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Presidential Documents

Title 3—

The President

Presidential Determination No. 91–53 of September 16, 1991

Assistance to Jordan Under Chapter 5 of Part II of the Foreign Assistance Act of 1961 and Section 23 of the Arms Export Control Act

Memorandum for the Secretary of State

By virtue of the authority vested in me by section 502(c) of the Dire Emergency Supplemental Appropriations for Consequences of Operation Desert Shield/Desert Storm, Food Stamps, Unemployment Compensation Administration, Veterans Compensation and Pensions, and other Urgent Needs Act of 1991 (Public Law 102–27), I hereby determine and certify that furnishing assistance under chapter 5 of part II of the Foreign Assistance Act of 1961, as amended, and under section 23 of the Arms Export Control Act, to Jordan would be beneficial to the peace process in the Middle East.

In addition, by virtue of the authority vested in me by section 586D of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991 (Public Law 101–513), I hereby determine and certify that assistance for Jordan under chapter 5 of part II of the Foreign Assistance Act of 1961, as amended, and under section 23 of the Arms Export Control Act, is in the national interest of the United States.

You are authorized and directed to notify the Congress of this determination and to publish it in the **Federal Register.**

THE WHITE HOUSE,
Washington, September 16, 1991.

[FR Doc. 91–23913
Filed 9–30–91; 4:44 pm]
Billing code 3195–01–M

Rules and Regulations

Federal Register
Vol. 56, No. 191
Wednesday, October 2, 1991

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 245

[INS No. 1440-91]

RIN 1115-AC88

Adjustment of Status to That of Person Admitted for Permanent Residence

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rulemaking amends those regulations relating to adjustment of status from a temporary (or nonimmigrant) classification to a permanent (or immigrant) one. These changes facilitate implementation of the Immigration Act of 1990 (IMMACT), Public Law 101-649, November 29, 1990, and eliminate provisions relating to sections of law under which aliens may no longer apply for benefits. The rulemaking also simplifies the adjustment of status regulations and improves the efficiency of the adjudications program.

EFFECTIVE DATE: October 1, 1991.

FOR FURTHER INFORMATION CONTACT: Michael L. Shaul, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., room 7122, Washington, DC 20536, telephone (202) 514-3946.

SUPPLEMENTARY INFORMATION: On August 9, 1991, the Immigration and Naturalization Service ("Service") published, at 56 FR 37864, proposed regulations to amend 8 CFR part 245 which sets forth eligibility, documentation and other requirements for adjustment of status from a nonimmigrant to an immigrant under a number of provisions in the Immigration and Nationality Act ("the Act") and related laws. The proposed rulemaking would eliminate a number of obsolete provisions of the regulation under which aliens were previously permitted to seek adjustment of status. It would also discontinue a procedure whereby the Service allowed concurrent filings of petitions for (employment-based) immigrant visa classification under section 203(b) of the Act and applications for adjustment of status under section 245 of the Act in favor of a procedure whereby the visa petition would be filed at a Service Center and (once the petition was approved) the adjustment application would be filed at a local office. The rulemaking does not affect the ability of a petitioner and an alien to file simultaneously a family-based immigrant rise petition under either section 201(b)(2)(A)(i) or 203(a) of the Act and an adjustment application under section 245.

The comment period on this proposal extended until September 9, 1991, during which time the Service received a total of twelve comments. All twelve comments have been reviewed and the opinions expressed therein have been taken into account in drafting the final rule.

None of the commenters objected to the removal of the obsolete provisions of the regulations, and that segment of the proposal will be adopted as proposed.

All twelve commenters discussed the proposal to eliminate concurrent filings, expressing a wide variety of viewpoints. Two commenters felt that the concurrent filing program should not be discontinued, but merely suspended for no more than three months as a transitional matter to allow the Service time to conduct necessary training. The Service is not adopting the commenter's suggestion, but will re-examine the issue in a few months (after we have had time to analyze the implementation of the new law and evaluate the success of our training efforts) to determine whether the concurrent filing program should be re-implemented.

Several commenters were opposed to the elimination, feeling that it would "only delay even further the overall processing time for granting alien permanent residency." The Service acknowledges that the creation of a two step visa petition and adjustment application process may seem like an additional bureaucratic barrier on the surface. However, this procedural change is being adopted because the Service believes that it will actually prove to be more efficient for both the public and the Service. It is intended to shorten the overall processing time and improved quality because the Service Centers' adjudicators could more efficiently make visa petition determinations given their enhanced knowledge of employment based immigration issues.

Other commenters felt that the proposal would increase overall processing time, but recognized that the visa petitions would be processed more expeditiously at the Service Centers. One commenter suggested that the Service should continue to allow concurrent filings, but require that both the visa petition and the adjustment application be filed at the Service Center, with only a portion of the adjustment applications being referred to local offices for interview. Under this commenter's proposal all the visa petitions and those adjustment applications not selected for interview would be adjudicated at the Service Center. Although the Service has had a similar proposal under consideration for some time, it is still undergoing study and we are not yet prepared to implement it.

Additional commenters saw merit in the proposal, but only if certain procedural problems relating to local office operations were also addressed. Specifically, these commenters seek clarification regarding procedures for obtaining petitions which has been sent to consulates outside the United States, submission of documentation required to apply for adjustment, and obtaining employment authorization. The Service is already addressing these issues through non-regulatory channels, including redesign of forms and instructions.

One commenter was concerned that elimination of the concurrent filing provision would result in no visa petitions being subjected to the more intense scrutiny possible through a personal interview and that it would "cause the expertise that currently exists at district offices to be lost by not being used and by attrition." Furthermore, this commenter took issues with the implication that a higher standard of quality was maintained at Service Centers than at local offices.

The Service has never implied that its employees and managers at local offices are any less dedicated or capable than those at the Service Centers, merely that due to enhanced automation and certain other factors the Service Centers were able to take advantage of economies of scale and produce a quality adjudication product more efficiently. On the other hand, it is recognized that certain functions are beyond the scope of Service Centers (e.g., conducting personal interviews and detecting certain local fraud patterns) and are best handled in a local office environment. For this reason, it is anticipated that employment-based visa petitions requiring interview will continue to be sent to local offices, and that local offices will provide Service Centers with intelligence information necessary for determining problem cases.

A number of commenters were concerned about the issuance of employment authorization to aliens between the filing of the visa petition and the filing of the adjustment application. These commenters correctly understand that the issuance of employment authorization ensues only at the point that the alien has filed an adjustment application, not when the visa petition is filed. As such, the existing procedures created a number of potential problems, especially in cases where the visa petition was subsequently denied. The current regulations provide that "(i)f a visa would be immediately available upon approval of a visa petition, the application will not be considered properly filed unless such petition has first been approved." Accordingly, the existing practice of issuing employment authorization prior to the approval of the visa petition was questionable, at best. On the other hand, since most employment-based adjustment applicants are maintaining their status in a nonimmigrant classification which authorizes employment, the Service believes that the adverse effect of this change on the general public will be minimal. (Contrary to the opinion of one commenter, the mere filing of a visa petition on behalf of an alien in nonimmigrant status does not result in that alien being considered to be out of status.)

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This is not a major rule as defined in section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

The information collection requirement contained in this rule has been cleared by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The clearance number for this collection is contained in 8 CFR 299.5.

Lists of Subjects in 8 CFR Part 245

Aliens, Employment, Health care, Immigration, Passports and visas.

Accordingly, part 245 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

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

Authority: 8 U.S.C. 1101, 1103, 1151, 1154, 1182, 1186a, 1255, and 1257; 8 CFR part 2.

§ 245.1 [Amended]

2. Section 245.1 is amended in paragraph (b)(8) by removing the word "Any" and adding in its place the words "Except for an alien who is applying for residence under the provisions of section 133 of the Immigration Act of 1990, any".

§ 245.1 [Amended]

3. Section 245.1 is amended in paragraph (b)(10) by revising the reference to "203(a)(1) through 203(a)(6)" to read "203(a) or 203(b)".

§ 245.1 [Amended]

4. Section 245.1 is amended in paragraph (b)(12) by adding "or 216A" after the citation "section 216".

5. Section 245.1 is amended by:

a. Revising paragraph (d)(1);

b. Removing paragraph (d)(2);

c. Redesignating paragraph (d)(3) as paragraph (d)(2);

d. Revising paragraph (f);

e. Removing paragraph (g);

f. Redesignating paragraph (h) as paragraph (g) and revising it to read as follows:

§ 245.1 Eligibility.

* * * * *

(d) * * *

(1) *Alien medical graduates.* Any alien who is a medical graduate qualified for special immigrant classification under section 101(a)(27)(H) of the Act and is the beneficiary of an approved petition as required under section 204(a)(1)(E)(i) of the Act is eligible for adjustment of status. An accompanying spouse and children also may apply for adjustment of status under this section. Temporary absences from the United States for 30 days or less, during which the applicant was practicing or studying medicine, do not interrupt the continuous presence requirement. Temporary absences authorized under the Service's advance parole procedures will not be considered interruptive of continuous presence when the alien applies for adjustment of status.

* * * * *

(f) *Availability of immigrant visas under section 245 and priority dates—*

(1) *Availability of immigrant visas under section 245.* An alien is ineligible for the benefits of section 245 of the Act unless an immigrant visa is immediately available to him or her at the time the application is filed. If the applicant is a preference alien, the current Department of State Visa Office Bulletin on Availability of Immigrant Visa Numbers will be consulted to determine whether an immigrant visa is immediately available. An immigrant visa is considered available for accepting and processing the application Form I–485 if the preference category applicant has a priority date on the waiting list which is not later than the date shown in the Bulletin (or the Bulletin shows that numbers for visa applicants in his or her category are current), and (if the applicant is seeking status pursuant to section 203(b) of the Act) the applicant presents evidence that the appropriate petition filed on his or her behalf has been approved. An immigrant visa is also considered immediately available if the applicant establishes eligibility for the benefits of Public Law 101–238. Information concerning the immediate availability of an immigrant visa may be obtained at any Service office.

(2) *Priority dates.* The priority date of an applicant who is seeking the allotment of an immigrant visa number under one of the preference classes specified in section 203(a) or 203(b) of the Act by virtue of a valid visa petition approved in his or her behalf shall be fixed by the date on which such approved petition was filed.

(g) *Conditional basis of status.* Whenever an alien spouse (as defined in section 216(g)(1) of the Act), an alien son or daughter (as defined in section 216(g)(2) of the Act), an alien entrepreneur (as defined in section 216A(f)(1) of the Act), or an alien spouse or child (as defined in section 216A(f)(2) of the Act) is granted adjustment of status to that of lawful permanent residence, the alien shall be considered to have obtained such status on a conditional basis subject to the

provisions of section 216 or 216A of the Act, as appropriate.

§ 245.2 [Amended]

6. Section 245.2 is amended in paragraph (a)(1) by removing the phrase "or section 101 or 104 of the Act of October 28, 1977," in the first and second sentences.

7. Section 245.2 is amended by:

a. Removing paragraphs (a)(2)(i) and (a)(2)(iii);

b. Redesignating paragraph (a)(2)(ii) as paragraph (a)(2)(i);

c. Redesignating paragraph (a)(2)(iv) as paragraph (a)(2)(ii); and

d. Revising the newly redesignated paragraph (a)(2)(i) to read as follows:

§ 245.2 Application.

(a) * * *

(2) * * *

(i) *Under section 245.* Before an application for adjustment of status under section 245 of the Act may be considered properly filed, a visa must be immediately available. If a visa would be immediately available upon approval of a visa petition, the application will not be considered properly filed unless such petition has first been approved. If an immediate relative petition filed for classification under section 201(b)(2)(A)(i) of the Act or a preference petition filed for classification under section 203(a) of the Act is submitted simultaneously with the adjustment application, the adjustment application shall be retained for processing only if approval of the visa petition would make a visa immediately available at the time of filing the adjustment application. If the visa petition is subsequently approved, the date of filing the adjustment application shall be deemed to be the date on which the accompanying petition was filed.

* * * * *

8. Section 245.2 is amended in paragraph (a)(3)(i) by removing the phrase "the Act of October 28, 1977," in the first sentence, by removing paragraph (a)(3)(iii), and by redesignating paragraph (a)(3)(iv) as paragraph (a)(3)(iii).

§ 245.2 [Amended]

9. Section 245.2 is amended by removing paragraph (a)(4)(iii) and redesignating paragraph (a)(4)(iv) as paragraph (a)(4)(iii).

§ 245.2 [Amended]

10. Section 245.2 is amended by removing paragraph (a)(5)(iii) and redesignating paragraph (a)(5)(iv) as paragraph (a)(5)(iii).

§ 245.2 [Amended]

11. Section 245.2 is amended by removing paragraphs (b) and (e) and by redesignating paragraphs (c) and (d) as paragraphs (b) and (c), respectively.

§ 245.4 [Removed]

12. Section 245.4 is removed.

§ 245.5 [Removed]

13. Section 245.5 is removed.

§ 245.6 [Removed]

14. Section 245.6 is removed.

§ 245.7 [Redesignated as § 245.4]

15. Section 245.7 is redesignated as § 245.4.

§ 245.8 [Redesignated as § 245.5]

16. Section 245.8 is redesignated as § 245.5 and revised to read as follows:

§ 245.5 Medical examination.

Pursuant to section 234 of the Act, an applicant for adjustment of status shall be required to have a medical examination by a designated civil surgeon, whose report setting forth the findings of the mental and physical condition of the applicant shall be incorporated into the record. A medical examination shall not be required of an applicant for adjustment of status who entered the United States as a non-immigrant fiance or fiancee of a United States citizen as defined in section 101(a)(15)(K) of the Act pursuant to § 214.2(k) of this chapter if the applicant was medically examined prior to, and as a condition of, the issuance of the nonimmigrant visa; provided that the medical examination must have occurred not more than one year prior to the date of application for adjustment of status. Any applicant certified under paragraphs (1)(A)(ii) or (1)(A)(iii) of section 212(a) of the Act may appeal to a Board of Medical Officers of the U.S. Public Health Service as provided in section 234 of the Act and part 235 of this chapter.

§ 245.9 [Redesignated as § 245.6 and Amended]

17. Section 245.9 is redesignated as § 245.6 and amended by revising the term "is filed" to read "was filed" in the second sentence.

§ 245.10 [Redesignated as § 245.7]

18. Section 245.10 is redesignated as § 245.7.

Dated: September 20, 1991.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 91-23864 Filed 9-30-91; 3:09 pm]

BILLING CODE 4410-10-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 large cranes, certain canned food products, brown and granulated sugar, and small paper bags.

SUMMARY: This notice advises the public that the Small Business Administration (SBA) is establishing a waiver of the "Nonmanufacturer Rule" for the classes of products listed below. These classes of products are being granted waivers because no small business manufacturer or processor is available to participate in the Federal procurement market. The effect of a waiver is to allow an otherwise qualified small business regular dealer to supply the product of any domestic manufacturer or processor on a Federal supply contract set aside for small business or awarded through the SBA 8(a) program.

PSC	Classes of products granted waivers.
3810	Cranes (greater than 15 ton capacity).
8905	Tuna, canned.
8915	Spinach, canned.
8915	Pineapple slices and tidbits, canned.
8915	Citrus sections, canned.
8915	Pineapple juice, canned.
8925	Granulated sugar.
8925	Brown sugar.
9310	Paper bags (small hardware type).

EFFECTIVE DATE: October 2, 1991.

FOR FURTHER INFORMATION CONTACT: James Fairbairn, Industrial Specialist, phone (202) 205-6465.

SUPPLEMENTARY INFORMATION: On November 15, 1988, Public Law 100-656 incorporated into the Small Business Act the existing SBA policy that recipients of contracts set aside for small business or the SBA 8(a) Program shall provide the products of small business manufacturers or processors. The requirement is commonly known 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 also 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. Section 210 of Public Law 101-574 subsequently amended the language to allow for waivers of classes of products where there are no small business manufacturers or processors

"available to participate in the Federal procurement market." (emphasis added). 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 within a PSC. To be considered available to participate in the Federal procurement market, a small business must have been awarded a contract by the Federal government to supply that particular class of products, either directly or through a dealer, or offered on a solicitation within the past two years from the date of request for waiver. SBA has been requested to issue a waiver for each of the classes of products listed above because of an apparent lack of any small business manufacturers or processors of them available to participate in the Federal procurement market. SBA searched its Procurement Automated Source System (PASS) for small business manufacturers or processors. No small business manufacturers or processors were identified as available to participate in the Federal procurement market. We then published a notice to the public in the **Federal Register** on August 19, 1991 (56 FR 41057) stating our intention to grant waivers for these classes of products unless sources were found. The notice described the legal provisions for a waiver, how SBA defines the market, and requested information on small business manufacturers or processors available to participate in the Federal procurement market.

We received no new information as a result of this notice. These waivers are thus granted pursuant to statutory authority under section 210 of Public Law 101–574. A waiver for a designated class of products is for an indefinite period, but is subject to an annual review or upon receipt of information indicating that the conditions required for a waiver no longer exist. If SBA determines that the conditions required for a waiver no longer exist, the waiver will be terminated. That termination will be published in the **Federal Register.**

Robert J. Moffitt,

Chairman, Size Policy Board.

[FR Doc. 91–23651 Filed 10–1–91; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 91–ANM–12]

Establishment of Additional Control Area: Schloredt, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes controlled airspace at Schloredt, Wyoming. There has been an increase in the number of general aviation and air taxi flights between Spearfish, South Dakota and Gillette, Wyoming. This action will permit direct routing of aircraft and enable air traffic control to provide instrument clearance to aircraft in controlled airspace.

EFFECTIVE DATE: 0901 u.t.c., November 14, 1991.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM–535, 1601 Lind Avenue SW., Renton, Washington 98055–4056, Telephone: (206) 227–2535.

SUPPLEMENTARY INFORMATION:

History

On July 19, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish controlled airspace at Schloredt, Wyoming (56 FR 33217). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Accordingly, the control area is adopted as proposed, except for a change to reflect the correct coordinates of the Gillette VOR, which were incorrectly published in the NPRM. Section 71.163 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes controlled airspace at Schloredt, Wyoming. There has been an increase in the number of general aviation and air taxi flights between Spearfish, South Dakota and Gillette, Wyoming. This action will permit direct routing of aircraft and enable air traffic control to provide instrument clearances to aircraft in a controlled airspace environment throughout the entire flight. This will improve the flow of traffic, reduce operating costs and fuel consumption to the public, and reduce controller work load.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Control area.

Adoption of the Amendment

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

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

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

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

2. Section 71.163 is amended as follows:

§ 71.163 [Amended]

Schloredt, Wyoming [New]

That airspace extending upward from 8,000 feet MSL bounded on the east by an arc of a 53 mile-radius of the Ellsworth Air Force Base, South Dakota, (lat. 44°08'45" N, long. 103°06'15" W), on the southwest by the north edge of V–86, and on the northwest by a line 5.3 miles north of and parallel to the Gillette VOR (lat. 44°20'52" N, long. 105°32'35" W) 082° radial.

Issued in Seattle, Washington on September 16, 1991.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc. 91–23662 Filed 10–1–91; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 91-ANM-10]

Establishment of Additional Control Area; Sun River, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a transition area to provide controlled airspace for a new VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME) approach to the Sun River Airport, Sun River, Oregon. The transition area will segregate aircraft operating under visual flight rules (VFR) form those operating under instrument flight rules (IFR). The area will be depicted on aeronautical charts to provide references for pilots.

EFFECTIVE DATE: 0901 u.t.c., November 14, 1991.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM–535, 1601 Lind Avenue SW., Renton, Washington 98055–4056, telephone: (206) 227–2535.

SUPPLEMENTARY INFORMATION:

History

On July 26, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish controlled airspace at Sun River, Oregon (56 FR 34155). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Accordingly, the control area is adopted as proposed, except for a change to reflect the correct coordinates of the Sun River Airport. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes controlled airspace for the new VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME) approach to the Sun River Airport, Sun River, Oregon. The transition area will segregate aircraft operating under visual flight rules (VFR) from those operating under instrument flight rules (IFR). The area will be depicted on aeronautical charts to provide references for pilots.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

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

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

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

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

2. Section 71.181 is amended as follows:

Sun River, Oregon [New]

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Sun River, Oregon, Airport (lat. 43°52'36" N, long. 121°27'06" W), and within 4 miles each side of the Redmond, Oregon VORTAC (lat. 44°15'11" N, long. 121°18'09" W) 197° radial extending from the 7-mile radius to 10 miles north of the Sun River Airport.

Issued in Seattle, Washington on September 18, 1991.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc. 91–23663 Filed 10–1–91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 91-ANM-8]

Establish Transition Area; Albany, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a transition area to provide controlled airspace for the new VHF Omnidirectional Range (VOR)–A approach to the Albany Municipal Airport, Albany, Oregor . The transition area will segregate aircraft operating under visual flight rules (VFR) from those operating under instrument flight rules (IFR). The area will be depicted on aeronautical charts to provide references to pilots.

EFFECTIVE DATE: 0901 u.t.c., November 14, 1991.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM–535, 1601 Lind Avenue SW., Renton, Washington 98055–4056, Telephone: (206) 227–2535.

SUPPLEMENTARY INFORMATION:

History

On July 2, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a transition area at Albany, Oregon (56 FR 30354). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Accordingly, the transition area is adopted as proposed, except for a correction to delete the reference to the Corvalis 700-foot transition area, which does not exist. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes controlled airspace at Albany, Oregon to accommodate a new VHF Omnidirectional Range (VOR)–A approach to the Albany Municipal Airport, Albany, Oregon. The transition area will segregate aircraft operating under visual flight rules (VFR) from those operating under instrument flight rules (IFR). The area will be depicted on aeronautical charts to provide references for pilots.

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

negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, Transition areas.

Adoption of the Amendment

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

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

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

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

2. Section 71.181 is amended as follows:

Albany, Oregon, Transition Area [New]

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Albany, Oregon Airport (lat. 44°38'17" N, long. 123°03'30" W), and within 2 miles either side of the Cowalis, Oregon VOR/DME (lat. 44°29'59" N, long. 123°17'33" W) 048° radial; excluding that airspace within the Eugene, Oregon, 700 foot transition area.

Issued in Seattle, Washington, on September 16, 1991.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc. 91–23664 Filed 10–1–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 91–ANM–11]

Amendment to The Dalles Transition Area, The Dalles, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends The Dalles, Oregon Transition area. This action provides controlled airspace for The Dalles VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME)–A approach segment from The Dalles VORTAC to MUGGZ intersection which is presently outside of controlled airspace.

EFFECTIVE DATE: 0901 u.t.c., November 14, 1991.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM–535, 1601 Lind Avenue S.W., Renton, Washington 98055–4056, telephone: (206) 227–2535.

SUPPLEMENTARY INFORMATION:

History

On July 29, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend The Dalles, Oregon Transition area (56 FR 35838). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Accordingly, the transition area is adopted as proposed, except for a change to reflect the correct coordinates of The Dalles VORTAC. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations amends The Dalles, Oregon Transition Area. This action provides controlled airspace for The Dalles VOR/DME–A approach segment from The Dalles VORTAC to MUGGZ intersection which is presently outside of controlled airspace. This action will segregate aircraft operating under visual flight rules from aircraft operating under instrument flight rules. The area will be depicted on aeronautical charts for pilot reference.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

Adoption of the Amendment

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

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

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

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

2. Section 71.181 is amended as follows:

The Dalles, Oregon [Revised]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of The Dalles Municipal Airport (lat. 45°37'07"N, long. 121°09'58"W), and that airspace within 5-miles each side of The Dalles VORTAC (lat. 45°42'49"N, long. 121°05'59"W) 184° radial extending from The Dalles VORTAC to 17.5-miles south of the VORTAC, and that airspace between The Dalles VORTAC 206° radial clockwise to the 222° radial extending from the 5-mile radius of the Airport to the 11.5-mile radius of the Airport, and that airspace 5-mile either side of the 17.3-mile radius of the VORTAC between the 121° radial clockwise to the 206° radial: that airspace extending upward from 1,200 feet above the surface within 8-miles north and 6-miles south of The Dalles VORTAC 281° radial and 101° radial extending from 7-miles west to 14-miles east of the VORTAC, and within 5-miles north of the VORTAC 101° radial extending from 14-miles east to 23-miles east of the VORTAC, and that airspace within a 23-mile radius of the VORTAC extending clockwise from the 101° radial to the 272° radial, excluding the airspace within the Portland, Oregon, Transition area.

Issued in Seattle, Washington, on September 16, 1991.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc. 91–23665 Filed 10–1–91; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 10

[T.D. 91–82]

Elimination of License Requirement for Canadian Petroleum Imports

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

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations so that they will accurately reflect current law and practice. The regulations permit duty free importation of Canadian crude petroleum when certain conditions are

met. One of those conditions is that the importation be done pursuant to a license issued by the Secretary of Energy. Presidential Proclamation 5141 eliminated the need for such licenses, however, and they are no longer issued by the Department of Energy. Since the licenses are not currently available, Customs is amending its regulations to remove the requirement.

EFFECTIVE DATE: October 2, 1991.

FOR FURTHER INFORMATION CONTACT: Joanne Roman, Commercial Rulings Division, 202–566–5856.

SUPPLEMENTARY INFORMATION:

Background

Presidential Proclamation 3279, issued March 10, 1959, imposed a requirement that importers of crude oil or unfinished oils obtain a license from the Department of the Interior. The underlying purpose behind the licensing requirement was the finding that adjustments to the levels of imported oils were necessary so that the imports would not threaten the national security. When the Department of Energy was created, it assumed the licensing functions from the Department of the Interior.

Because this licensing requirement was in place when Customs adopted regulations governing the operational aspects of commercial exchange agreements between United States and Canadian refiners relating to crude petroleum, the existence of an import license from the Secretary of Energy was incorporated as one of the essential elements necessary for duty free entry of crude petroleum from Canada.

On December 22, 1983, Presidential Proclamation No. 5141 revoked Proclamation No. 3279 and the licensing system. Because the requirement no longer existed, the Department of Energy stopped issuing licenses. Since the licenses no longer exist, Customs cannot require their production as an element in determining whether Canadian crude petroleum qualifies for duty free entry.

Therefore, Customs is amending its regulations to delete paragraph (a)(2) in § 10.179 which identified the Department of Energy license as an item necessary for an importer to receive duty free treatment of Canadian petroleum received in exchange for domestic or duty paid imported petroleum exported from the United States to Canada.

This amendment will not change any of the other requirements which apply to the treatment of such products.

Inapplicability of Public Notice and Delayed Effective Date Requirements, the Regulatory Flexibility Act, and Executive Order 12291

Because this amendment merely conforms the regulations to existing law as expressed in Presidential Proclamation 5141 by removing a requirement and conferring a benefit upon the public, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are unnecessary; further, for the same reasons, good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553(d)(3). Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This amendment does not meet the criteria for a "major rule" as defined in Executive Order 12291. Accordingly, a regulatory impact analysis is not required.

Drafting Information

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

List of Subjects in 19 CFR Part 10

Customs duties and inspection, Petroleum, Oil imports.

Amendment to the Regulations

Accordingly, part 10, Customs Regulations (19 CFR part 10) is amended as set forth below:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority for part 10 continues to read as follows:

Authority: 19 U.S.C. 66, 1202, 1481, 1484, 1498, 1623, 1624;

* * * * *

§ 10.179 [Amended]

2. Section 10.179 is amended by removing paragraph (a)(2); and paragraphs (a)(3) and (a)(4) are redesignated as paragraphs (a)(2) and (a)(3) respectively.

Approved: September 25, 1991.

Carol Hallett,

Commissioner of Customs.

Peter K. Nunez,

Assistant Secretary of the Treasury.

[FR Doc. 91–23649 Filed 10–1–91; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

Animal Drugs, Feeds, and Related Products; Change of Sponsor Name

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor name from Elanco Products Co., A Division of Eli Lilly & Co., to Elanco Animal Health, A Division of Eli Lilly & Co.

EFFECTIVE DATE: October 2, 1991.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Place, Rockville, MD 20855, 301–295–8646.

SUPPLEMENTARY INFORMATION: Elanco Animal Health has advised FDA of a change of sponsor name from Elanco Products Co., A Division of Eli Lilly & Co. to Elanco Animal Health, A Division of Eli Lilly & Co. Accordingly, the agency is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) to reflect this change.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) in the entry for "Elanco Products Co., and in the table in paragraph (c)(2) in the entry for "000986" by removing "Elanco Products Co., " and replacing it with "Elanco Animal Health,".

Dated: September 23, 1991.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 91-23679 Filed 10-01-91; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Lincomycin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove and reserve that portion of the regulations reflecting approval of a new animal drug application (NADA) held by Cadco, Inc. The NADA provides for the manufacture of a Type B medicated feed containing lincomycin. In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of the NADA.

EFFECTIVE DATE: October 15, 1991.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8749.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of NADA 132-658 held by Cadco, Inc., P.O. Box 3599, 10100 Douglas Ave., Des Moines, IA 50322. The NADA provides for the manufacture of Type B medicated feed containing lincomycin.

This final rule removes and reserves 21 CFR 558.325(a)(4), which reflects approval of the NADA.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.325 [Amended]

2. Section 558.325 *Lincomycin* is amended by removing and reserving paragraph (a)(4).

Dated: September 23, 1991.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 91-23678 Filed 10-1-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 515

Cuban Assets Control Regulations

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

ACTION: Final rule.

SUMMARY: This rule amends the Cuban Assets Control Regulations, 31 CFR part 515 (the "Regulations"), by reducing the dollar amount that may be sent to the remitter's close relatives in Cuba; generally prohibiting Cuban nationals from carrying non-Cuban currency to Cuba; and by limiting the dollar amount that can be expended by U.S. persons for transactions related to their travel to Cuba or for support for the travel of a Cuban national to the United States. These amendments to the Regulations are intended to reduce the flow of funds entering the Cuban economy from the United States. This rule also makes various clarifying and technical amendments.

EFFECTIVE DATE: November 1, 1991.

FOR FURTHER INFORMATION: William B. Hoffman, Chief Counsel (tel.: 202/535-6020), or Steven I. Pinter, Chief of Licensing (tel.: 202/535-9449), Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION: In order to reduce the flow of funds into the Cuban economy from the United States, § 515.560 is amended to limit the funds that a person traveling to Cuba may remit to Cuba for travel-related transactions such as passport or visa fees and taxes. Present § 515.563 permits, in pertinent part, the remittance of up to $500 in any 3-month period to the remitter's close relative(s) located in Cuba. This section is amended to reduce this amount to $300 per 3-month period. This change makes the amount consistent with the amount permitted in other programs administered by the Office of Foreign Assets Control for Vietnam and Cambodia. It also serves to reduce the amount of currency sent to Cuba from the United States. In addition, this section is amended to clarify that remittances for the purpose of enabling a Cuban national to emigrate are only authorized for the benefit of Cuban nationals emigrating from Cuba to the United States.

Present § 515.564, which authorizes transactions related to the travel to the United States by a Cuban national entering on a visa issued by the State Department, places no limit on the amount that may be remitted for such transactions. This section is amended to limit the amount of money that a U.S. person may remit to Cuba directly or indirectly for transactions related to such travel to $500. In addition, such remittances may be sent only after the Cuban national has received a valid U.S. visa. This section is also amended to clarify that travel transactions authorized in this section include travel directly from Cuba to the United States. Finally, present § 515.569 is amended to add a new subsection prohibiting Cuban nationals from carrying non-Cuban currency to Cuba from the United States in excess of amounts brought into the United States. An exception is made for the carrying of family remittances which the travelers may legally receive pursuant to § 515.563.

This rule also includes two clarifying amendments. Present § 515.311 is amended to make explicit the longstanding interpretation of the Office of Foreign Assets Control that the term, "property," includes services. On February 2, 1989 (54 FR 5235), § 515.560(c)(5) was inadvertently revised when it had been correctly removed on November 23, 1988 (53 FR 47527). This paragraph is removed in this rule.

Because the Regulations involve a foreign affairs function, Executive Order 12291 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rule making is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply.

List of Subjects in 31 CFR Part 515

Administrative practice and procedure, Cuba, Currency, Foreign investments in United States, Foreign

trade, Penalties, Reporting and recordkeeping requirements, Securities, Travel restrictions.

For the reasons set forth in the preamble, 31 CFR part 515 is amended as follows:

PART 515—CUBAN ASSETS CONTROL REGULATIONS

1. The "Authority" citation for part 515 continues to read as follows:

Authority: 50 U.S.C. App. 5, as amended; 22 U.S.C. 2370(a); Proc. 3447, 27 FR 1085, 3 CFR 1959–1963 Comp. p. 157; E.O. 9193, 7 FR 5205, 3 CFR 1938–1943 Cum. Supp. p. 1174; E.O. 9989, 13 FR 4891, 3 CFR 1943–1946 Comp. p. 748.

Subpart C—General Definitions

§ 515.311 [Amended]

2. Section 515.311 is amended by adding the word, "services," after the phrase, "contracts of any nature whatsoever.".

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

3. Section 515.560 is amended by revising paragraph (c)(1) to read as follows:

§ 515.560 Certain transactions incident to travel to and within Cuba.

* * * * *

(c) * * *

(1) All transportation-related transactions ordinarily incident to travel to and from Cuba, provided no more than $500 may be remitted to Cuba directly or indirectly for fees imposed by the Government of Cuba in conjunction with such travel.

* * * * *

4. Section 515.560(c)(5), as published at 54 FR 5235, February 2, 1989, is removed.

5. Section 515.563 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 515.563 Family remittances to nationals of Cuba.

(a) * * *

(1) For the support of the payee (including any members of the payee's household) in amounts not exceeding $300 in any consecutive 3-month period to any one household; and

(2) For the purpose of enabling the payee to emigrate from Cuba to the United States, in an amount not exceeding $500 to be made only once to any one payee, provided that the payee is a resident of and located within Cuba on the effective date of this section.

* * * * *

6. Section 515.564 is amended by revising the introductory text of paragraph (a), and paragraph (a)(1), and adding a new paragraph (c) to read as follows:

§ 515.564 Certain transactions incident to travel to, from and within the United States by certain Cuban Nationals.

(a) Except as provided in paragraphs (b) and (c) of this section, the following transactions by or on behalf of a Cuban national who enters the United States from Cuba on a visa issued by the State Department are authorized:

(1) All transactions ordinarily incident to travel between the United States and Cuba, including the importation into the United States of accompanied baggage for personal use;

* * * * *

(c) Remittances by persons subject to U.S. jurisdiction to Cuba or a Cuban national, directly or indirectly, for transactions on behalf of a Cuban national authorized in paragraph (a) may not exceed $500 and may be remitted only after the Cuban national has received a valid visa issued by the State Department. Authorized transactions include purchase of airline tickets and payment of visa fees or other travel-related fees.

7. Section 515.569 is amended by redesignating paragraphs (d) and (e) as (e) and (f), and adding a new paragraph (d) to read as follows:

§ 515.569 Currency carried by travelers to Cuba.

* * * * *

(d) Except for remittances authorized for the traveler's household by § 515.563(a)(1) and the amount of U.S. currency or currency from a third country brought into the United States by the traveler and registered with the U.S. Customs Service upon entry, Cuban nationals returning directly to Cuba from the United States may carry no non-Cuban currency.

* * * * *

Dated: September 13, 1991.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: September 16, 1991.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 91–23660 Filed 9–27–91; 11:37 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR PUBLIC LAND ORDER 6884

[AK–932–4214–10; AA–5964, AA–3060, AA–5934]

Withdrawal of National Forest System Lands for the Kenai River Recreation Area, the Russian River Campground Area, and the Lower Russian Lake Recreation Area; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws approximately 1,855 acres of National Forest System lands from surface entry and mining for a period of 20 years for the Forest Service to protect the Kenai River Recreation Area, the Russian River Campground Area, and the Lower Russian Lake Recreation Area. The lands have been and remain open to mineral leasing.

EFFECTIVE DATE: October 2, 1991.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2) (1988), but not from leasing under the mineral leasing laws, to protect the recreational values of the Kenai River Recreation Area, the Russian River Campground Area, and the Lower Russian Lake Recreation Area:

Seward Meridian

Chugach National Forest

(a) Kenai River Recreation Area (AA–5964):
T. 5 N., R. 4 W., unsurveyed,

Within sections 27, 28, 33, 34, 35, and 36, more particularly described as:

A strip of land from the forest boundary on the west to the Cooper Creek Campground withdrawal (Public Land Order No. 829) on the east, lying between the Sterling Highway (Alaska State Highway No. 1) and the Kenai River, and a roadside zone 400 feet in width on the north side of the highway west of the Schooner Bend Bridge, to the forest boundary, and 400 feet on the south side of the highway east of said bridge to the Cooper Creek Campground withdrawal (Public Land Order No. 829).

The area described contains approximately 350 acres.

(b) Russian River Campground Area (AA–3060):

T. 5 N., R. 4 W., unsurveyed,
Sec. 33, fractional part of N½ between the Kenai River on the north and the Russian River on the south, NE¼SE¼ lying east of the Russian River;
Sec. 34, that part of SW¼NE¼, NW¼, N¼SW½, NW¼SE¼ lying south of the Kenai River and east of the Russian River.

The area described contains approximately 340 acres.

(c) Lower Russian Lake Recreation Area (AA–5934):

T. 4. N., R. 4 W., unsurveyed,
Sec. 3, W½W½;
Sec. 4, E½E½, SW¼SE¼, fractional parts of W½NE¼, NW¼SE¼, and E½SW¼ lying east of the Russian River;
Sec. 9, NE¼NE¼, W½NE¼, NW¼SE¼, fractional parts of E½NW¼ and NE¼SW¼ lying east of the Russian River and fractional parts of SW¼SE¼, SE¼SW¼ lying east of Lower Russian Lake;
Sec. 10, NW¼NW¼;
Sec. 16, SE¼SW¼ and fractional parts of NE¼SW¼, W½NE¼, SE¼NW¼, and W½SW¼ lying east of Lower Russian Lake;
Sec. 21, NE¼NW¼, fractional part of NW¼NW¼ lying east of Lower Russian Lake and the Russian River.

T. 5 N., R. 4 W., unsurveyed,
Sec. 33, fractional part of SE¼SE¼ lying east of the Russian River;
Sec. 34, S½S½ and fractional parts of NE¼SE¼ and SE¼NE¼ lying south of the Kenai River.

The area described contains approximately 1,165 acres.

The areas described above aggregate approximately 1,855 acres.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of National Forest System lands under lease, license, or permit, or governing the disposal of its mineral or vegetative resources other than under the mining laws. This withdrawal does not affect the adjudication of any applications for the land existing period to the withdrawal.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: September 23, 1991.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 91–23687 Filed 10–1–91; 8:45 am]

BILLING CODES 4310–JA–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

45 CFR Part 1160

Indemnities Under the Arts and Artifacts Indemnity Act

AGENCY: National Endowment for the Arts.

ACTION: Final rule.

SUMMARY: This rule describes the procedures of the Arts and Artifacts Indemnity Program. The previous rules had not been updated since 1976. The revisions reflect changes in the statute and Program guidelines over the last fifteen years.

EFFECTIVE DATE: November 1, 1991.

FOR FURTHER INFORMATION CONTACT: Alice M. Whelihan, Indemnity Administrator, Museum Program, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5442, from whom copies of the program guidelines are available.

SUPPLEMENTARY INFORMATION: This rule adopts as a final rule a proposed rule published in the **Federal Register** on July 15, 1991 (56 FR 32155). The rules govern the Arts and Artifacts Indemnity Act as amended (20 U.S.C. 971–977). The legal counsel of the Federal Council on the Arts and the Humanities reviewed suggestions made by staff and made further adjustments to revise and update the rules. The members of the Indemnity Advisory Panel and Federal Council on the Arts and the Humanities approved the revisions. The revised rules will be included in guideline packages for prospective applicants and in Certificates of Indemnity. The Catalogue of Federal Domestic Assistance number for the Arts and Artifacts Indemnity Program is 45–201.

No comments were received with respect to these proposals. A technical change was made in § 1160.4(e) to clarify the request for information on the significance and value of the exhibition. With that minor change, it has been determined that the proposed rule should be adopted as a final rule.

List of Subjects in 45 CFR Part 1160

Indemnity payments.

Alice M. Whelihan,

Indemnity Administrator, National Endowment for the Arts.

For reasons set out in the preamble, Title 45, Chapter XI, part 1160 of the Code of Federal Regulations is amended as set forth below.

PART 1160—INDEMNITIES UNDER THE ARTS AND ARTIFACTS INDEMNITY ACT

Sec.
1160.1 Purpose and scope.
1160.2 Federal Council on the Arts and the Humanities.
1160.3 Definitions.
1160.4 Application for indemnification.
1160.5 Certificate of national interest.
1160.6 Indemnity agreement.
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1160.9 Certification of claim and amount of loss to the Congress.
1160.10 Appraisal procedures.
1160.11 Indemnification limits.

Authority: 20 U.S.C. 971–977

§ 1160.1 Purpose and scope.

(a) This part sets forth the exhibition indemnity procedures of the Federal Council on the Arts and the Humanities under the Arts and Artifacts Indemnity Act (Pub. L. 94–158) as required by section 2(a)(2) of the Act. An indemnity agreement made under these regulations shall cover either:

(1) Eligible items from outside the United States while on exhibition in the United States or

(2) Eligible items from the United States while on exhibition outside this country, preferably when they are part of an exchange of exhibitions.

(b) Program guidelines and further information are available from the Indemnity Administrator, c/o Museum Program, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

§ 1160.2 Federal Council on the Arts and the Humanities

For the purposes of this part (45 CFR part 1160) the Federal Council on the Arts and the Humanities shall be composed of the Chairman of the National Endowment for the Arts, the Chairman of the National Endowment for the Humanities, the Secretary of Education, the Director of the National Science Foundation, the Librarian of Congress, the Chairman of the Commission of Fine Arts, the Archivist of the United States, the Commissioner, Public Buildings Service, General Services Administration, the Administrator of the General Services Administration, the Director of the United States Information Agency, the Secretary of the Interior, the Secretary of Commerce, the Secretary of Transportation, the Chairman of the National Museum Services Board, the Director of the Institute of Museum Services, the Secretary of Housing and Urban Development, the Secretary of Labor, the Secretary of Veterans Affairs, and

the Commissioner of the Administration on Aging.

§ 1160.3 Definitions.

For the purposes of this part:

(a) *Council* means the Federal Council on the Arts and the Humanities as defined in § 1160.2.

(b) *Letter of Intent* means an agreement by the Council to provide an indemnity covering a future exhibition subject to compliance with all requirements at the date the indemnity is to be effective.

(c) *Lender* means the owner of an object.

(d) *Eligible item* means an object which qualifies for coverage under the Arts and Artifacts Indemnity Act.

(e) *Exhibition* means a public display of an indemnified items(s) at one or more locations, as approved by the Council, presented by any person, nonprofit agency or institution, or Government, in the United States or elsewhere.

(f) *On Exhibition* means the period of time beginning on the date an indemnified item leaves the place designated by the lender and ending on the termination date.

(g) *Indemnity Agreement* means the contract between the Council and the indemnitee covering loss or damage to indemnified items under the authority of the Arts and Artifacts Indemnity Act.

(h) *Indemnitee* means the party or parties to an indemnity agreement issued by the Council, to whom the promise of indemnification is made.

(i) *Participating institution(s)* means the location(s) where an exhibition indemnified under this part will be displayed.

(j) *Termination date* means the date thirty (30) calendar days after the date specified in the indemnity Certificate by which an indemnified item is to be returned to the place designated by the lender or the date on which the item is actually so returned, whichever date is earlier. (In museum terms this means wall–to–wall coverage.) After 11:59 p.m. on the termination date, the item is no longer covered by the indemnity agreement unless an extension has theretofore been requested by the indemnitee and granted in writing by the Council.

§ 1160.4 Application for indemnification.

An applicant for an indemnity shall submit an Application for Indemnification, addressed to the Indemnity Administrator, National Endowment for the Arts, Washington, DC 20506, which shall described as fully as possible:

(a) The time, place, nature and Project Director/Curator of the exhibition for which the indemnity is sought;

(b) Evidence that the owner and present possessor are willing to lend the eligible items, and both are prepared to be bound by the terms of the indemnity agreement;

(c) The total value of all items to be indemnified, including a description of each item to be covered by the agreement and each item's value;

(d) The source of valuations of each item, plus an opinion by a disinterested third party of the valuations established by lenders;

(e) The significance, and the educational, cultural, historical, or scientific value of the items to be indemnified, and the exhibition as a whole;

(f) Statements describing policies, procedures, techniques, and methods to be employed with respect to:

(1) Packing of items at the premises of, or the place designated by the lender;

(2) Shipping arrangements;

(3) Condition reports at lender's location;

(4) Condition reports at borrower's location;

(5) Condition reports upon return of items to lender's location;

(6) Security during the exhibition and security during transportation, including couriers were applicable;

(7) Maximum values to be transported in a single vehicle of transport.

(g) Insurance arrangements, if any, which are proposed to cover the deductible amount provided by law or the excess over the amount indemnified;

(h) Any loss incurred by the indemnitee or participating institutions during the three years prior to the Application for Indemnification which involved a borrowed or loaned item(s) or item(s) in their permanent collections where the amount of loss or damage exceeded $5,000. Details should include the date of loss, nature and cause of damage, and appraised value of the damaged items(s) both before and after loss;

(i) If the application is for an exhibition of loans from the United States, which are being shown outside the United States, the applicant should describe in detail the nature of the exchange of exhibitions of which it is a part if any, including all circumstances surrounding the exhibition being shown in the United States, with particular emphasis on facts concerning insurance or indemnity arrangements.

(j) Upon proper submission of the above required information an application will be selected or rejected for indemnification by the Council. The review criteria include:

(1) Review of educational, cultural, historical, or scientific value as required under the provisions of the Arts and Artifacts Indemnity Act;

(2) Certification by the Director of the United States Information Agency that the exhibition is in the national interest; and

(3) Review of the availability of indemnity obligational authority under section 5(b) of the Arts and Artifacts Indemnity Act (20 U.S.C. 974).

[Approved under OMB control number 3135–0094.]

§ 1160.5 Certificate of national interest.

After preliminary review the application will be submitted to the Director of the United States Information Agency for determination of national interest and issuance of a Certificate of National Interest.

§ 1160.6 Indemnity agreement.

In cases where the requirements of §§ 1160.4 and 1160.5 have been met to the satisfaction of the Council, an Indemnity Agreement pledging the full faith and credit of the United States for the agreed value of the exhibition in question may be issued to the indemnitee by the Council, subject to the provisions of § 1160.7.

1160.7 Letter of intent.

In cases where an exhibition proposed for indemnification is planned to begin on a date more than twelve (12) months after the submission of the application, the Council, upon approval of such a preliminary application, may provide a Letter of Intent stating that it will, subject to the conditions set forth therein, issue an Indemnity Agreement prior to commencement of the exhibition. In such cases, the Council will examine a final application during the twelve (12) month period prior to the date the exhibition is to commence, and shall, upon being satisfied that such conditions have been fulfilled, issue an Indemnity Agreement.

§ 1160.8 Loss adjustment.

(a) In the event of loss or damage covered by an Indemnity Agreement, the indemnitee without delay shall file a Notice of Loss or Damage with the Council and shall exercise reasonable care in order to minimize the amount of loss. Within a reasonable time after a loss has been sustained, the claimant shall file a Proof of Loss or Damage on forms provided by the Council. Failure to report such loss or damage and to file such Proof of Loss within sixty (60) days

after the termination date as defined in § 1160.3(k) shall invalidate any claim under the Indemnity Agreement.

(b) In the event of total loss or destruction of an indemnified item, indemnification will be made on the basis of the amount specified in the Indemnity Agreement.

(c) In the event of partial loss, or damage, and reduction in the fair market value, as a result thereof, to an indemnified item, indemnification will be made on the basis provided for in the Indemnity Agreement.

(d) No loss or damage claim will be paid in excess of the Indemnification Limits specified in § 1160.11.

§ 1160.9 Certification of claim and amount of loss to the Congress.

Upon receipt of a claim of total loss or a claim in which the Council is in agreement with respect to the amount of partial loss, or damage and reduction in fair market value as a result thereof, the Council shall certify the validity of the claim and the amount of such loss or damage and reduction in fair market value as a result thereof, to the Speaker of the House of Representatives and the President pro tempore of the Senate.

§ 1160.10 Appraisal procedures.

(a) In the event the Council and the indemnitee fail to agree on the amount of partial loss, or damage to, or any reduction in the fair market value as a result thereof, to the indemnified item(s), each shall select a competent appraiser(s) with evidence to be provided to show that the indemnitee's selection is satisfactory to the owner. The appraiser(s) selected by the Council and the indemnitee shall then select a competent and disinterested arbitrator.

(b) After selection of an arbitrator, the appraisers shall assess the partial loss, or damage to, or where appropriate, any reduction in the fair market value of, the indemnified item(s). The appraisers' agreement with respect to these issues shall determine the dollar value of such loss or damage or repair costs, and where appropriate, such reduction in the fair market value. Disputes between the appraisers with respect to partial loss, damage repair costs, and fair market value reduction of any item shall be submitted to the arbitrator for determination. The appraisers' agreement or the arbitrator's determination shall be final and binding on the parties, and agreement on amount or such determination on amount shall be certified to the Speaker of the House and the President pro tempore of the Senate by the Council.

(c) Each appraiser shall be paid by the party selecting him or her. The arbitrator and all other expenses of the appraisal shall be paid by the parties in equal shares.

§ 1160.11 Indemnification Limits.

The dollar amounts of the limits described below are found in the guidelines referred to in § 1160.1 and are based upon the statutory limits in the Arts and Artifacts Indemnity Act (20 U.S.C. 974).

(a) There is a maximum amount of loss or damage covered in a single exhibition or an Indemnity Agreement.

(b) A sliding scale deductible amount is applicable to loss or damage arising out of a single exhibition for which an indemnity is issued.

(c) There is an aggregate amount of loss or damage covered by indemnity agreements at any one time.

(d) The maximum value of eligible items carried in or upon any single instrumentality of transportation at any one time, is established by the Council.

[FR Doc. 91-23531 Filed 10-1-91; 8:45 am]
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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB38

Endangered and Threatened Wildlife and Plants; Final Rule to List the Plant Manihot walkerae as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines *Manihot walkerae* (Walker's manioc) to be an endangered species, under the authority contained in the Endangered Species Act of 1973 (Act), as amended. Walker's manioc is endemic to the Lower Rio Grande Valley of south Texas and northeast Mexico. At present, one natural population is known from Texas. There are no recently verified populations in Mexico, although plants were collected there in the past. This plant may still occur in suitable brush habitat. This species is threatened by brush clearing, livestock grazing, and increased urbanization and recreation. This rule implements the provisions afforded by the Act for the Walker's manioc. Critical habitat is not being designated.

EFFECTIVE DATE: November 1, 1991.

ADDRESSES: The complete file for this rule is available for inspection by appointment, during normal business hours at the Service's Ecological Services Field Office, c/o Corpus Christi State University, Campus Box 338, 6300 Ocean Dr., Corpus Christi, Texas 78412.

FOR FURTHER INFORMATION CONTACT: Rogelio Perez (see **ADDRESSES**) at (512) 888-3346 or FTS 529-3346.

SUPPLEMENTARY INFORMATION:

Background

Manihot walkerae (Walker's manioc) is a perennial herb that is presently known from only one natural population in the U.S. Historically, the species was first collected by Schott in 1853 at Ringgold Barracks, Starr County, Texas, but this specimen was misidentified as *Manihot carthagenesis*, a species of tropical America (Turner 1982). Subsequent collections were made in 1888, 1940, and 1960. The type specimen was collected by Mrs. E.J. Walker in 1940 and transmitted to H.B. Parks for identification; he in turn transmitted it to V.L. Cory. Cory sent the material for identification to Croizat, who recognized it as a new species. The species was described in 1942. Rogers and Appan (1973), in their monograph of *Manihot* (Manihotoides) for the Flora Neotropica, retained *Manihot walkerae* as a valid species.

This member of the spurge family (Euphorbiaceae) is a branched perennial herb that grows to 0.5 meters (1.6 feet). The stems are slender with palmately lobed leaves, 7–10 cm (3–4 inches) long. The tubular flowers are white, somewhat fleshy, 5–10 millimeters (0.2–0.4 inches) long, and either staminate or pistillate. The fruit is a globular capsule about 1 centimeter (0.4 inches) in diameter and splits into three segments. Each fruit produces three seeds.

Walker's manioc occurs in sandy loam soils at an elevation of 100–200 meters (328–656 feet) in the Lower Rio Grande Valley of Texas. It has also been found growing up through protective thorn shrubs on sandy prairie overlying caliche in Tamaulipas, Mexico. This species occurs in undisturbed, native brush dominated by *Acacia* spp. (acacia), *Prosopis glandulosa* (mesquite), *Zanthoxylum fagara* (colima), *Pithecellobium flexicaule* (Texas ebony), and *Leucophyllum frutescens* (cenizo). The habitat requirements of Walker's manioc are presently unknown.

One natural population of Walker's manioc is presently known in the U.S. Historically, this species was documented from Starr and Hidalgo Counties, Texas, and the State of Tamaulipas, Mexico. Collections from

natural habitat have been made from only seven localities. The populations in northeastern Tamaulipas may still exist, but their presence has not been verified. Turner (1982) made several attempts over a 5-year period to locate the species in the vicinity of previously known sites and elsewhere in Texas, but failed to locate any plants. Lonard (Pan American University, *in litt.*, 1990) did not find Walker's manioc during searches in wooded sites along the Rio Grande in Texas. Service botanist Philip Clayton discovered the species in 1990 at a previously unrecorded site in Hidalgo County, Texas.

Transplanted specimens are growing at the University of Texas, Austin, and plants are being cultivated at the San Antonio Botanical Gardens in Texas. Brush clearing for cultivation, range improvement, and urban and recreational development has destroyed much of the suitable habitat for Walker's manioc. However, the collector of the type specimen believes that Walker's manioc still occurs in brush habitats. Turner (1982) believes that natural populations still occur along the Rio Grande in areas of previous collections, and Lonard (*in litt.*, 1990) suggested an additional area to survey in Texas.

Manihot walkerae is related to the important crop plant, *Manihot esculenta* (cassava), which is a staple food item in many Third World nations today. It may be possible to interbreed Walker's manioc with cassava and thus provide a valuable gene pool for the improvement of this plant. Loss of Walker's manioc could have considerable impacts to humans, judging by the potential it might hold for food and drug purposes (Turner 1982). Walker's manioc could contain genes that provide salt, drought, cold, or disease resistance to commercial cassava. These properties would be beneficial for third world nations.

Section 12 of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) directed the Secretary of the Smithsonian Institution to prepare a report of those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the Smithsonian Institution report as a petition within the context of section 4 of the Act and of its intention to review the status of the plant taxa named within. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act.

This list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. Walker's manioc was included in the July 1, 1975, notice of review and in the June 16, 1976, proposal.

The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. Subsequently, on December 10, 1979 (44 FR 70796), the Service published a notice of the withdrawal of the portion of the June 16, 1976, proposal that had not been made final, along with other proposals that had expired; this notice of withdrawal included Walker's manioc.

On December 15, 1980 (45 FR 82480), September 27, 1985 (50 FR 39526), and February 21, 1990 (55 CFR 6184), the Service published updated notices reviewing the native plants being considered for classification as threatened or endangered. Walker's manioc was included in these notices as a category 1 species. Category 1 comprises taxa for which the Service has sufficient biological data to support proposing them as endangered or threatened.

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary to make findings on certain pending petitions within 1 year of their receipt. Section 2(b)(1) of the Act's Amendments of 1982 further requires that all petitions pending on October 12, 1982, be treated as having been newly submitted on that date. Because Walker's manioc was included in the 1980 notice, the petition to list this species was treated as being newly submitted on October 12, 1982. In 1983, 1984, 1985, 1986, 1987, 1988, and 1989, the Service made the required 1-year findings that listing of Walker's manioc was warranted, but precluded by other listing actions of higher priority. Biological data, supplied by Turner (1982), fully support the listing of Walker's manioc. A proposed rule to determine endangered status for Walker's manioc was published in the **Federal Register** on October 1, 1990 (55 FR 39989).

Summary of Comments and Recommendations

In the October 1, 1990 proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice inviting public comment was published in the McAllen *Monitor* on October 21, 1990. However, it contained an error and was correctly published on October 30, 1990. One comment was received within the comment period, and it supported the listing of Walker's manioc.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that Walker's manioc should be classified as an endangered species. Procedures found at Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be 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 *Manihot walkerae* Croizat (Walker's manioc) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Walker's manioc is endemic to the Lower Rio Grande Valley of Texas and northeastern Mexico. Since the early 1900's, over 90 percent of the brushland in this area has been cleared for agriculture, urban development, and recreation (USFWS 1985). Over 90 percent of the riparian habitat has been destroyed, and a large percentage of similar habitat has been cleared in Mexico (Collins 1984). Estimates of remaining native brush range from 1 to 5 percent of the original vegetation. (Jahrsdoerfer and Leslie 1988). Water development on the Rio Grande has substantially reduced river flow, resulting in altered riparian habitats and additional brush clearing. Brush is destroyed by mechanical clearing, herbicides, and fire (Jahrsdoerfer and Leslie 1988).

Walker's manioc is near extinction because of extensive conversion of the Lower Rio Grande Valley brushland to cropland and improved pasture in Texas and adjoining Mexico. Land that remains in native vegetation is used for cattle production and is often severely overgrazed. Attempts to locate previously known sites for Walker's manioc in Texas have been unsuccessful

(Lonard, *in litt.*, 1990; Turner 1982). A new site for Walter's manioc was discovered recently in Hidalgo County. Existing populations in Mexico are under severe threat because of overgrazing and intensive agriculture (Turner, University of Texas at Austin, *in litt.*, 1982).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* None known. Because of its rarity, Walker's manioc is of interest to botanists, plant breeders, and possibly to drug companies. Walker's manioc may contain genes that provide salt, drought, cold, or disease resistance to commercial cassava. This species may also contain biodynamic compounds useful for the treatment of human diseases. Therefore, collection is a minor but present threat.

C. *Disease or predation.* While cattle grazing or trampling may not kill mature plants with an established root system, these actions may kill seedlings and affect the reproduction of mature plants, thereby reducing recruitment rates in the population.

D. *The inadequacy of existing regulatory mechanisms.* Walker's manioc is not currently protected by either Federal or State law in the U.S. or Mexico. The Act provides protection and encourages active management through the "Available Conservation Measures" discussed below.

E. *Other natural or manmade factors affecting its continued existence.* Scarcity and limited distribution make this species vulnerable to both natural and human threats. Any further reduction in plant numbers could reduce the reproductive capabilities and genetic potential of the species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Manihot walkerae* as endangered without critical habitat. This status is appropriate because the previously known populations in the U.S. have been eliminated and only one natural population is presently known. The previously recorded site in Mexico is in an area of heavy grazing and cultivation. The reasons for not designating critical habitat are discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires, to the maximum extent prudent and determinable, that the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for this species. Only one natural population of Walker's manioc is known at the present. No direct attention should be drawn toward the species or its location. Any type of publicity on this species could make it susceptible to increased visitation or collection, which would be detrimental to the survival of this rare plant. As discussed under Factor B in the Summary of Factors Affecting the Species, Walker's manioc is threatened by taking, an activity difficult to enforce against any only regulated by the Act with respect to plants in cases of: (1) Removal and reduction to possession of listed plants from lands under Federal jurisdiction, or their malicious damage or destruction on such lands; and (2) removal, cutting, digging up, or damaging or destroying in knowing violation of any State law or regulation, including State criminal trespass law. Such provisions are difficult to enforce, and publication of a critical habitat description and map would make Walker's manioc more vulnerable and increase enforcement problems.

The only known natural population of Walker's manioc is found on private lands where Federal involvement in land-use activities does not generally occur. In general, additional protection resulting from critical habitat designation is often achieved through the section 7 Consultation process. Since section 7 would not apply to the majority of land-use activities occurring within critical habitat in this instance, its designation would not appreciably benefit the species.

Available Conservation Measures

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

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of 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. There are no known populations of Walker's manioc that either occur on Federal land and/or would be affected by activities authorized, funded, or carried out by a Federal agency. However, the plant likely occurs in other suitable habitat, including national wildlife refuge lands, in the Lower Rio Grande Valley. In the Lower Rio Grande Valley, the International Boundary and Water Commission clears brush for the purpose of maintaining flood capacity within the river floodway and interior floodways on the U.S. side of the Rio Grande. The U.S. Army Corps of Engineers also authorizes pipeline construction projects within the area. If it is determined that such activities could have an effect on Walker's manioc, section 7 consultation would have to be initiated.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances.

It is anticipated that few trade permits would ever be sought or issued because the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 3507, Arlington, VA 22201 (703/358–2104).

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

Collins, K. 1984. Status and management of native south Texas brushlands. U.S. Fish and Wildlife Service, Ecological Services, Corpus Christi, TX. 18 pp.

Jahrsdoerfer, S.E., and D.M. Leslie, Jr. 1988. Tamaulipan brushland of the Lower Rio Grande Valley of south Texas: description, human impacts, and management options. U.S. Fish and Wildlife Service, Biological Report 88(36). 63 pp.

Rogers, D.M., and S.G. Appan. 1973. Manihot, Manihotoides (Euphorbiaceae). Flora Neotropica, Monograph No. 13, pp. 63–65. Hafner Press, New York.

Turner, B.L. 1982. Status report, *Manihot walkerae* Croizat. U.S. Fish and Wildlife Service, Albuquerque, NM. 9 pp.

U.S. Fish and Wildlife Service. 1985. Department of the Interior land protection plan for Lower Rio Grande Valley National Wildlife Refuge in Cameron, Hildalgo, Starr, and Willacy Counties, Texas. Albuquerque, NM. 19 pp.

Author

The primary author of this final rule is Sonja Jahrsdoerfer, U.S. Fish and Wildlife Service, 222 South Houston, suite A, Tulsa, OK 74127 (918/581–7458 or FTS 745–7458).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended 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. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Euphorbiaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*		
Euphorbiaceae—Spurge family:						
*	*	*	*	*		
Manihot walkerae	Walker's manioc	U.S.A. (TX), Mexico	E	446	NA	NA
*	*	*	*	*		

Dated: September 25, 1991.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 91–23639 Filed 10–1–91; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 910650–1218]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

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

ACTION: Notice of closure.

SUMMARY: The Secretary of Commerce (Secretary) closes the commercial fishery in the exclusive economic zone (EEZ) for king mackerel from the western zone of the Gulf migratory group. The Secretary has determined that the commercial quota for Gulf group king mackerel from the western zone was reached on September 28, 1991. This closure is necessary to protect the overfished Gulf king mackerel resource.

EFFECTIVE DATE: Closure is effective on September 29, 1991, through June 30, 1992.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813–893–3722.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic, as amended, was prepared by the South Atlantic and Gulf of Mexico Fishery Management Councils (Councils) under authority of the Magnuson Fishery Conservation and Management Act and is implemented by regulations at 50 CFR part 642. Catch limits recommended by the Councils for the Gulf of Mexico migratory group of king mackerel for the current fishing year (July 1, 1991, through June 30, 1992) set the commercial allocation at 1.84 million pounds divided into quotas of 1.27 million pounds for the eastern zone and 0.57 million pounds for the western zone. The boundary between the eastern and western zones is a line directly south from the Florida/Alabama boundary (87°31′06″ W. longitude) to the outer limit of the EEZ .

Under § 642.22(a), the Secretary is required to close any segment of the king mackerel commercial fishery when its allocation or quota has been reached, or is projected to be reached, by publishing a notice in the **Federal Register**. NMFS has determined that the commercial quota of 0.57 million pounds for the western zone of the Gulf migratory group of king mackerel was reached on September 28, 1991. Hence, the commercial fishery for Gulf group king mackerel from the western zone is closed effective September 29, 1991, through June 30, 1992, the end of the fishing year.

Except for a person aboard a charter vessel, during the closure, no person aboard a vessel permitted to fish under a commercial allocation may fish for,

retain, or have in possession in the EEZ king mackerel from the western zone. A person aboard a charter vessel may continue to fish for king mackerel in the western zone under the bag limit set forth in § 642.28(a)(1), provided the vessel is under charter and the vessel has an annual charter vessel permit issued under § 642.4(a)(3). A charter vessel with a permit to fish on a commercial allocation is under charter when it carries a passenger who fishes for a fee or when there are more than three persons aboard, including operator and crew. During the closure, king mackerel from the western zone taken in the EEZ, including those harvested under the bag limit, may not be purchased, bartered, traded, or sold. This prohibition does not apply to trade in king mackerel from the western zone that were harvested, landed, and bartered, traded, or sold prior to the closure and held in cold storage by a dealer or processor.

Other Matters

This action is required by 50 CFR 642.22(a) and complies with E.O. 12291.

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

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 26, 1991.

Richard H. Schaefer,

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

[FR Doc. 91-23675 Filed 9-27-91; 11:59 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 56, No. 191
Wednesday, October 2, 1991

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 91-AGL-6]

Proposed Alteration of Federal Airways; IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions of Federal airways located in the State of Illinois. This proposal is the culmination of an airspace utilization improvement study for the Chicago, IL, area. These changes would be an adjustment to the O'Hare International Airport approach control arrivals, due to the implementation of a Standard Terminal Arrival Route (STAR). This action would reduce chart clutter and improve the arrival traffic flow in the O'Hare terminal area.

DATES: Comments must be received on or before November 12, 1991.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AGL-500, Docket No. 91-AGL-6, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. The FAA Rules docket is located in the Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC.

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

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9255.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 91-AGL-6." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the descriptions of VOR Federal Airways V-69, V-116, and V-262 located in the State of Illinois. This proposal is the culmination of an airspace utilization improvement study for the Chicago, IL, area. These changes would be an adjustment to the O'Hare approach control arrivals, due to the implementation of a STAR. This proposal would reduce chart clutter and controller workload. Section 71.123 of part 71 the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

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

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

The Proposed Amendment

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

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

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

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

§ 71.123 [Amended]

2. § 71.123 is amended as follows:

V–69 [Amended]

By removing the words "INT Joliet 067° and Du Page, IL, 129° radials."

V–116 [Amended]

By removing the words "Joliet, IL; to INT Joliet 067° and Du Page, IL, 129° radials." and substituting the words "Pontiac, IL; Joliet, IL."

V–262 [Amended]

By removing the words ", via Bradford, IL; to Joliet, IL; INT Joliet 067° and Du Page, IL, 129° radials." and substituting the words"; Bradford, IL; to INT Bradford 085°T (081°M) and Joliet, IL, 204°T(202°M) radials; Joliet."

Issued in Washington, DC, on September 19, 1991.

Jerry W. Ball,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 91–23667 Filed 10–1–91; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Ohio Permanent Regulatory Program; Revision of Administrative Rule

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

ACTION: Proposed rule.

SUMMARY: OSM is announcing the receipt of proposed Program Amendment Number 53 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surfacing Mining Control and Reclamation Act of 1977 (SMCRA). The amendment was initiated by Ohio and is intended to revise one rule in the Ohio Administrative Code to provide that highwalls need not be entirely eliminated in areas to be covered by impoundments.

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

DATES: Written comments must be received on or before 4 p.m. on November 1, 1991. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on November 28, 1991. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on October 17, 1991.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Richard J. Seibel, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232, Telephone: (614) 866–0578.

Ohio Department of Natural Resources, Division of Reclamation, 1855 Fountain Square Court, Building H–3, Columbus, Ohio 43224, Telephone: (614) 265–6675.

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office, (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background

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. Discussion of the Proposed Amendments

By letter dated September 10, 1991 (Administrative Record No. OH–1581), Ohio submitted proposed Program Amendment Number 53. The amendment proposes to delete Ohio Administrative Code (OAC) section 1501:13–9–04 paragraph (H)(2)(e). This paragraph currently requires operators to eliminate highwalls in areas which are to be covered by permanent impoundments.

In place of this existing provision, the proposed amendment would add a new paragraph (H)(1)(i) to OAC 1501:13–9–04. This new paragraph would require that the vertical portion of any remaining highwall beneath the surface of impoundments shall be located far enough below the low-water line of the impoundment to provide adequate safety and access for future users of the impoundment.

III. Public Comment Procedures

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

Written Comments

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

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m. on October 17, 1991. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

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

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet the OSM representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at

the locations listed under "ADDRESSES." A written summary of each public meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 19, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 91-23659 Filed 10-1-91; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OAQPS No. CA11-7-5270; FRL-4018-6]

Approval and Promulgation of Implementation Plans California State Implementation Plan Revision; South Coast Air Quality Management District; San Diego County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to approve two volatile organic compound (VOC) rule submitted by the California Air Resources Board (ARB) as revisions to the California State Implementation Plan (SIP). The rules were adopted by the South Coast Air Quality Management District (SCAQMD) on April 6, 1990 and by the San Diego County Air Pollution Control District (SDAPCD) on May 21, 1991. The SCAQMD rule was submitted by ARB on December 31, 1990, and the SDAPCD rule was submitted by ARB on May 30, 1991. Each rule establishes guidance modeled after the EPA's Emissions Trading Policy Statement, published on December 4, 1986 (51 Federal Register 43814), for the trading of VOC emissions within applicable existing stationary sources in the SCAQMD and SDAPCD. EPA is proposing to approve the rules because they are consistent with the 1990 Clean Air Amendments, 40 CFR part 51, and EPA policy.

DATES: Comments must be received on or before November 1, 1991.

ADDRESSES: Comments may be mailed to: Colleen McKaughan, State Implementation Plan Section (A-2-3), Air and Toxics Division, Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rules and EPA's evaluation report are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1219 "K" Street, Sacramento, CA 95814.

South Coast Air Quality Management District, Public Information Center, 9150 Flair Drive, El Monte, CA 91731.

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123-1095.

FOR FURTHER INFORMATION CONTACT: John Ungvarsky, State Implementation Plan Section (A-2-3), Air and Toxics Division, Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105, telephone (415) 744-1188, FTS: 484-1188.

SUPPLEMENTARY INFORMATION:

Background

On May 26, 1988, EPA notified the Governor of California that the SCAQMD and SDAPCD (along with other California Districts) portion of the California State Implementation Plan (SIP) was inadequate to attain and maintain the National Ambient Air Quality Standards for ozone. Part of this notification process (known as the "SIP-Call"') included a requirement that States correct deficient VOC SIP regulations which did not fully meet Clean Air Act (CAA) requirements relating to reasonably available control technology (RACT) as interpreted in existing EPA policy. On November 15, 1990, the Clean Air Act Amendments of 1990 (CAAA) were enacted (Pub. L. 101-549, 104 Stat. 1399, codified at 42 U.S. SS7401-7671q). In section 182(a)(2)(A) of the CAAA, Congress statutorily adopted the requirement that ozone nonattainment areas classified marginal or higher fix their deficient RACT rules and established a deadline of May 15, 1991, for States to submit corrections of those deficiencies. The SCAQMD and SDAPCD were subject to this deadline.

As part of this effort, EPA Region 9 identified numerous Alternative Emission Control Plan (AECP) provisions in existing California VOC regulations as inconsistent with EPA policy. Today's notice proposes to approve SCAQMD Rule 108—Alternative Emission Control Plans and SDAPCD 67.1—Alternative Emission Control Plans, which correct the AECP deficiency in a variety of rules limiting VOC emissions from surface coating regulations.

The SCAQMD is responsible for correction and implementation of a number of VOC regulations applicable in the South Coast Air Basin, which is designated as an nonattainment area. The SDAPCD is responsible for correction and implementation of a number of VOC regulations applicable to San Diego County, which is designated as an ozone nonattainment area [1]. VOCs are a primary precursor involved in the formation of ambient ozone.

At the time of the SIP-call in May, 1988, numerous SCAQMD and SDAPCD rules contained AECP provisions which allowed a source to average or bubble their VOC emissions from a variety of operations within a facility. While EPA policy allows for the averaging or bubbling of emissions,the SCAQMD and SDAPCD AECP provisions were inconsistent with EPA criteria established in the Emissions Trading Policy Statement (ETPS). As a response to the SIP-call, the SCAQMD adopted rule 108 and SDAPCD adopted Rule 67.1, which are both new rules modeled after criteria in the ETPS. Along with the adoption of rule 1908, the SCAQMD deleted the AECP language in a number of VOC regulations (described below) and added a provision in each applicable VOC regulation which referenced rule 108. SDAPCD has taken a similar approach with its applicable VOC regulations (also described below). EPA is not taking action today on the individual rules which reference rules 108 and 67.1; EPA will take action on these regulations in future rulemaking notices.

Description of Regulations

SCAQMD Rule 108 and SDAPCD Rule 67.1 establish criteria for the averaging or bubbling of VOC emissions within existing stationary sources. Key criteria within rules 108 and 67.1 include that:

- The AECP shall be enforceable over a 24-hour period;
- The AECP shall establish an emissions baseline for each source by using the lowest of either actual or allowable values for the emission rate, capacity utilization, and hours of operation, based on the previous two year's of information or another more representative period;
- Emission reductions shall be surplus, permanent, quantifiable, and enforceable;
- The AECP shall provide a net air quality benefit by achieving a 20%

[1] Under section 181 of the CAAA, the ACAQMD will be classified as an extreme ozone nonattainment area, and the SDAPCD will be classified as a severe ozone nonattainment area.

reduction beyond the established baseline;

• AECP approvals shall be submitted to CARB and EPA as source-specific revisions to the SIP.

Rule 108 is applicable to an existing stationary source electing to comply by means of an AECP and subject to one of the following SCAQMD VOC rules:

1104—Wood Flat Stock Coating Operations,
1106—Marine Coating Operations,
1107—Coating of Metal Parts and Products,
1115—Motor Vehicle Assembly Line Coating Operations,
1124—Aerospace Assembly and Component Coating Operations,
1125—Metal Container, Closure, and Coil Coating Operations,
1128—Paper, Fabric, and Film Coating Operations,
1130—Graphic Arts,
1136—Wood Products Coatings,
1145—Plastic, Rubber, and Glass Coatings,
1151—Motor Vehicle and Mobile Equipment Non-assembly Line Coating Operations,
1164—Semiconductor Manufacturing,
1168—Control of Volatile Organic Compound Emissions from Adhesive Application.

These thirteen source categories represent a variety of surface coating operations, which emit VOCs. Prior to adoption of rule 108, the SCAQMD staff estimated that an undetermined number of sources representing six rule categories (1107, 1124, 1125, 1130, 1136, and 1145) had previously applied for and were operating using an AECP. Upon adoption of rule 108, applicable sources were required to reapply for an AECP under the revised criteria if they intended to continue using an AECP as a method of compliance. While today's action proposes to approve rule 108, EPA is not taking action in this notice on the individual rules listed above. Revisions to these rules and applicable AECP submittals will be addressed in future rulemaking actions. At that time, EPA will consider the applicability, if any, of the additional requirements in the ETPS for state assurances.

Rule 67.1 is applicable to an existing stationary source electing to comply by means of an AECP and subject to one of the following SDAPCD VOC rules:

67.3—Coating of Metal Parts and Products,
67.4—Metal Container, Metal Closure and Metal Coil Coating Operations,
67.5—Paper, Film and Fabric Coating Operations,
67.9—Aerospace Coating Operations,
67.11—Wood Products Coating Operations,
67.16—Graphic Arts Operations,
67.18—Marine Coating Operations.

These seven source categories represent a variety of surface coating operations which emit VOCs. Prior to adoption of rule 67.1, the SDAPCD staff estimated that three sources (all regulated under rule 67.9) were operating under an AECP. Upon adoption of rule 67.1, applicable sources were required to reapply for an AECP under the revised criteria if they intended to continue using an AECP as a method of compliance. While today's action proposes to approve rule 67.1, EPA is not taking action in this notice on the individual rules listed above. Revisions to these rules and applicable AECP submittals will be addressed in future rulemaking actions. At that time, EPA will consider the applicability, if any, of the additional requirements in the ETPS for State assurances.

EPA Evaluation

EPA has evaluated SCAQMD Rule 108 and SDAPCD Rule 67.1 for consistency with the 1990 Clean Air Act Amendments (CAAA), 40 CFR part 51, and EPA policy. Specifically, this SIP revision complies with the requirements under: Section 110 (1) regarding non-interference with attainment and reasonable further progress; section 182(a)(2)(A) regarding the correction of RACT deficiencies; and section 193 which insures no relaxation of control requirements unless equivalent or greater reductions are achieved. SCAQMD Rule 108 and SDAPCD Rule 67.1 were also evaluated against criteria in the ETPS and EPA guidance as discussed in Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations—Clarification to appendix D of November 24, 1987 **Federal Register**; May 25, 1988. EPA has determined rules 108 and 67.1 to be consistent with the aforementioned criteria and, therefore, will improve the integrity of the AECPs and emissions reductions obtained under a variety of VOC regulations. Rules 108 and 67.1 will also correct a major appendix D deficiency for a number of SCAQMD and SDAPCD VOC rules, as required by EPA's 1988 SIP Call and section 182(A)(2)(A) of the CAAA. Accordingly, EPA proposes to approve Rules 108 and 67.1 as a revision to the California SIP because they improve and strengthen the SIP.

EPA Proposed Action

Under section 110 and part D of the CAA, EPA is proposing to approve rules 108 and 67.1 because they are consistent with the 1990 Clean Air Act Amendments, 40 CFR part 51, and EPA Policy. Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements..

Regulatory Process

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

This action has been classified as a Table 2 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 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years.

List of Subjects in 40 CFR Part 52

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

Authority: 42 U.S.C. 7401–7642
Dated: September 26, 1991.

Nora L. McGee,

Acting Regional Administrator.

[FR Doc. 91–23707 Filed 10–1–91; 8:45 am]
BILLING CODE 6560–50–M

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40 CFR Part 228

[FRL–4017–8]

Ocean Dumping; Proposed Designation of Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to designate a dredged material disposal site located in the Pacific Ocean offshore of the mouth of the Umpqua River, Oregon, for the disposal of dredged material removed from the federal navigation project in the Umpqua River and estuary, and for materials dredged during other actions authorized by, and in accordance with, section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (MPRSA). This action is necessary to provide an acceptable ocean dumping site for the current and future disposal of this material. This proposed site designation is for an indefinite period of time, but the site is subject to continuing monitoring to insure that unacceptable, adverse environmental impacts do not occur.

DATES: Comments must be received on or before November 18, 1991.

ADDRESSES: Comments on this proposed rule should be sent to: John Malek, Dredging and Ocean Dumping Coordinator, Region 10, WD–128.

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

EPA Public Information Reference Unit (PIRU), room 2904 (rear), 401 M Street Southwest, Washington, DC.

EPA Region 10, 1200 Sixth Avenue, Seattle, Washington.

U.S. Army Corps of Engineers, North Pacific Division, U.S. Custom House, 220 Northwest Eighth, Portland, Oregon.

U.S. Army Corps of Engineers, Portland District, 319 Southwest Pine, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: John Malek, 206/553–1286.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("the Act"), gives the Administrator the authority to designate sites where ocean dumping may be permitted. On October 1, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR chapter I, subchapter H, § 228.4) state that ocean dumping site will be designated by publication in part 228. A list of "Approved and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 *et seq.*) and was last updated on February 2, 1990, (55 FR 3688 *et seq.*). That list established an interim site in the vicinity of the Umpqua River entrance. Realignment of the approach channel to the estuary placed it directly over the interim site. An adjusted site was identified to avoid navigational conflicts and is being proposed for formal designation. The adjusted site is located 2,800 feet (853 m) north of the interim site in slightly deeper water. This site designation is being published as proposed rulemaking in accordance with section 228.4(e) of the Ocean Dumping Regulations, which permits the designation of ocean disposal sites for dredged material. Interested persons may participate in this proposed rulemaking by submitting written comments within 45 days of the date of this publication to the address given above.

B. EIS Development

Section 102(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, (NEPA) requires that Federal agencies prepare an Environmental Impact Statement (EIS) on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. The object of NEPA is to build into agency decision-making processes careful consideration of all environmental aspects of proposed actions. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EIS's in connection with ocean dumping site designations such as this. (39 FR 16186) (May 7, 1974).

EPA has prepared a draft EIS entitled "Umpqua, Oregon, Dredged Material Disposal Site Designation". As a separate but concurrent action, a notice of availability of the draft EIS for public review and comment has been published in the **Federal Register**. It is planned that the public review periods for the draft EIS and this proposed rule overlap. However, comments will be accepted on either the draft EIS or proposed rule until the end of the latest 45-day period. Comments will be responded to in the final EIS and rule. Anyone desiring a copy of the EIS may obtain one from the address given above.

The action discussed in the draft EIS is designation for continuing use of an ocean disposal site for dredged material. The purpose of the designation is to provide an environmentally acceptable location for ocean disposal of dredged material. The appropriateness of ocean disposal is determined on a case-by-case basis as part of the process of issuing permits for ocean disposal.

The draft EIS provides information to support designation of an ocean dredged material disposal site (ODMDS) in the Pacific Ocean off the mouth of the Umpqua River in the State of Oregon. The proposed ODMDS is an adjusted location lying north of an existing, interim-designated site. Site designation studies were conducted by the Portland District, Corps of Engineers, in consultation with EPA Region 10. The adjusted ODMDS was judged to be a safer location than the interim site.

The study and final designation process are being conducted in accordance with the Act, the Ocean Dumping Regulations, and other applicable Federal environmental legislation.

C. Proposed Site Description

The proposed site is located approximately one nautical mile offshore of the mouth of the Umpqua River and occupies an area of about 116 acres (.14 square nautical miles). Water depths within the site average 105 feet (32 m). The coordinates of the site are as follows (NAD 83):

43°40'34" N., 124°14'26" W.,
43°40'34" N., 124°13'50" W.,
43°40'20" N., 124°13'50" W.,
43°40'20" N., 124°14'26" W.

If at any time disposal operations at the site cause unacceptable adverse impacts, further use of the site will be restricted or terminated.

D. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf are chosen. If at any time disposal operations at a site cause unacceptable adverse impacts, the use of that site will be terminated as soon as suitable alternate disposal sites can be designated. The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations, and § 228.6 lists eleven specific factors used in evaluating a proposed disposal site to assure that the general criteria are met.

The proposed site, as discussed below under the eleven specific factors, is acceptable under the five general criteria, except for the preference for sites located off the Continental Shelf. EPA has determined, based on the information presented in the draft EIS, that a site off the Continental Shelf is not feasible and that no environmental benefits would be obtained by selecting such a site instead of that proposed in this action. Historical use at the existing interim site has not resulted in substantial adverse effects to living resources of the ocean or to other uses of the marine environment. The adjusted site proposed for designation is in the same general area as the interim site and is not anticipated that its use would incur significantly different or greater adverse effects.

The characteristics of the existing interim site and the adjusted site being proposed for designation are reviewed below in terms of the eleven factors.

1. Geographical Position, Depth of Water, Bottom Topography, and Distance from Coast

40 CFR 228.6(a)(1). The interim site, or areas in the same vicinity, have been used by Portland District since 1924. The site received its interim designation from EPA in 1977 (40 CFR 228.12); it was entitled "Umpqua River Entrance" and was given the following corner coordinates (NAD 83):
43°40'06" N., 124°14'22" W.,
43°40'06" N., 124°13'46" W.,
43°39'52" N., 124°13'46" W.,
43°39'52" N., 124°14'22" W.,
The approximate location of this site is one nautical mile from the Umpqua River entrance, with dimensions of 3600 feet by 1400 feet (1097 m by 427 m) and an average depth of 90 feet (27.5 m). The site occupies approximately 116 acres (.14 square nmi).

The U.S. Coast Guard raised some concern with the location of the interim site with respect to the marked approach channel. The approach channel was re-aligned in response to changes made in the entrance jetties in 1982. As a result, the approach channel became aligned directly over the interim ODMDS. Potential conflicts could occur between the dredge or tug-and-barge activity and local ships during disposal. Additionally, navigational problems could develop if mounding were to occur at the interim disposal site. As a result, an adjusted location was defined and is proposed for final designation. It has the following coordinates (NAD 83):
43°40'34" N., 124°14'26" W.,
43°40'34" N., 124°13'50" W.,
43°40'20" N., 124°13'50" W.,
43°40'20" N., 124°14'26" W.
The adjusted site is located 2,800 feet (853 m) to the north of the interim site in slightly deeper water, with an average depth of 105 feet (32 m). Its dimensions are identical to the interim site, occupying approximately 116 acres (.14 square nmi). The center line of both sites is on a 270 degree azimuth.

2. Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult and Juvenile Phases.

40 CFR 228.6(a)(2). Aquatic resources of the site are described in detail in the draft EIS, appendix A. The interim and adjusted sites are located in the nearshore area, and contain an abundance of aquatic life characteristic of nearshore, sandy wave-influenced regions common along the coast of the Pacific Northwest. The infaunal community is dominated by gammarid amphipods and polychaete worms. The species of invertebra es inhabiting the study area are the more motile psammnetic (sand-dwelling) forms which tolerate or require high sediment flux. Accordingly, use of the adjusted site for disposal is not expected to harm, but may enhance, these organisms. The dominant commercially and recreationally important macroinvertebrate species in the area are shellfish, Dungeness crab, and squid. The nearshore area off the Umpqua River supports a variety of pelagic and demersal fish species. Pelagic species include anadromous salmon, steelhead, cutthroat trout, and shad that migrate through the estuaries to upriver spawning areas. Other pelagic species include the Pacific herring, anchovy, surf smelt, and sea perch. Numerous species of birds and marine mammals occur in the pelagic nearshore and shoreline habitats.

Portland District requested an endangered species listing for the ODMDS from U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) as part of their coordination of the Site Evaluation Report. At that time only the brown pelican and the gray whale were listed. Based on previous biological assessments conducted along the Oregon coast, it was concluded that no impacts to either species is anticipated from the proposed designation and use. A letter of concurrence from the NMFS concluded that no impacts to the brown pelican or gray whale would be anticipated. This information was presented to EPA in the final Site Evaluation Report. Subsequently, the Corps and EPA were informed by the NMFS that they have revised their list of threatened/endangered species. Species listed by the NMFS now include the gray, humpback, blue, fin, sei, right, and sperm whales; northern (Steller) sea lions; leatherback sea turtles; and Sacramento River winter run chinook salmon. A biological assessment was prepared by the Corps addressing the newly listed species and revision previous biological assessment on the gray whale. The assessment concluded that no impact to any of the species is anticipated by designation and use of ODMDS. Based on this and previous biological assessments conducted along the Oregon coast, EPA has concluded that no impacts to any threatened or endangered species would result from designation and use of the Umpqua ODMDS.

In summary, both the interim and adjusted ODMDS contain living resources that could be affected by disposal activities. Evaluation of past disposal activities do not indicate that unacceptable adverse effects to these resources have occurred. Based on resource considerations, both the interim and adjusted ODMDS are considered acceptable for ODMDS designation.

3. Location in Relation to Beaches and Other Amenity Areas

40 CFR 228.6(a)(3). The interim disposal site is 850 feet (260 m) from the end of the jetties and 1,900 feet (580 m) from the nearest beach. The adjusted site is 1,200 feet (365 m) from the end of the jetties and 2,200 feet (670 m) from the nearest beach. There are no rocks or pinnacles in the vicinity of either site.

4. Types and Quantities of Wastes Proposed to be Disposed of, and Proposed Methods of Release, Including Methods of Packing the Waste, if Any

40 CFR 228.6(a)(4). The disposal site will receive dredged materials transported by either government or private contractor hopper dredges or ocean-going barges. The dredges typically available for use at the Umpqua project have hopper capacities of 800 to 1,500 cy. Barges have a greater capacity, up to 4,000 cy. Thus, no more than 4,000 cy would be disposed at any one time. For steerage purposes, the ships would be under power and moving while disposing. This would increase dispersion. To date, over 14.5 million cy have been disposed at sea, over 3.5 million cy of which were disposed in the interim ODMDS. Between the years 1968 and 1988, total annual dredging volume averaged 560,000 cy. Most of that material (average 312,000 cy) was disposed within the estuary. However, in the past five years, estuarine disposal has averaged just 180,000 cy. This trend toward greater reliance on ocean disposal is expected to continue.

Material dredged for offshore disposal comes from bars forming at the mouth of the Umpqua. They consist primarily of marine sand transported into the river's mouth. The sand is medium to fine grained, and is slightly coarser than the native offshore sediments. The sand has been excluded in previous disposal activities from further biological and chemical testing as discussed in 40 CFR 227.13b. Fine grain materials placed in the final site would receive chemical and biological testing, if appropriate, as outlined in the joint EPA/Corps national testing framework, supplemented by regional practices and best professional judgment. Periodic re-evaluation of sediment characteristics by the Corps and EPA occur as part of our management responsibilities.

5. Feasibility of Surveillance and Monitoring

40 CFR 228.6(a)(5). The proximity of the interim disposal site to shore facilities creates an ideal situation for shore-based monitoring of disposal activities. Surveillance can also be accomplished by surface vessel.

Following formal designation of an ODMDS, EPA and the Corps will develop a site management plan which will address post-disposal monitoring. All Oregon ODMDS are periodically monitored jointly by the Corps and EPA already. Several research groups are available in the area to perform any required work. The work could be performed from small surface research vessels at a reasonable cost.

6. Dispersal, Horizontal Transport and Vertical Mixing Characteristics of the Area, Including Prevailing Current Direction, and Velocity

40 CFR 228.6(a)(6). The sediments dredged from the Umpqua River entrance are predominantly marine sands and fluvial gravels. Although the Umpqua River delivers a large sediment load, the bottom contours suggest a rapid distribution away from the river mouth. The beaches seem to be in equilibrium, suggesting that littoral transport is in balance. From the bottom current records, there appears to be a slight bias in transport to the south year-round, with some northward transport in summer only. The more probable sediment transport system at the disposal site is a general movement southward and deeper from the site, with a northward movement at greater depths. The constantly varying river outflow combines with tidal flows to produce a highly variable influence on the nearshore circulation.

Sediment movement in the littoral zone consists of two mechanisms depending upon the size of the sediment. Anything finer than sand size is carried in suspension in the water and is relatively quickly removed far offshore. The almost total lack of silts and clays within the Umpqua area attests to the efficiency of this mechanism. Sediments sand size or coarser may be occasionally suspended by wave action near the bottom, and are moved by bottom currents or directly as bedload. Tidal, wind and wave forces contribute to generating bottom currents which act in relation to the sediment grain size and water depth to produce sediment transport.

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

40 CFR 228.6(a)(7). Average annual volume of dredged material disposed offshore in the interim ODMDS from 1968 to 1988 was 147,349 cubic yards (cy). The maximum and minimum quantities of sandy material were 313,632 and 500 cy respectively. In appendix B of the draft EIS, table B–1 gives the volumes of material disposed of in the last 21 years. The adjusted site has not received any dredged material.

Detailed offshore bathymetry at the mouth of the Umpqua River shows a bulge in bottom contours between approximately –60 (–18 m) and –120 feet (–37 m) at the location of the interim ODMDS. The bulge is probably related to the combination of river discharge and ebb tide currents, which create an "ebb delta" of nearshore material. Ebb deltas are common in many areas of the world. The crest of the ebb delta runs through the interim disposal site. Historically there has not been mounding within the site, nor is there aggradation specific to the site. A post dumping survey in August of 1988 indicates some recent mounding within the interim site. The recent mounding may be attributed to above average disposal during the 1988 dredge season and mild wave climate during the winter of 1987–88. A general seaward movement of contours between 1984 and 1985 may be the result of seasonal variation or the effect of changes induced by El Nino.

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

40 CFR 228.6(a)(8). The draft EIS identified no legitimate uses of the ocean that would be interfered with as a result of designation of an ODMDS or its use. The following paragraphs summarize conclusions:

Commercial and Recreational Fishing: Major commercial and recreational fisheries occur in and around the disposal site. Coho and chinook salmon are taken in a nearshore commercial troll fishery. Salmon support a good recreational fishery centered off the Umpqua bar. Both commercial and recreational fishing seasons generally begin in June and run through October, subject to catch quotas set by ODFW. During this period, the potential exists for conflicts between the dredge and fishing boats The Coast Guard and ODFW indicated that they are unaware of any instance where this has ever been a problem.

The recreational Dungeness crab fishery takes place mainly within Winchester Bay. Some commercial crabbing occurs within close proximity to the two disposal sites. Mussels and shrimp support a small commercial fishery. Mussels are collected in nearshore areas, and shrimp are taken in deep waters well away from the disposal area.

Offshore Mining Operations: Although deposits of heavy minerals containing magnetite, gold, platinum, chromite, and ilmenite are present offshore along the Oregon coast, no metallic mineral deposits in the immediate area are known. There have been no exploratory wells drilled offshore near the mouth of the Umpqua. Exploratory wells near Reedsport (on land) did not result in production. In any case it is unlikely that production facilities would be placed near the river's mouth of the ODMDS due to the hazard to navigation that would be created.

Navigation: No conflicts with commercial navigation traffic have been recorded in the more than 60-year history of hopper dredging activity. The potential for serious conflict at the interim site was created when the navigation marked approach channel was realigned directly over the site. Conflicts at the adjusted site are not expected due to the light traffic in the Umpqua River area and the site's location away from the marked approach channel. This situation is not expected to change substantially.

Scientific: There are no known transects or other scientific study locations that could be impacted by the disposal site.

Coastal Zone Management: Local comprehensive land use plans for the Umpqua area have been acknowledged and approved by the State of Oregon. These plans discuss ocean disposal and recognize the need to provide for suitable offshore sites for disposal of dredged materials. In addition, this site evaluation document establishes that no significant effects on ocean, estuarine, or shoreland resources are anticipated, as Goal 19 of the Oregon Statewide Planning Goals and Guideline requires.

During coordination of the Site Evaluation Report, the Corps made a determination of consistency with Coastal Zone Management plans. EPA also concludes that designation of the proposed site is consistent to the maximum extent practicable with the state coastal management program. A letter of concurrence with that finding

was provided by the Oregon Department of Land Conservation and Development, the state coastal zone management office. Their letter of concurrence is included in the draft EIS. The letter notes that the Department may reexamine the consistency issue if new information becomes available.

9. The Existing Water Quality and Ecology of the Site as Determined by Available Data or by Trend Assessment of Baseline Surveys

40 CFR 228.6(a)(9). Water quality off the mouth of the Umpqua River is considered excellent, typical of unpolluted seawater along the Pacific Northwest coast. No short of long term impacts to water quality are expected to be associated with disposal operations. The ODMDS and near vicinity is typical of a Pacific Northwest mobile sand community. Monitoring studies have not shown any significant adverse effects from historic disposal. Studies indicate a depressed density of benthic infauna within the interim disposal site, but no impact to densities outside of the site relative to the reference stations. Reasons for depression in the density may be due to the coincidence of the dredging activity and the benthic recruitment season. If disposal at the interim site is discontinued, the benthic densities should recover to normal levels. Shifting disposal activities to the adjusted site may result in a similar depression at the site.

10. Potentially for the Development or Recruitment of Nuisance Species in the Disposal Site

40 CFR 228.6(a)(10). It is highly unlikely that any nuisance species would be transported to the disposal site. Nuisance species are considered to be any undesirable organism not previously existing at the disposal site and either transported or attracted there because of the disposal of dredged materials which are capable of establishing themselves there.

In the past, all materials dredged and transported to the interim ODMDS have been noncontaminated marine sands similar to sediments from the interim disposal site. While there are no immediate plans for the disposal of fine grain material, the possibility exists in the future. It is anticipated that the quantity of fine grain material would be small and infrequent (less than 40,000 cy every four years). Any fine grain material disposed in the site would be subject to specific evaluation by the Corps and EPA as previously noted. The high energy wave and current environment would tend to rapidly disperse fine sediments. Therefore, it is highly unlikely that any nuisance species could be established at the disposal site since habitat or contaminant levels are unlikely to change over the long term.

11. Existence at or in Close Proximity to the Site of any Significant Natural or Cultural Features of Historical Importance

40 CFR 228.6(a)(11). The cultural resource literature search of the Umpqua River study area is described in appendix E of the EIS. Due to the proximity of the disposal site, the resource that has the greatest potential for impact by use of the ODMDS is shipwrecks. The most likely areas for shipwrecks in the project area are in the shallow breaker zone and the Umpqua River mouth. Any wreck within these areas would experience damage from the high energy wave climate. Deeper water would buffer the high energy wave climate, thus shipwrecks in deeper water could have less damage. The shipwrecks in deeper water tend to have more cultural value, but tend to be fewer than shipwrecks nearshore. Historical records indicate there are not any shipwrecks within the interim or adjusted ODMDS.

Wrecks could occur in the project area that have not yet been discovered. However, based on previous investigations in other Oregon coastal settings (Yaquina Bay, Coquille, Mouth of the Columbia River, etc.), beaches, surf zones, and shallow waters are the most likely areas for shipwreck occurrence. The Umpqua ODMDS is removed from these areas. A letter by the Oregon State Historic Preservation Officer (SHPO) concurs that no significant cultural resources will be affected by the proposed designation and use. The letter is included in the EIS.

E. Proposed Action

The EIS concluded that the proposed site may be appropriately designated for use. The proposed site is compatible with the general criteria and specific factors used for site evaluation.

The designation of the Umpqua River ODMDS as an EPA approved Ocean Dumping Site is being published as proposed rulemaking. Management of this site will be delegated to the Regional Administration of EPA Region 10.

It should be emphasized that, if an ocean dumping site is designated, such a designation does not constitute or imply EPA's approval of actual disposal of material at sea. Before ocean dumping or dredged material at the site may commence, the Corps of Engineers must evaluate a permit applications according to EPA's ocean dumping criteria. EPA has the right to disapprove the actual dumping if it determines that environmental concerns under the Act have not been met.

F. Regulatory Assessments

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

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

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

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: September 23, 1991.

Dana A. Rasmussen,

Regional Administrator for Region 10.

In consideration of the foregoing, subchapter H of chapter I of title 40 is amended as set forth below.

PART 228—[AMENDED]

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

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

2. Section 228.12 is amended by removing the entry for "Umpqua River Entrance" from the Dredged Material Site Listing in paragraph (a)(3), and by adding paragraph (b)(93) to read as follows:

§ 228.12 Delegation of management authority for interim ocean dumping sites.

* * * * *

(b) * * *

(93) Umpqua River—Region 10.

Location: 43°40'34" N., 124°14'26" W.; 43°40'34" N., 124°13'50" W.; 43°40'20" N., 124°13'50" W.; 43°40'20" N.; 124°14'26" W. (NAD 83)
Size: 0.14 square nautical miles
Depth: 32 meters (average)
Primary Use: Dredged material.
Period of Use: Continuing use.
Restrictions: Disposal shall be limited to dredged material determined to be suitable for unconfined disposal from the Umpqua Estuary and River and adjacent areas.

[FR Doc. 91-23612 Filed 10-1-91; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 764

[OPTS-62089; FRL-3767-7]

RIN 2070-AC17

Proposed Ban on Acrylamide and N-methylolacrylamide Grouts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would prohibit the manufacture, importation, distribution in commerce, and use of acrylamide grout; and would prohibit all uses of N-methylolacrylamide (NMA) grout, except its use for sewer line repair. The proposed rule would also prohibit, after a period of 3 years, the manufacture, importation, and distribution in commerce of NMA grout for any purpose, and the use of NMA grout for sewer line repair. The proposed action is necessary to protect grouters from the neurotoxic and carcinogenic risks arising from significant dermal and inhalation exposures to these grouts encountered with their use, even while wearing personal protective equipment. EPA is issuing the proposed rule under the authority of sections 6(a) and 8(a) of the Toxic Substances Control Act (TSCA). This proposed rule is based on a determination that use of acrylamide and NMA grouts presents an unreasonable risk of injury to human health, and that pollution prevention through a ban on their manufacture, importation, distribution in commerce, and use, and appropriate labeling of the grouts, is necessary to protect adequately against these risks. EPA estimates that a 3-year delay of the ban on NMA grout use for sewer line repair will substantially ease the potential economic burden on the sewer sealing industry, without posing an unreasonable risk to workers during that 3-year period.

DATES: Written comments in response to this proposed rule must be received on or before December 2, 1991. If persons request time for oral comment, EPA will hold an informal hearing in Washington, DC. The exact date, time, and location of the hearing will be made available by telephoning the Environmental Assistance Division at the telephone number listed under FOR FURTHER INFORMATION CONTACT. Written requests to participate in the informal hearing must be received by December 2, 1991. For further information regarding the hearing, see Unit XII of this preamble.

ADDRESSES: Submit written comments, in triplicate, identified by the docket number OPTS-62089, by mail to: TSCA Public Docket Office (TS-793), rm. NE-G004, Office of Toxic Substances, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. For further information regarding the submission of comments containing confidential business information, see Unit X of this preamble.

FOR FURTHER INFORMATION CONTACT: David J. Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, rm. E-543, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION:

I. Authority

If EPA determines that there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance, or that any combination of such activities, presents or will present an unreasonable risk of injury to human health or the environment, section 6(a) of TSCA authorizes EPA to apply one or more of the following requirements to such substance, to the extent necessary to protect against the risk: prohibit or limit the manufacture, processing, or distribution in commerce; require labeling; prohibit or otherwise regulate any manner or method of commercial use or disposal; and require that chemical manufacturers notify the public of unreasonable risk associated with a chemical substance. Under TSCA, importation is included in the definition of manufacture. TSCA section 6 requires EPA to apply the least burdensome requirements to protect adequately against the risk.

This proposed rule will affect both private grouters and State and municipal workers engaged in grouting operations. Because acrylamide and NMA grouts have been sold as commercial products, grouting operations using these products are considered commercial activities, subject to section 6(a)(5) of TSCA.

EPA is also proposing limited recordkeeping and reporting requirements under TSCA section 8(a). Section 8(a) authorizes EPA to require persons who manufacture or process chemical substances and mixtures to maintain records and submit reports for many purposes, including records and reports necessary for effective enforcement of TSCA requirements.

II. Background

1. *Acrylamide grout.* Acrylamide grout was first introduced into U.S. commerce in 1955. It quickly became popular because of its low cost and superior performance properties compared to other grouts then on the market. In the 1970's, demand for acrylamide grout grew as a result of an increase in sewer repair (rehabilitation) activities. In 1978, production of acrylamide grout in the U.S. ceased because of the producer's concern for its potential risk to human health. In response, users of acrylamide grout either obtained acrylamide grout from foreign sources, switched to other chemical grouts, or reduced/stopped grouting. Acrylamide grout continues to be the chemical grout selected most often for use in sewer operations. About 650,000 pounds of acrylamide grout were consumed in 1989, roughly 43 percent of the total chemical grout usage.

Acrylamide grouts generally consist of a 19:1 mixture of acrylamide and a crosslinking agent. When preparing the grout for use, water and small amounts of other chemicals are added. These chemicals include catalysts, activators or accelerators, and inhibitors. When the acrylamide grout polymerizes or "gels," it solidifies into a stiff gel that is impervious to water. In gel form, the grout contains less than 0.05 percent free acrylamide.

Grouters typically inject acrylamide grout in and around concrete, rock, and soil to increase the absolute strength of the mass and to restrict the flow of water through a structure or the grouted area. Approximately 87 percent of all acrylamide grout is used in sewer rehabilitation: 76 percent in sewer line repair and 11 percent in manhole sealing. Sewer rehabilitation helps minimize the demands on sewage treatment capacity and wastewater treatment costs by reducing the inflow of rainwater and nonpoint run-off and the infiltration of groundwater through cracks, holes, and joints in the sewer system.

In sewer rehabilitation of lateral and main lines, leaking pipes and joints are sealed remotely using equipment that

incorporates a closed-circuit television system, an inflatable packer, and a grout delivery system. The camera provides pictures of the inside of the sewer line to a worker who controls the packer and the grout delivery system from a control board inside the service truck. Exposure to grouts from this use typically occurs during grout mixing, and equipment disassembly and clean-up operations. In manhole sealing, a worker enters the manhole and uses a hand-held device to inject the grout into holes drilled in the side of the manhole. The grout flows into the soil surrounding the manhole, sealing cracks and preventing water infiltration. Worker exposure occurs in all phases of this operation (grout mixing, injection, equipment disassembly, and clean-up).

Acrylamide grout has two other minor uses. Eight percent is used for structural water control and five percent for geotechnical applications. In structural water control, the grout is used to repair leaking concrete structures. These projects include seepage control, sealing cracks in sewage aeration basins, and repairing dams. In geotechnical applications, the grout is applied to soil or rock formations. Geotechnical grouting includes water cut-off in mines and reservoirs, sealing underground salt domes and potash mines, and isolating hazardous waste sites. Both structural water control and geotechnical grouting operations involve manual injection techniques. Worker exposures may occur during grout mixing, injection, equipment disassembly, and clean-up.

2. *NMA grout.* NMA is a derivative of acrylamide. Sixty thousand pounds of NMA grout are consumed yearly, accounting for three percent of the current chemical grout market. NMA grout is used exclusively in sewer rehabilitation and manhole sealing. The equipment and processes necessary for sewer rehabilitation and manhole sealing with NMA grout are the same as those described above for the use of acrylamide grout, although a different chemical catalyst is used. Individual worker exposure to NMA grout during its use is believed to be comparable to that which is experienced by workers who use acrylamide grouts.

3. *OSHA actions.* In 1971, the Occupational Safety and Health Administration (OSHA) of the U.S. Department of Labor, under the Occupational Safety and Health Act (OSHAct), established an occupational standard for acrylamide with a permissible exposure limit (PEL) of 0.3 milligrams/cubic meter (mg/m^3) for an 8–hour time-weighted average (TWA), and a skin notation to reduce dermal exposure. However, OSHA established no workplace standard for NMA. The acrylamide standard was intended to reduce inhalation and dermal exposures, specifically to protect workers from neurotoxic risks. In developing the PEL, OSHA did not consider carcinogenic risks. In January of 1989, OSHA lowered the acrylamide PEL to 0.03 mg/m^3 for an 8–hour TWA, with a skin notation, in response to carcinogenic risk evidence.

In addition to the acrylamide PEL and skin notation, producers and users of acrylamide and NMA grouts are subject to the provisions of OSHA's Hazard Communication Standard (29 CFR 1910.1200). The Standard is intended to provide health hazard information to employees exposed to hazardous chemicals. The Standard requires that bags and containers of hazardous materials, such as acrylamide and NMA grouts, be labeled and accompanied by material safety data sheets, and that worker training programs be instituted.

Employers are also subject to OSHA's personal protective equipment standard (29 CFR 1910.132(a)). An employer may be issued a citation for violation of this standard if it fails to provide appropriate personal protective equipment to its employees, and enforce the use of the equipment.

III. Regulatory Assessment

Under section 6(c)(1) of TSCA, EPA must consider the following factors in determining whether activities involving a chemical substance present an unreasonable risk:

1. The effects of such substance on health and the magnitude of the exposure of human beings to such substance.

2. The effects of such substance on the environment and the magnitude of the exposure of the environment to such substance.

3. The benefits of such substance for various uses and the availability of substitutes for such uses.

4. The reasonably ascertainable economic consequences of the rule, after consideration of the effect on the national economy, small business, technological innovation, the environment, and public health.

A. Risk Analysis

1. *Health effects of acrylamide and NMA.*-- a. *Acrylamide.* Acrylamide is a human neurotoxin. There is firm evidence of its neurotoxicity based on effects observed in both the peripheral and central nervous systems, the cumulative effects of chronic exposures, and dose-response relationships observed in animal studies. Predominant among the effects in humans are signs of peripheral nerve damage, including tingling of the hands and feet, muscle weakness, loss of muscular coordination, and decreased tendon reflexes. Central nervous system effects include drowsiness, tremors, slurred speech, and hallucinations. The reports of human neurotoxicity from acrylamide exposure also indicate that although most individuals recovered completely once exposure was stopped, some severely affected persons did not, thus suggesting irreversible effects.

Acrylamide exposure also poses potential cancer effects in humans. These potential effects are based on the following evidence from animal studies: benign and malignant tumor formation, tumor formation in two animal species, tumor formation observed in both sexes and at multiple sites, and a dose-response relationship observed in a lifetime bioassay. Acrylamide's genotoxicity provides additional support for the conclusion that acrylamide may be a human carcinogenic agent. Acrylamide has been shown to be a mutagenic agent in both *in vivo* and *in vitro* tests. In addition, acrylamide has been shown to be a germ cell mutagen in mice.

Three human studies were conducted to examine the relationship of worker exposure to acrylamide and cancer mortality. Overall, the results of the studies do not indicate an excess of cancers from exposure to acrylamide. However, this may be due to limitations in the design of the studies. Consequently, the results of the human studies alone are inadequate under EPA's Guidelines for Carcinogen Risk Assessment (51 FR 34042, September 24, 1986) to judge the human carcinogenicity of acrylamide.

Based on all available evidence, EPA has concluded that there is sufficient weight-of-evidence to identify acrylamide as a probable human carcinogen (Group B2) as defined in EPA's Guidelines for Carcinogen Risk Assessment.

Reproductive and developmental effects have also been observed in several animal studies. Available animal data indicate that acrylamide can act directly on the reproductive system. Acrylamide has also been shown to produce developmental and postnatal effects in mouse and rat offspring following administration to pregnant dams.

b. *NMA.* The health effects associated with exposure to NMA are comparable to those associated with acrylamide exposure. They include carcinogenicity, neurotoxicity, and developmental and reproductive effects. The results of a 2–

year National Toxicology Program (NTP) animal study show that NMA is carcinogenic in both sexes of the mouse. Preliminary analysis of these data as well as supporting information from genotoxicity studies and structure activity considerations indicate a close similarity to acrylamide, which has been classified as a probable human carcinogen (Group B2). Prechronic studies conducted by NTP prior to the 2–year study measured several neurotoxic endpoints in laboratory rodents following NMA dosing. Neurotoxic effects included loss of muscular coordination, tremors, and hyperreactivity. NMA is reported to be a less potent neurotoxin than acrylamide (See support document 4 in Unit XIV of this preamble).

Reproductive toxicity and developmental effects of NMA were also observed in laboratory mice studies. Exposure resulted in degeneration of the epithelia of the seminiferous tubules, including spermatids and spermatocytes, as well as reduced numbers of spermatozoa and testicular weight. Developmental abnormalities included decreased litter size in female mice mated to treated males. This decrease was a result of significant increases in resorptions.

2. *Magnitude of exposure to acrylamide and NMA grouts.* Due to the identical end uses of acrylamide and NMA grouts, and the fact that the same equipment and techniques are used to process and apply both grouts, EPA believes the magnitude of individual exposures to acrylamide and NMA grouts is similar.

The exposure information presented below focuses on the major end uses of acrylamide and NMA grouts: Sewer line sealing and manhole sealing. For the minor uses of the two grouts, structural water control and geotechnical grouting operations, EPA is unaware of the existence of monitoring data. However, because both of these operations involve manual injection techniques, worker exposures could be as high as those encountered during manhole sealing operations.

a. *Dermal exposure.* Based on data collected during EPA's 1986 monitoring study at four grouting sites (see support document 2 in Unit XIV of this preamble), and considering the nature of the operations involved in different sewer grouting tasks, EPA has concluded that it is virtually impossible for grouting workers who use acrylamide grout not to be exposed dermally. As noted in a letter dated March 5, 1991, from Gerard F. Scannell to Linda J. Fisher, a special field evaluation of acrylamide grouting operations by OSHA's Salt Lake Technical Center "confirmed the potential occurrence of significant worker exposures to acrylamide."

Grouters who perform manhole sealing using grout injection devices are required to work in tightly confined areas for extended periods, using techniques that inevitably result in extensive dermal exposures. The conditions in manhole operations expose the worker to chemical runoff and splashes during the injection process, despite the use of personal protective equipment. In the EPA field study, workers were observed wearing disposable coveralls, eye goggles, half-mask air purifying respirators, and rubber gloves during the manhole grouting. The wearing of additional personal protective equipment would substantially impair the grouter's ability to perform grouting operations, and is generally regarded as impractical.

EPA's monitoring study measured dermal exposure levels at manhole sealing sites ranging from 2.6 milligrams/hour (mg/h) to 5.0 mg/h. The latter exposure level for acrylamide (assuming an 8–hour work day and 70–kilogram worker weight) is close to its neurotoxic no observed effect level (NOEL), thus providing almost no margin between exposure and levels at which neurotoxic effects might be seen.

The dermal exposures for workers performing sewer line repair are not as high as those of workers engaged in manhole sealing operations, since dermal contact caused by chemical runoff and splashes during these remote-controlled operations is generally minimal. However, dermal contact during mixing, gel testing, equipment disassembly, and clean-up does occur during sewer line repair operations. EPA's monitoring study found dermal exposure levels ranging from 0.61 mg/h to 1.8 mg/h for these workers, despite their use of coveralls and gloves.

b. *Inhalation exposure.* Acrylamide grout is a dry powder which the workers mix with an aqueous catalyst at the grouting site. When the workers pour acrylamide grout into the mixing tank, some of the powder may become airborne, thus leading to inhalation exposures. Although the grout is generally sold in bags with a special dispensing liner intended to reduce the amount of grout which can become airborne at the time of mixing, the EPA monitoring team observed airborne acrylamide grout dust when workers poured the grout into the mixing tank at one of the four sites surveyed.

Inhalation exposures may also occur as a result of grout spills which are not properly cleaned up. When the water from the grout solution evaporates, the remaining dry acrylamide powder may become airborne, and subject to inhalation by workers in the area. Based on the EPA field study, the 8–hour TWA exposures found in the breathing zones of workers ranged from 0.008 mg/m^3 to 0.12 mg/m^3. Half of the air samples (3 out of 6) collected at the sewer grouting sites exceeded the current OSHA PEL of 0.03 mg/m^3, 8–hour TWA.

3. *Environmental effects.* Section 6(c) of TSCA requires that, in promulgating rules under section 6(a), EPA must make a statement pertaining to the environmental effects and magnitude of environmental exposure as part of the unreasonable risk finding. EPA has not identified any environmental risk from the use of acrylamide and NMA grouts. EPA bases the unreasonable risk finding of this proposal solely on risks to human health.

4. *Human risk.*--a. *Acrylamide.* For exposure to acrylamide grout, three endpoints were quantified: Neurotoxic, cancer, and reproductive risks.

i. *Neurotoxic risk.* Acrylamide grout use results in substantial neurotoxic risk. Acrylamide is a human neurotoxin that affects both sensory and motor nerves. Nerve fibers in the most distal portions of the limbs are usually affected first, leading to weakness of the feet and legs, loss of coordination and tendon reflex, and numbness of the toes and fingers.

Because data on human neurotoxicity are primarily limited to case reports of unquantified exposure levels, a quantitative risk assessment for neurotoxicity must rely on the best available animal data. From the best available animal data, EPA calculated chronic exposure NOEL's in the range of 0.2 to 2.0 mg/kg/day; the range reflecting species differences. As a way of measuring neurotoxic risks, EPA used National Institute for Occupational Safety and Health (NIOSH), EPA, and industry-supplied data to calculate margins of exposure (MOEs) for exposed grouters. The neurotoxic MOE is a measure of the extent by which the neurotoxic NOEL, as determined in a laboratory study, exceeds the exposure dose. Lower MOEs pose greater concern. MOEs for sewer grouting workers are less than 10, thus indicating that the 1,800 acrylamide grouting workers may be exposed to levels of acrylamide close to the estimated human effect level. This is further supported by the finding that one of the nine employees observed during EPA's field monitoring survey exhibited peeling palms and fingers (signs of acrylamide-induced peripheral

neurotoxicity) and one other worker reported past episodes of peeling palms and fingers. See support document 3 in Unit XIV of this preamble for further discussion.

ii. *Carcinogenic risk.* Since adequate human data were not available, estimates of cancer risk attributable to acrylamide grouting were generated using data from a long-term animal bioassay.

Estimated upper-bound lifetime individual cancer risks for grouting workers are very high. Even with the assumption that grouting may not occur 8 hours daily or during certain times of the year, grouters have a 1 in 100 to 1 in 1,000 probability of developing cancer over their lifetime. EPA estimates a total of 1.8 to 18 excess cancer cases, over a 70–year period, attributable to the use of acrylamide grout. See support document 3 in Unit XIV of this preamble for further discussion of carcinogenic risk.

iii. *Reproductive risk.* Reproductive risks from acrylamide grouting were estimated through the use of animal data. Reproductive risk estimations are expressed as MOEs. Based on EPA monitored exposures for grouting workers, and a NOEL of 0.112 mg/kg/day, the MOEs for reproductive effects range from 0.8 to 7. See support document 3 in Unit XIV of this preamble for further discussion of reproductive risk.

b. *NMA.* EPA has not quantified non-cancer health risks associated with the use of NMA grouts. However, in tests with mice treated with both acrylamide and NMA, the neurotoxic potential of NMA appears to be lower than that of acrylamide. Evidence of developmental and reproductive toxicity exists; however, EPA has no quantitative data for these effects. EPA believes the toxicities of acrylamide and NMA are qualitatively the same, although they differ quantitatively.

Based on data from the 1989 NTP carcinogenicity bioassay, EPA carried out a quantitative, dose-response assessment for NMA. EPA calculated upper-bound cancer risk probabilities in the range of 1 in 1,000 to 1 in 10,000 for individuals using NMA grout. These cancer risks are about an order of magnitude lower than estimated cancer risks for individuals using acrylamide grout. See support document 4 in Unit XIV of this preamble for further discussion of NMA risks.

B. Benefits of Acrylamide and NMA grouts and the Availability of Substitutes

1. *Benefits of acrylamide and NMA grout use.* Although acrylamide grout is used more widely today than NMA grout, the two grouts are generally used in the same applications, and they exhibit many of the same performance characteristics. Acrylamide grout's most popular end use is in the rehabilitation of sewer systems, a development brought about by increasing concerns over the infiltration and inflow of water into sewer systems. Chemical grouting provides a means of sealing and repairing the sewer system without costly excavation.

Acrylamide grout is the most widely used chemical grout for sewer rehabilitation because of its low cost, quick and controllable "gel" or "set up" time (the time it takes for the grout to polymerize), long history of reliable performance, and very low viscosity. NMA grouts also gel quickly, have low viscosity, and have proven equally effective as acrylamide for sewer line sealing, although they are priced slightly higher.

Both acrylamide and NMA grouts are less costly than substitute chemical grouts. They are also reported to be easier to use than some of the substitute grouts, although other substitutes are reported to be just as easy to work with as acrylamide and NMA grout. The use of certain substitute grouts appears to require more attention to the details of proper storage, grout mixing ratios, and general handling practices. Nevertheless, the substitute chemical grouts are currently used in all of the same major commercial applications as acrylamide and NMA grouts. The only commercial application for which none of the currently available substitute products has been used successfully is sealing salt domes and potash mines, an episodic and very minor (less than 1 percent of total acrylamide grout) application. Overall, EPA finds that the differences in benefits to society of acrylamide and NMA grouts relative to the available substitutes are small.

2. *Availability of substitutes.* Several types of chemical substitutes are currently used for grouting. The two most promising substitutes, polyacrylamide and low-viscosity (LV) urethanes were recently commercialized and have thus far only been used in sewer applications. Two other types of substitute grout, acrylates and high-viscosity (HV) urethanes, have been on the market for many years, and are currently used for all major commercial applications of acrylamide and NMA grouts. HV-urethane grouts are used primarily for structural water control, manhole sealing and geotechnical applications, whereas acrylate grouts are used more for sewer rehabilitation, especially remote sewer main line sealing. The newer grouts, polyacrylamide and LV-urethanes, are expected to find widespread use in all chemical grouting applications. The main chemical substitutes are described below.

a. *Acrylates.* Acrylate grouts, like acrylamide and NMA grouts, are low-viscosity grouts used primarily in sewer rehabilitation. Acrylate grouts are typically formulated with either magnesium diacrylate or calcium acrylate, and lesser amounts of lithium acrylate, hydroxyethyl acrylate, or polyethylene glycol diacrylate. Grouters apply acrylates using the same techniques, catalyst system, and equipment as acrylamide.

Although some users of acrylate grouts complain of flaccid, weak gels that do not produce a good seal, this may be attributable to insufficient solids concentrations. Mixing at less than the recommended percent solids content may occur when users try to minimize chemical costs or because mixing follows the same practices used for acrylamide grouts, where a lower percentage of solids will still produce a strong gel. Based on information from grouters using acrylates successfully, EPA believes that, when used properly, acrylate grouts are versatile and can be adapted to numerous end uses.

b. *HV-Urethanes.* HV-urethanes are very different from acrylamide and the other grouts. All urethane grouts are composed of isocyanate-terminated urethane prepolymers. HV-urethane grouts have a relatively high viscosity and require a solvent clean-up. The grouts are formulated either as a water-activated system or a chemically-cured system, although the water-activated urethanes are most commonly used.

Unlike most of the other substitutes, the HV-urethanes cannot be pumped through the same equipment used for acrylamide grouts. The technique and equipment involved in pumping HV-urethane in remote sewer line repair is different from the low-viscosity grouts. Therefore, with the current technology, grouters switching from acrylamide (or NMA) to HV-urethane would need to retrofit existing rigs (vehicles containing grout mixing and injecting equipment) at substantial expense. Realizing these constraints, several manufacturers developed LV-urethanes that can be pumped with much of the same equipment currently used for acrylamide (and NMA) grouts.

For manhole sealing, HV-urethanes are growing in use. Currently, 50 percent of all manhole sealing operations are performed using this grout, compared to 35 percent with acrylamide. HV-urethane grouts are equally effective as

acrylamide for manhole sealing, and preferable for use above the soil freeze line, because they are better able to withstand freeze-thaw cycles without fracturing.

HV-urethane grouts are also well suited to structural water control and geotechnical applications. Within the structural water control category, HV-urethane is the material of choice, accounting for 90 percent of all applications in this end use. In geotechnical applications, HV-urethane grout can maintain its integrity in shifting soils, soils above the freeze line, and areas experiencing vibrations or stress.

c. *LV-Urethanes.* LV-urethane grouts are also composed of TDI-based urethane prepolymers; however, these grouts have a low-viscosity similar to acrylamide and NMA grouts. LV-urethanes are also mixed with water at the same ratio as acrylamide and NMA, thus necessitating only minor equipment modifications to currently existing rigs. Initial experience with LV-urethanes indicates that they are easy-to-use grouts with performance comparable to that of acrylamide, NMA, and HV-urethanes. Because of their reduced viscosity, the LV-urethanes flow through long hoses much more easily than the HV-urethanes. Finally, some LV-urethanes are reported to be less adhesive than HV-urethanes, thereby easing the movement of the grout packer through the sewer lines.

Although LV-urethanes have not been widely used, nor used in non-sewer applications, their physical/chemical properties indicate that they could be a viable substitute for acrylamide and NMA in virtually any grouting application.

d. *Polyacrylamide.* Polyacrylamide grout is a recently developed grout containing polyacrylamide and water. The grout has a low viscosity after mixing, similar to acrylamide and NMA grouts. This grout was commercially introduced in July 1991 after the successful completion of sewer grouting field tests in four States. These tests indicated that polyacrylamide grout is an easy-to-use grout with performance comparable to that of acrylamide and NMA grout. As with the LV-urethanes, minor equipment modifications to existing rigs are necessary in order to use the polyacrylamide grout. However, these modifications are very minor compared to what is necessary when substituting to the HV-urethanes.

3. *Possible hazards of substitutes.* EPA has analyzed available data on the health effects and exposure potentials of the major substitutes for acrylamide and NMA grouts. While some of the substitutes may present some risk, EPA has concluded from the available information that none of the substitutes appear to present as great a potential for risk as acrylamide or NMA grouts. The conclusions of EPA's analysis for the substitute grouts follows. See support document 5 in Unit XIV of this preamble for a further discussion of the risks of substitute grouts.

a. *Acrylates.* Although acrylates as a class are considered suspect carcinogens, the overall evidence available to EPA pertaining to carcinogenic potential indicates a lower concern for acrylates relative to acrylamide, by both the dermal and inhalation routes. Acrylate inhalation studies in laboratory animals resulted in no overt signs of neurotoxicity, and no reproductive toxicity has been attributed to the acrylates used in grout formulations. Dermal exposure to acrylate grouts may result in irritation and sensitization in some individuals; however, acrylate grouts generally present a lower hazard and risk potential than acrylamide and NMA grouts.

b. *HV and LV-urethanes.* Several urethane grouts (both HV and LV) contain small amounts (i.e., less than 2 percent of total formulation) of toluene diisocyanate (TDI) and/or methylene bisphenyl isocyanate (MDI). There is sufficient evidence for the carcinogenicity of TDI in test animals by the oral route; however, no data are available for dermal and inhalation exposures, the primary routes of exposure for grouters. EPA has some data which suggest that effects from exposure to TDI by one route may not be predictive of possible effects from other exposure routes.

TDI and MDI are strong sensitizers and respiratory irritants. Respiratory tract sensitization, resulting in bronchial asthma, occurs in approximately 10 percent of exposed individuals. Inhalation exposure, however, is mitigated by the process of co-injecting water with the grout, where it is expected that the urethane prepolymers will undergo rapid reaction with water. EPA-modeled worst-case TDI inhalation exposures to grouting workers are considerably lower than the OSHA ceiling value for exposure to TDI, and the recommended American Council of Governmental Industrial Hygienists (ACGIH) threshold limit value for both TDI and MDI.

Exposure to TDI and MDI does not appear to result in neurotoxic or reproductive health effects, although no studies have been conducted specifically for these effects. Risk of dermal sensitization from contact with isocyanates, and fire potential due to the use of flammable solvents for clean-up are also believed to be low. However, EPA is requesting any additional information which may be available on these potential hazards (see Unit VII of this preamble). Overall, the EPA believes urethane grouts present a lower risk potential than acrylamide and NMA grouts.

c. *Polyacrylamide.* The neurotoxic effects of acrylamide are associated with acrylamide monomer. Polymerization results in a compound that is not toxic. The recently commercialized polyacrylamide grout contains less than 0.01 percent monomeric acrylamide. Therefore, EPA believes that the neurotoxic potential of polyacrylamide grouts is negligible. In addition, the relatively high molecular weight of polyacrylamide significantly decreases absorption of the chemical by any exposure route.

C. Economic Effects of the Proposed Rule

EPA has evaluated the economic effects of the proposed rule by estimating the costs of switching from the regulated grouts to substitute grouts. The major costs considered are for the grout material and equipment modifications. The factors considered for grout material costs include cost of final mixed solution, transportation costs, amount of acrylamide displaced by substitute, longevity, and wasted batches. Equipment modification costing factors include equipment retrofits, hose replacement, equipment clean-up costs, training costs, and storage/handling. See support document 1 in Unit XIV of this preamble for a more detailed discussion of the economic effects of the proposed rule.

1. *Economic consequences for each application.* Due to the disparity in costs between the alternative chemical grouts and the different substitution scenarios for the four uses of acrylamide and NMA grouts, the economic consequences of the proposed regulation are separated by application. The total compliance costs given below are annualized over a 15–year period.

a. *Sewer line sealing.* This rule proposes to ban the use of acrylamide grout for sewer line sealing immediately, and to ban the use of NMA grout in this application after 3 years. EPA has determined that allowing continued use of NMA for sewer line sealing for 3 years will substantially reduce the costs of this proposed action.

If both grouts were subject to an immediate ban in sewer line applications, it is expected that they

would be replaced by some mix of polyacrylamide, LV-urethanes, and acrylate grouts. While HV-urethanes could also be used in this application, EPA does not believe that grouters will switch to them for sewer line sealing, because their use would result in much greater substitution costs than any of the other chemical substitutes (See sensitivity analysis of sewer line costs discussion below). However, because of the limited experience with polyacrylamide and LV-urethane grouts, and concerns about the performance of acrylates, EPA has analyzed several substitution scenarios for sewer line sealing in the event of a ban on acrylamide and NMA grouts. While it is often difficult to project future market shares of products which have just begun to penetrate the market, EPA believes the following scenarios provide a reasonable estimation of the range of costs likely to be incurred for sewer line sealing as a result of this proposed regulation.

The three substitution scenarios evaluated are as follows: (1) Polyacrylamide captures 100 percent of the market; (2) LV-urethanes capture 70 percent of the market and acrylates capture 30 percent; and (3) LV-urethanes capture 30 percent of the market and acrylates capture 70 percent. For polyacrylamide substitution, it is assumed that this product's combination of price and performance advantages relative to the other substitutes lead to it taking 100 percent of the market. For LV-urethane substitution, EPA analyzed two scenarios. For these two scenarios it is assumed that some unforeseen problem arises with the polyacrylamide grout, and that the replacement market is shared by LV-urethane grout and acrylate grout. Acrylates are much cheaper to use, but many grouters have experienced problems with the grout's performance.

The estimated annualized costs of a ban on both acrylamide and NMA grouts for sewer line sealing is $3.8 million per year for the first scenario, $10.7 million per year for the second scenario, and $5.5 million for the third scenario. Over 65 percent of these costs are attributable to increased grout costs.

EPA is proposing to allow continued use of NMA in sewer line sealing for 3 years. EPA estimates that such a delay will substantially reduce the costs of this proposed action, without posing an unreasonable risk to workers using NMA grout during the 3–year delay. The delay eases the economic burden in two ways. First, the delay allows for a 3–year period in which sewer line grouters will not incur the costs of using some mix of polyacrylamide, LV-urethanes, and acrylates in place of both acrylamide and NMA. It is projected that during this 3–year period, almost all current use of acrylamide grout in sewer line sealing will be replaced with NMA grout. The costs of this switch are reasonably low, totalling about $1.0 million per year. Second, the 3-year delay will allow individual grouters the opportunity to become more familiar with the new grouts which have just recently been commercialized. EPA expects that during this period, grouters will undertake an evaluation of the substitute grouts, and plan for any changes they must make to switch over to these products.

EPA's estimate of the 15–year annualized costs of the proposed action for sewer line sealing is $3.0 million for total polyacrylamide substitution, and $4.2 million to $7.9 million for LV-urethane/acrylate substitution. Using the midpoint of the latter range, EPA estimates the 15–year annualized costs of the proposed action for sewer line sealing to be $3 million to $6 million per year. This estimate accounts for savings due to a delay in many of the costs associated with a switch to the substitute grouts. However, this cost analysis is based on the current assessment of grouting products which are new to the market and have not yet been widely used. While those in the industry who have worked with the new grouts are confident about their performance, greater costs than are shown here could actually be incurred. Similarly, additional experience with these grouts may lead to improvements in formulation or in application practices which result in additional cost savings.

Sensitivity analysis of sewer line costs. The above cost analysis assumes that the two recently commercialized grouts, polyacrylamide and LV-urethanes, will take over a substantial portion of the sewer line sealing market. This assumption is based on information received from grout manufacturers, distributors, and end-users. While this information represents the best available data, EPA is aware that polyacrylamide and LV-urethane grouts have not been widely used, and that some unforeseen difficulties could arise with their use in the future. As such, EPA is including additional cost estimates of the proposed action for sewer line sealing, without consideration of these new grouts as substitutes for acrylamide and NMA grouts. See support document 1 in Unit XIV of this preamble for further discussion of the results of this analysis.

For the sensitivity analysis of sewer line costs, it is assumed that HV-urethanes and acrylates are the only available substitutes for acrylamide and NMA grouts. In the case of HV-urethane/acrylate substitution for sewer line sealing, the substitution scenarios are the same as those used for LV-urethanes: (1) 70 percent HV-urethane grout, 30 percent acrylate grout; and (2) 30 percent HV-urethane grout, 70 percent acrylate grout. The annualized costs of an immediate ban on both acrylamide and NMA grouts in sewer line sealing would be an estimated $18.3 million per year for the first scenario, and an estimated $8.8 million per year in the second scenario. The increased costs when using HV-urethanes is primarily due to estimated losses in worker productivity when switching from acrylamide or NMA grouts to HV-urethanes, and additional equipment modifications needed to pump the high-viscosity grouts. In fact, over 60 percent of the above costs are attributable to an estimated decrease in labor productivity, while 25 percent are attributable to equipment retrofit and maintenance costs.

Taking into account the 3-year delay in banning NMA grout, EPA's estimate of the 15–year annualized costs of the proposed action for sewer line sealing is reduced to $6.5 million to $13.1 million per year. This estimate accounts for the savings due to a delay in many of the costs associated with a switch to high-viscosity urethanes, but does not consider any cost savings from the use of the LV-urethane or polyacrylamide grouts. However, as discussed in Unit III(C)(1)(a) above, EPA does expect that these new grouts will find widespread use for sewer line sealing, and that their use will result in significantly reduced costs for the proposed action.

b. *Manhole sealing.* Both HV-urethanes and acrylates are currently used to seal manholes. Although it seems plausible that LV-urethanes and polyacrylamide grouts could also be used to seal manholes, they are not currently used in this application, and EPA did not project potential market shares for these grouts in this application.

Past consumption patterns indicate a growing shift towards HV-urethanes for this application. In fact, more HV-urethanes are currently used for manhole sealing than acrylamide. Based on this information, and the proven effectiveness of HV-urethanes for this application, EPA assumed that 90 percent of the acrylamide and NMA grout banned would be replaced by HV-urethane grouts, and the remaining 10

percent by acrylate grouts. The total compliance cost for a ban of acrylamide and NMA grout for manhole sealing is approximately $1 million.

c. *Structural water control.* HV-urethanes dominate in the category of structural water control, accounting for roughly 90 percent of all grout used in this application. Thus, EPA assumed that 90 percent of the acrylamide grout banned (NMA grout is not currently used in this application) will be replaced by HV-urethanes and the remaining 10 percent by acrylates. The total compliance cost for a ban of acrylamide and NMA grout for this application is $0.3 million.

d. *Geotechnical applications.* Based on industry perception, and the available research on the specific issues of concern, EPA assumed that 90 percent of the acrylamide grout banned in this use category (NMA grout is not currently used in this application) will be replaced with HV-urethanes and the remaining 10 percent with acrylates. The total compliance cost for a ban of acrylamide and NMA grout for this application is $68,000. As previously noted, however, because of uncertainties with the use of substitutes in salt domes and potash mines, there may be some significant costs in the geotechnical category that have not been captured.

2. *Conclusion.* The total annualized compliance costs of the proposed regulation are in the range of $4.4 million to $7.4 million, depending on the substitution scenario for sewer line sealing. Based on a population of 1,800 grouters, this amounts to a cost of approximately $2,500 to $4,000 per year to protect each grouting worker from very high individual neurotoxic and carcinogenic risks. The largest portion of these costs are attributable to the ban of acrylamide and NMA grouts for sewer line sealing. Additionally, the sewer line sealing compliance costs assume significant substitution of acrylamide and NMA grouts with polyacrylamide and LV-urethanes. Substitution with HV-urethanes and acrylates for this application would result in much higher compliance costs ($7.8 million to $14.4 million) for the proposed action.

EPA expects that the delayed ban of NMA for sewer line sealing will lessen the economic burden on municipalities and grouting contractors by allowing them sufficient opportunity to fully evaluate new substitute grouts, and prepare for any capital investments which may be necessitated by a ban of acrylamide and NMA grouts.

Overall, EPA expects that this proposed rule, while having an impact on the cost of sealing sewer lines, will not have a significant adverse impact on the chemical grouting industry. Given the magnitude and severity of the risks associated with the use of acrylamide and NMA grouts, EPA believes that the estimated costs are warranted.

IV. Other Options Considered

EPA considered other regulatory options as alternatives to this proposed rule, but based on the available information determined that this proposed regulation was the least burdensome to adequately reduce the unreasonable risk faced by persons using acrylamide and NMA grouts. Although EPA could promulgate a worker protection standard covering State and municipal employees under its TSCA authority, EPA believes, as discussed in Unit VI of this preamble, that personal protective equipment cannot adequately reduce the risk, and that a ban is, in fact, the least burdensome requirement that will adequately reduce the risk. A discussion of the other options considered is given below.

1. *Ban acrylamide grout only at sites not covered by OSHA.* EPA considered imposing a ban on the use of acrylamide grout solely at State and municipal sites not covered by an OSHA-approved State plan. This option assumes a complete ban of NMA grout also, because there is currently no OSHA workplace standard for NMA. Estimated compliance costs for this option are in the range of $440,000 to $740,000, depending on the sewer line substitution scenario at sites where both acrylamide and NMA grout are prohibited.

EPA believes that a ban of acrylamide grouting only at State and municipal sites not covered by an OSHA-approved State plan is untenable for several reasons. First, enforcement of an acrylamide grout ban only at sites in 27 States (i.e. those without an OSHA-approved State plan) might prove extremely difficult since acrylamide grouts would still be on the market. Additionally, a ban of acrylamide grout use only by State and municipal workers in those 27 States (approximately 180 to 200 workers) would afford no additional protection to those acrylamide grouting workers in the private sector, who still face unreasonable risks due to the unavoidable dermal exposures encountered while grouting. Moreover, allowing one population of grouters to continue using acrylamide grout, provided they adhere to the OSHA workplace standard, while banning another population of grouters from using the grout altogether would amount to nonuniform regulation of the chemical grouting industry by different Federal agencies, and could merely result in increased privatization of grouting work. Thus, EPA dismissed this alternative, concluding instead that a total ban of acrylamide and NMA grout is necessary to ease the burdens of compliance monitoring, adequately protect all grouters, and ensure uniform, equitable regulation across all sectors of the chemical grouting industry.

2. *Ban all uses of acrylamide grout, and all uses of NMA grout, except allow NMA grout use in sewer line sealing.* This option is similar to the proposed action, except that NMA grout would not be restricted at all for sewer line use. Estimated annualized compliance costs for this option are about $2.3 million. An advantage of this option is that the compliance costs are approximately $2.1 million to $12.1 million (or 48 to 84 percent) less than the annualized compliance costs of EPA's preferred option, depending on the availability and costs of acrylamide and NMA substitutes. This cost reduction is due to the relatively high incremental costs of a ban on NMA grout in sewer lines after 3 years. EPA considered this option because NMA poses relatively less risk to workers than acrylamide, and sewer line use of grout poses somewhat less risk to workers than manhole use.

Although this option would eliminate the highest risk grout (acrylamide) for all uses, and eliminate acrylamide and NMA grouts for the highest risk use (manhole operations), at this time EPA does not believe this option will sufficiently reduce risks to grouting workers. In the event of a ban on acrylamide grout for sewer line sealing, and no action on NMA grout for this application, EPA expects NMA grout to be the primary substitute. As noted above, while the risks from using NMA grout are lower than those associated with the use of acrylamide grout, the risk to individual grouting workers using NMA grout is still high. At this time, EPA believes the combination of this high risk and the presence of substitutes which pose lower risk potential, particularly the polyacrylamide and LV-urethane grouts, warrants restrictions on both acrylamide and NMA grouts for sewer line sealing.

3. *Ban the use of acrylamide and NMA grouts for manhole sealing only.* This option would allow continued, unrestricted use of acrylamide and NMA grouts for sewer line sealing, structural water control, and geotechnical applications. Estimated compliance costs for this option are approximately $1 million.

EPA does not believe this option will sufficiently reduce the risks faced by grouters for all applications of acrylamide and NMA grouts. Although manhole sealing does present the highest risks to grouters who use acrylamide and NMA, EPA believes other applications (e.g., main and lateral line sealing) also present unreasonable risks. Reducing risks from one application does not obviate the need for reducing risks from other applications.

Based on the available information, there are no uses of acrylamide or NMA grouts for which substitute grouts are not available, with the possible exception of water cut-off in salt domes and potash mines. Therefore, to sufficiently protect all grouters, a total ban of acrylamide and NMA grouts is preferable to a ban only for manhole sealing.

4. *Ban acrylamide grout only.* This option would prohibit all uses of acrylamide grout, but allow continued unrestricted use of NMA grout. EPA's estimated compliance costs for this option are approximately $1.2 million.

EPA does not believe this option will sufficiently reduce risks to grouting workers. In the event of a ban only on acrylamide grout, EPA expects NMA grout to be the primary substitute. Although the risks associated with NMA grout use appear to be an order of magnitude lower than those associated with acrylamide grout use, the risk to individual grouting workers is still high. Given the availability of substitute chemical grouts, especially the recently commercialized polyacrylamide and LV-urethane grouts, which are easy to use and present lower risk potential than acrylamide and NMA grouts, a ban of both grouts is preferable to a ban of acrylamide alone.

5. *Immediate ban of all uses of both grouts.* This option is similar to the proposed action, except that the prohibition on NMA grout use for sewer line sealing would be effective at the same time as the other proposed prohibitions on acrylamide and NMA grout, instead of 3 years later. EPA's best estimate of compliance costs for this option are in the range of $5.1 million to $9.4 million. However, this estimate assumes complete familiarity with the recently commercialized substitutes. If there are uncertainties with the newer grouts, compliance costs for this option could be somewhat higher.

Although EPA believes that good substitute chemical grouts exist for sealing sewer lines, EPA determined that an immediate ban of both acrylamide and NMA grouts for all applications is not necessary to adequately reduce the unreasonable risk from the use of acrylamide and NMA grouts. Since the unreasonable risk finding under TSCA requires EPA to consider not only the risk of an activity, but the cost of controlling the risk, EPA weighed the cost of an immediate ban of both grouts for sewer line repair against the risk of continued use of one of the grouts for this application. Because of the relatively high cost of an immediate ban of both grouts, and the lower risk associated with the use of NMA grouts, relative to acrylamide, EPA determined that continued use of NMA grout for sewer line repair for a period of 3 years will not present an unreasonable risk.

Delaying the ban of NMA grout for this application will afford those in the industry an opportunity to become more familiar with the new grouts which have just recently been commercialized, and plan for any changes they must make to switch over to these products.

Thus, EPA believes a 3–year delayed ban of NMA grout for sewer line sealing, with an immediate ban of all other NMA grout uses, and all uses of acrylamide grout, will ease the economic burden on the sewer sealing industry while adequately protecting grouters from the unreasonable risks of acrylamide and NMA grouts.

V. Finding of Unreasonable Risk

EPA has weighed the health risks from continued use of acrylamide and NMA grouts against the costs attributable to the proposed regulation. EPA has concluded that avoidance of the significant individual cancer risks at the current exposure levels and the serious neurotoxic risks associated with grouting operations outweigh the cost to society of the proposed regulation. Therefore, EPA finds that the use of acrylamide and NMA grouts presents an unreasonable risk of injury to human health. In brief, the finding is based on the following:

1. The health effects from exposure to acrylamide and NMA grouts are serious. Acrylamide is a demonstrated human neurotoxin and a probable human carcinogen (Group B2). The magnitude of exposure during grouting operations, even when personal protective equipment is worn, places all grouters at very high neurotoxic risk, and estimated excess lifetime cancer risks in the range of 1 in 100 to 1 in 1,000. The health effects associated with exposure to NMA are identical to those associated with acrylamide exposure, and EPA believes the magnitude of individual exposure to acrylamide and NMA grouts is also the same. Grouters using NMA are exposed to high neurotoxic risk, and estimated excess lifetime cancer risks in the range of 1 in 1,000 to 1 in 10,000.

2. The Agency has determined that the health risks from acrylamide and NMA grouts outweigh the benefits of continued use of the two grouts. Effective substitute grouts are available, already in use, and in some applications gaining market share over acrylamide and NMA grouts. The available information indicates that risk from exposure to the substitute grouts is lower than that from exposure to either acrylamide or NMA grouts.

3. The reasonably ascertainable economic consequences of the rule, after consideration of the effect on the national economy, small business, technological innovation, the environment, and public health, are not unduly burdensome for those affected by the proposed regulation. The cost of banning acrylamide and NMA grouts, including the labeling, reporting, and recordkeeping requirements, is reasonable in view of the high risk associated with their continued use.

VI. Analysis Under TSCA Section 9(a)

TSCA section 9(a) provides that, if EPA determines that an unreasonable risk exists, and determines, in the Administrator's discretion, that the risk may be prevented or reduced to a sufficient extent by action taken under a Federal law not administered by EPA, EPA shall submit a report to the agency administering such law, describing the risk and the activities presenting such risk. If the other agency responds by declaring that the activities described do not present an unreasonable risk, or if the agency initiates action to protect against the risk, EPA is precluded from acting against the risk under TSCA.

The risk to workers from continued use of acrylamide and NMA grouts in the private sector can be reduced to some extent by OSHA under the OSHAct. However, EPA has determined that even though OSHA has employed its statutory authority to protect workers from the hazards of acrylamide, an unreasonable risk of injury to grouting workers remains, which should be addressed under TSCA section 6. EPA has consulted with OSHA on this matter, and OSHA is in agreement with EPA's position (as noted in the letter of March 5, 1991, from Gerard F. Scannell to Linda J. Fisher, in which OSHA cites "the advantage of substituting acrylamide and NMA with safer materials to mitigate the potential hazards from improper work practices," and pledges "cooperation in support of EPA's proposed action to address the hazards related to acrylamide and NMA

under the Toxic Substances Control Act").

OSHA has promulgated a PEL for acrylamide, aimed at reducing the risk from inhalation of the chemical. However, the primary risk to grouting workers is from dermal contact, which is addressed by a skin notation to the PEL, OSHA's general personal protective equipment standard at 29 CFR 1910.132(a), and the Hazard Communication Standard at 29 CFR 1910.1200. Based on site visits and exposure monitoring by EPA, the evidence indicates that even while wearing full personal protective equipment, including a respirator, grouters face an unreasonable risk of injury.

The evidence gathered by EPA during its site visits indicates that the nature of grouting work, specifically the close quarters in which the work is performed and the dexterity required by the employees, makes it impossible to prevent a hazardous level of dermal exposure to acrylamide and NMA with personal protective equipment. Moreover, because of the acute neurotoxic concerns associated with both acrylamide and NMA, infrequent or even incidental contact with the two chemicals could represent hazardous levels of exposure.

In the workplace, the use of personal protective equipment is generally accepted as the last resort in the industrial hygiene hierarchy of controls. The substitution of a safer chemical or process is to be preferred over solutions which attempt to keep the toxic chemical away from the worker through such methods as personal protective equipment. In the case of grouting, personal protective equipment can reduce, but cannot eliminate hazardous exposures.

In addition to the difficulties arising from the use of personal protective equipment in confined spaces such as manholes, an inherent shortcoming of personal protective equipment is that its effectiveness depends largely on human behavior. Given the low neurotoxic margins of exposure associated with the use of acrylamide and NMA grouts, an unreasonable risk of injury would exist even if personal protective equipment could eliminate exposures in most cases.

EPA's finding that one of the nine employees observed during the field monitoring exhibited peeling palms and fingers (signs of acrylamide-induced peripheral neurotoxicity), and one other worker reported prior episodes of peeling palms and fingers, lends support to EPA's belief that personal protective equipment cannot adequately protect the workers from hazardous levels of exposure.

OSHA has not established a PEL for NMA, but employees using this chemical are required to use appropriate personal protective equipment under 29 CFR 1910.132(a). As in the case of acrylamide, however, the only evidence available to EPA establishes that the risk posed to grouting workers by NMA cannot be reduced by personal protective equipment to the extent necessary to eliminate the unreasonable risk. EPA, therefore, has determined not to refer the acrylamide or NMA risk to OSHA, but rather to promulgate a TSCA section 6 rule, which appears to be the only mechanism by which the unreasonable risk can be eliminated.

EPA's decision not to refer the acrylamide and NMA risk to OSHA is further influenced by the evidence that a substantial portion of grouting workers are State and municipal workers in OSHA Federal enforcement States, whose employees are not subject to the OSHAct. EPA could promulgate a worker protection standard covering these employees under its authority in TSCA section 6(a)(5); however, the existing evidence indicates that such a rule would not adequately reduce the risk due to the inherent limitations of personal protective equipment in grouting operations.

VII. Issues for Comment

EPA is proposing a total ban of acrylamide and NMA grouts with a 3–year delay in the NMA grout ban for sewer line sealing. EPA requests comment on this approach, especially the length of the NMA grout ban delay, and on alternative regulatory strategies, such as those discussed in Unit IV of this preamble. EPA is particularly interested in: (1) Any comments on the option to ban acrylamide and NMA grouts solely at State and municipal sites not covered by an OSHA-approved State plan, and (2) the proposed ban of NMA grout for sewer line sealing, including any comments on the proposed length of the delay.

Additionally, EPA requests comment on several other issues pertaining to this rulemaking. The issues include: (1) The availability of substitute grouts for salt dome/potash mine sealing, the importance of this application, and any information on potential costs to society if substitute grouts do not perform adequately in this application; (2) any performance data on acrylate grouts (e.g., inspections of previous sewer sealing jobs performed with acrylate grout); (3) any performance data on the new polyacrylamide and LV-urethane grouts for sewer sealing or other grouting applications; (4) any information on variable performance of the substitute grouts due to climatic, soil, or other geographically-related conditions; (5) any additional health and safety information related to the use of polyacrylamide and LV-urethane grouts; (6) the development status and comparative costs of any other new products and technologies in sewer line sealing; (7) any evidence of skin or lung sensitization from contact with isocyanate-containing urethane grouts; (8) the potential for fires during use or clean-up of urethane grouts due to the presence of solvents, such as acetone; (9) the adequacy of existing employer-sponsored programs to inform grouting workers of potential risks associated with exposure to grouting chemicals; (10) any data on costs associated with the health effects from acrylamide and NMA exposure (these data could include medical costs, costs due to lost work time or decreased productivity, loss of job/income, employee medical surveillance, increased liability insurance, etc.); (11) the cost of modifying pre-1980 rigs to pump the new grouts (EPA assumed the same modifications needed to pump HV-urethanes); (12) the applicability of some kind of market-based incentive (an incentive approach usually takes the form of either a price-based (e.g., fees), or a quantity-based (e.g., permits) regulation); and (13) the effective date of the final rule (EPA is proposing that it be 45 days after the date of publication in the **Federal Register**; however, no requirement other than reporting would become effective until 15 or more days after the effective date).

VIII. Labeling, Recordkeeping, and Reporting

By 15 days after the effective date of this rule, NMA grout manufacturers, importers, and distributors would be required to label, or ensure the integrity of the label on, each container of grout, and persons who have possession or control of acrylamide grout are also required to label containers of grout.

EPA believes there is a strong need for labeling to ensure compliance with the prohibitions on the manufacture, importation, distribution, and use of acrylamide and NMA grouts. Labeling is a necessary mechanism to direct users toward compliance with the prohibitions on uses of acrylamide and NMA grout.

NMA grout manufacturers, importers, and distributors would also be required to retain records at their companies' domestic headquarters locations of all shipments of NMA grouts for a period of 2 years from the date of shipment.

Records would include the amount of grout manufactured or imported, date manufactured or imported, amount sold, date sold, and to whom sold (and to whom shipped, if different). Manufacturers, importers, and distributors would comply with the labeling and recordkeeping requirements by 15 days after the effective date of the final rule.

Distributors of acrylamide and NMA grout would also be required to provide an initial report, to the appropriate EPA region, identifying their headquarters and shipment office locations through which their grout is sold. The initial report would also need to contain a list of customers, and total amount and type of grout sold to each customer, for the year immediately preceding the report due date. Distributors would be required to comply with the initial reporting requirements by the effective date of the final rule, or within 30 calendar days after the distributor first begins distribution of NMA grout, whichever is later. An updated list would be required when changes in ownership, headquarters, or shipment office occur, and would be required to be submitted to the appropriate EPA Regional Office no later than 10 calendar days after the change occurs.

The recordkeeping and reporting requirements will be necessary for effective enforcement of the rule. They will enable EPA to ensure compliance with the rule and conduct inspections effectively. Examination of reports submitted by grout distributors will enable EPA to track movement and use patterns, will help ensure that distributors are maintaining records of shipments of NMA grout, and will aid in identifying sites where a potential violation may exist. Recordkeeping of shipments of grouts will further aid in identifying sites where there is a potential for violation.

As described above, this proposed rule would impose limited recordkeeping requirements on persons who manufacture, import, or distribute NMA grouts in commerce, and limited reporting requirements on persons distributing acrylamide or NMA grouts in commerce. EPA believes there are only two U.S. companies distributing acrylamide and NMA grouts in commerce, and that one of these two companies is also the sole importer of both grouts. The other company is believed to be solely engaged in distribution of the grouts without any importing activities.

Section 8(a) of TSCA gives EPA authority to require persons who manufacture (under TSCA the term manufacture includes importation) or process chemical substances and mixtures to maintain records and submit reports for many purposes, including records and reports necessary for effective enforcement of TSCA requirements. Small manufacturers and processors are generally exempt from recordkeeping and reporting under section 8(a). However, section 8(a)(3)(A)(ii)(I) provides that, when, as here, the chemical substance or mixture involved is the subject of a rule proposed or promulgated under TSCA section 6, small manufacturers and processors also can be required to report and keep records.

EPA also has authority under TSCA section 6 to require recordkeeping and reporting related to the other regulatory requirements imposed by EPA under section 6. This is particularly important where, as here, such records and reports are necessary for effective enforcement of the section 6 rule and would apply to persons who are not covered by section 8(a), i.e., those who are not manufacturers or processors. In this case, section 6 provides the authority to apply the recordkeeping and reporting requirements to distributors of acrylamide and NMA grouts who are not also manufacturers and processors of such mixtures subject to section 8(a). EPA has used this section 6 recordkeeping and reporting authority previously in its polychlorinated biphenyl, asbestos, and hexavalent chromium rules promulgated under TSCA section 6 in 40 CFR parts 761, 763, and 749, respectively.

IX. Enforcement

Section 15 of TSCA makes it unlawful to fail or refuse to comply with any provision of a rule promulgated under section 6 of TSCA. Therefore, failure to comply with the rule would be a violation of section 15 of TSCA. In addition, section 15 of TSCA makes it unlawful for any person to: (1) Use for commercial purposes a chemical substance which such person knew or had reason to know was distributed in commerce in violation of a rule under section 6; (2) fail or refuse to establish and maintain records, submit reports, or permit access to or copying of records, as required by TSCA; or (3) fail or refuse to permit entry or inspection as required by section 11 of TSCA.

Violators may be subject to both civil and criminal liability. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to $25,000 for each violation. Each day of operation in violation of this rule would constitute a separate violation. Knowing or willful violations of the rule could lead to the imposition of criminal penalties of up to $25,000 and imprisonment for up to 1 year for each day of violation. In addition, other remedies are available to EPA under sections 7 and 17 of TSCA, such as seeking an injunction to restrain violators of the rule and seizing any chemical substance or mixture manufactured or imported in violation of the rule.

Individuals, as well as corporations, could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies. In particular, EPA may proceed against individuals who report false or misleading information or cause it to be reported.

X. Confidentiality

A person may assert a claim of confidentiality for any information, including public comments, submitted to EPA in connection with the proposed rule or in connection with the rule after it is promulgated. Any person who submits a confidential public comment must also submit a nonconfidential version. Any claim of confidentiality must accompany the information when it is submitted to EPA. Persons may claim information confidential by circling, bracketing, or underlining it, and marking it with "CONFIDENTIAL" or some other appropriate designation. EPA will disclose information subject to a claim of confidentiality only to the extent permitted by section 14 of TSCA and 40 CFR part 2, subpart B. If a person does not assert a claim ofconfidentiality for information at the time it is submitted to EPA, EPA may make the information public without further notice to that person.

XI. Export Notification

Section 12(b) of TSCA requires that any person who exports or intends to export a chemical substance or mixture for which a rule has been proposed or promulgated under section 6 must notify EPA of such exportation or intent to export. Since this rule applies only to acrylamide and NMA grouts, which are mixtures under TSCA, only export of grouts containing acrylamide or NMA, as opposed to other mixtures containing these substances, would be subject to the TSCA section 12(b) export notification requirements.

EPA anticipates that the burden of the export notification requirements will be minimal. Companies are required only to provide notification the first time they export or intend to export to each country in a calendar year. The

notification consists of the company's name and address, chemical name, TSCA section that triggered the notification (in this case section 6), countries that are the receivers, and the export date or intended export date (see 40 CFR 707.60 thru 707.75).

XII. Hearing Procedures

If persons request time for oral comment, EPA will hold informal hearings in Washington, DC. Any informal hearing will be conducted in accordance with EPA's "Procedures for Conducting Rulemaking Under Section 6 of the Toxic Substances Control Act" (40 CFR part 750). Persons or organizations desiring to participate in the informal hearing must file a written request to participate. The written request to participate must be sent to the Environmental Assistance Division at the address listed under FOR FURTHER INFORMATION CONTACT. The written request to participate must include: (1) A brief statement of the interest of the person or organization in the proceeding; (2) a brief outline of the points to be addressed; (3) an estimate of the time required; and (4) if the request comes from an organization, a nonbinding list of the persons to take part in the presentation. Organizations are requested to bring with them, to the extent possible, employees with individual expertise in and responsibility for each of the areas to be addressed. Organizations which do not file main comments in the rulemaking will not be allowed to participate at the hearing, unless the Record and Hearing Clerk grants a waiver of this requirement in writing.

The date for the receipt of the written request to participate in the hearing is set forth in the DATES section of the preamble to this document.

XIII. Official Rulemaking Record

In accordance with the requirements of section 19(a)(3) of TSCA, EPA has established a record for this rulemaking [docket number OPTS–62069]. This record includes basic information considered by the Agency in developing the proposed rule, and will include comments on the proposed rule and additional supporting information. A public version of the record is available in the TSCA Public Docket Office from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA Public Docket Office is located at EPA headquarters, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

XIV. Support Documents

1. Economic Analysis of a Proposed Ban on Chemical Grouts Containing Acrylamide and N-methylolacrylamide. U.S. EPA, Office of Toxic Substances, Economics and Technology Division, Regulatory Impacts Branch. November 1990. Addendum July, 1991.

2. Assessment of Airborne Exposure and Dermal Contact to Acrylamide During Chemical Grouting Operations. Office of Toxic Substances, Exposure Evaluation Division, Field Studies Branch. EPA 5 60/ 5–87–009. July 1987.

3. Assessment of Health Risks from Exposure to Acrylamide. U.S. EPA, Office of Toxic Substances, Existing Chemical Assessment Division. June 1990.

4. Risk Assessment of N-methylolacrylamide. U.S. EPA, Office of Toxic Substances, Existing Chemical Assessment Division. June 1990.

5. Relative Risks of Acrylamide Grout Substitutes Report. U.S. EPA, Office of Toxic Substances, Existing Chemical Assessment Division. May 1990.

XV. Regulatory Assessment Requirements

A. Executive Order 12291

Under E.O. 12291, EPA must judge whether a rule is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposed rule is not major because it would not result in any of the adverse impacts set forth in section 1 of E.O. 12291 as grounds for finding a rule to be major. The industry-wide annualized cost would be less than $10 million, which is considerably less than the $100 million established as the criterion for a major rule in the Order.

B. Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

As required by the general requirements (section 1320.4(a)) of the Paperwork Reduction Act (PRA), EPA must inform potential respondents that the information collection requirements in this proposed rule are not subject to Office of Management and Budget (OMB) review. Collections of information which are submitted to nine or fewer persons do not require OMB review under the PRA.

List of Subjects in 40 CFR Part 764

Acrylamide, N-methylolacrylamide, Environmental protection, Recordkeeping and reporting requirements.

Dated: September 24, 1991.

William K. Reilly,

Administrator.

Therefore, it is proposed that Chapter I of 40 CFR be amended by adding part 764 to read as follows:

PART 764—ACRYLAMIDE AND SUBSTITUTED ACRYLAMIDE

Subparts A-D—[Reserved]

Subpart E—Specific Use Requirements

Sec.
764.125 Chemical grouts containing acrylamide or N-methylolacrylamide.

Authority: 15 U.S.C. 2605 and 2607.

Subparts A-D—[Reserved]

Subpart E—Specific Use Requirements

§ 764.125 Chemical grouts containing acrylamide or N-methylolacrylamide.

(a) *Scope.* Chemical grouts that contain either acrylamide (CAS No. 79–06–1) or N-methylolacrylamide (NMA) (CAS No. 924–42–5) are subject to this section.

(b) *Purpose.* This section imposes requirements on persons engaged in certain commercial activities involving chemical grouts to prevent unreasonable risks of neurotoxic effects and cancer to persons who use certain materials in grouting operations.

(c) *Applicability.* This section applies to any person engaged in the manufacture, importation, or distribution in commerce of chemical grouts and to persons who use such grouts for commercial purposes.

(d) *Definitions.* In addition to the terms defined in section 3 of the Act, the following definitions also apply for purposes of this subpart:

(1) Acrylamide grout means a chemical grout that contains 5 percent or more (by weight) of acrylamide.

(2) Act means the Toxic Substances Control Act, 15 U.S.C. 2601 et seq.

(3) Chemical grout means any chemical substance or mixture which reacts in combination with other chemicals to form a substance that seals holes, cracks, or crevices in underground or other structures, or otherwise stabilizes soil to prevent or reduce the flow or seepage of water or other substances into or through such structures or soils.

(4) Commercial use, commercial purpose, and commercial activity mean those uses, purposes, and activities by any person related to the distribution in commerce of the chemical substance or any mixture containing the chemical

substance; the use of the chemical substance or any mixture containing the chemical substance in a commercial enterprise providing saleable goods or a service to another person; the use of the chemical substance or any mixture containing the chemical substance by any State or political subdivision thereof; and any commercial distribution, including for test marketing.

(5) Geotechnical applications means the injection of chemical grouts into soil or rock to restrict the flow of water or other substances through soil or rock formations, including but not limited to their use in mines and reservoirs.

(6) Label means any written, printed, or graphic material displayed on or affixed to containers of acrylamide or NMA grout.

(7) Manhole sealing means the use of chemical grouts to seal leaks in or around manholes or any other chamber used to gain access to sewer systems.

(8) NMA grout means a chemical grout that contains 5 percent or more (by weight) of N-methylolacrylamide.

(9) Person means any natural person, firm, company, corporation, joint venture, partnership, sole proprietorship, association or other business entity; any State or political subdivision thereof; any municipality; any interstate body; and any department, agency, or instrumentality of the Federal government.

(10) Sewer line repair means the use of chemical grouts in or around main and lateral sewer line systems to seal joints or leaks in these systems.

(11) Structural water control means the use of chemical grouts for sealing nonsewer subterranean or other concrete structures, including but not limited to basements, parking structures, subway tubes, dams and seawalls.

(e) *Prohibition on the manufacture, importation, and distribution of acrylamide grouts in commerce.* Effective [Insert date 15 days after the effective date of the final rule], all persons are prohibited from manufacturing, importing, or distributing in commerce any acrylamide grout for any purpose, including but not limited to its use for sewer line repair, manhole sealing, structural water control, and geotechnical applications.

(f) *Prohibitions on the commercial use of acrylamide grouts.* Effective [insert date 180 days after the effective date of the final rule], all persons are prohibited from using acrylamide grout for any commercial purpose, including but not limited to its use for sewer line repair, manhole sealing, structural water control, and geotechnical applications.

(g) *Prohibition on the commercial use of NMA grouts.* (1) Effective [insert date 180 days after the effective date of the final rule], all persons are prohibited from any commercial use of NMA grout, except for its use in sewer line repair. This prohibition includes, but is not limited to, its use for manhole sealing, structural water control, and geotechnical applications.

(2) Effective [insert date 3 years after the effective date of the final rule], all persons are prohibited from using NMA grout for any commercial purpose, including sewer line repair.

(h) *Prohibition on the manufacture, importation, and distribution of NMA grouts in commerce.* Effective [insert date 3 years after the effective date of the final rule], all persons are prohibited from manufacturing, importing, or distributing in commerce any NMA grout for any purpose, including but not limited to its use for sewer line repair, manhole sealing, structural water control, and geotechnical applications.

(i) *Labeling.* (1) Any person who has any inventory on hand, or in their possession or control, of any acrylamide grout after [insert date 15 days after the effective date of the final rule] shall affix a label or keep an existing label affixed to each container of grout, regardless of size. The label shall consist of the following language:

WARNING: The U.S. Environmental Protection Agency has banned the manufacture, importation, and distribution in U.S. commerce of this product under section 6 of the Toxic Substances Control Act (15 U.S.C. 2605) as of [insert date 15 days after the effective date of the final rule]. Distribution of this product in commerce after this date and intentionally removing or tampering with this label are violations of Federal law. All uses of this product are prohibited as of [insert date 180 days after effective date of the final rule].

(2) Any person who manufactures, imports, or distributes in commerce any NMA grout after [insert date 15 days after the effective date of the final rule] shall affix a label or keep an existing label affixed to each container of grout, regardless of size. The label shall consist of the following language:

WARNING: The U.S. Environmental Protection Agency has banned all uses of this product, except for sewer line repair, as of [insert date 180 days after effective date of the final rule]. This prohibition includes, but is not limited to, its use for manhole sealing, structural water control, and geotechnical applications. As of [insert date 3 years after effective date of the final rule], the U.S. Environmental Protection Agency has banned the manufacture, importation, distribution in commerce, and all uses of this product under section 6 of the Toxic Substances Control Act (15 U.S.C.2605). Intentionally removing or tampering with this label are violations of Federal law.

(3) The first word of the warning statement shall be capitalized, and the type size for the first word shall be no smaller than 10–point type for a label less than or equal to 10 square inches in area, 12–point type for a label above 10 but less than or equal to 15 square inches in area, 14–point type for a label above 15 but less than or equal to 30 square inches in area, and 16–point type for a label greater than 30 square inches in area. The type size of the remainder of the warning statement shall be no smaller than 6–point type. All required label text shall be in English and of sufficient prominence and shall be placed with such conspicuousness, relative to other label text and graphic material, to ensure that the warning statement is read and understood by the ordinary individual under customary conditions of purchase and use.

(4) Compliance with the labeling provisions of this section does not relieve a person from compliance with requirements established under the Federal Hazardous Substances Act (15 U.S.C. 1261) or the Hazard Communication Standard (29 CFR 1910.1200) established under the Occupational Safety and Health Act (29 U.S.C. 651 et seq.).

(j) *Recordkeeping.* (1) Any person who manufactures, imports, or distributes in commerce any NMA grout after [insert date 15 days after the effective date of the final rule] must retain at the headquarters of the company in one location documentation of information showing:

(i) The amount of grout manufactured/imported and the date of manufacture/import.

(ii) The name, address, and telephone number of any person to whom the grouts were sold and shipped.

(iii) The amount of grout shipped and the date of shipment.

(2) This information must be retained for 2 years from the date of shipment.

(k) *Reporting.* (1) Each person who distributes in commerce acrylamide or NMA grout shall report to the Regional Administrator of the EPA region in which the company headquarters is located. The report must be received no later than [insert effective date of the final rule], or 30 days after the person first begins to distribute the grout in commerce, whichever is later, and must include:

(i) The distributor's name, address, and telephone number, the name of a contact at their company headquarters, and the shipment office locations through which their grout is sold.

(ii) A list of customers, with customer addresses, and total amount and type of grout sold to each customer for the year immediately preceding the report due date.

(2) The report identified in paragraph (k)(1) of this section must be updated as changes occur in the company headquarters or shipment office information. The updated report must be submitted to the Regional Administrator and must be postmarked no later than 10 calendar days after the change occurs.

(3) Any person required to submit a report under this section may assert a claim of confidentiality for the information submitted. Any claim of confidentiality must accompany the information when it is submitted to EPA. EPA will disclose information subject to a claim of confidentiality only to the extent permitted by section 14 of TSCA and 40 CFR part 2, subpart B. If a person does not assert a claim of confidentiality for information at the time it is submitted to EPA, EPA may make the information public without further notice to that person.

(l) *Enforcement.* (1) Failure to comply with any provision of this section is a violation of section 15 of the Act (15 U.S.C. 2614).

(2) Failure or refusal to establish and maintain records or to permit access to or copying of records, as required by the Act, is a violation of section 15 of the Act (15 U.S.C. 2614).

(3) Failure or refusal to permit entry or inspection as required by section 11 of the Act (15 U.S.C. 2610) is a violation of section 15 of the Act (15 U.S.C. 2614).

(4) Violators may be subject to the civil and criminal penalties in section 16 of the Act (15 U.S.C. 2615) for each violation.

(m) *Inspections.* EPA will conduct inspections under section 11 of the Act (15 U.S.C. 2610) to ensure compliance with this section.

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BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 91-170]

Spectrum Efficiency in the Private Land Mobile Radio Bands in Use Prior to 1968

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; order extending comment period.

SUMMARY: The chief, Private Radio Bureau has adopted an order extending time periods in which to file comments and reply comments to the Notice of Inquiry 56 FR 31097, July 9, 1991, in this proceeding. The new dates are January 15, 1992 for comments and March 2, 1992 for reply comments. The extension would allow applicants to provide the Commission with a more complete record in this proceeding.

DATES: Comments on the Notice of Inquiry must be filed on or before January 15, 1992 and reply comments must be filed on or before March 2, 1992.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Doron Fertig, Policy and Planning Branch, Land Mobile and Microwave Division, Private Radio Bureau (202) 632-6497.

Order Extending Comment and Reply Comment Periods

Adopted: September 17, 1991.
Released: September 23, 1991.
By the Chief, Private Radio Bureau.

1. On July 2, 1991, the Commission released a Notice of Inquiry, 6 FCC Rcd 4126 (1991), (Notice), in this proceeding. The specified deadlines for comments and reply comments were October 25, 1991 and December 13, 1991, respectively.

2. On November 14, 1991, the Private Radio Bureau will hold a conference to discuss methods of satisfying the growing needs of private radio users in an era of increasing scarcity of spectrum. Industry representatives and policy makers will focus on the broad concerns raised in the Notice. An extension of the comment and reply comment deadline would provide members of the land mobile community the opportunity to prepare comments based in part on the conference and, thus, would provide the Commission with a more complete record in this proceeding. We conclude, therefore, that an extension of time is in the public interest. Accordingly, it is ordered, based on the authority in § 0.331 of the Commission's Rules and Regulations, 47 CFR 0.331, that the deadline for filing comments in the subject Notice of Inquiry is extended to January 15, 1992, and the deadline for filing reply comments is extended to March 2, 1992.

Federal Communications Commission
Ralph A. Haller,
Chief, Private Radio Bureau.

[FR Doc. 23731 Filed 10-1-91; 8:45 am]
BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 56, No. 191
Wednesday, October 2, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

September 27, 1991.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Revision

- Agricultural Stabilization and Conservation Service

7 CFR parts 729 and 1446—Poundage Quota and Marketing Regulations for the 1991 Through 1995 Crops of Peanuts
ASCS–278, 101, 1008, 1002, 1007, 1003, 1030, 1011, 1010, 1012, 1017, 1006, 1006–1, 1006–2, CCC–1042
Recordkeeping; On occasion
Farms; 645,205 responses; 276,350 hours
Paul P. Kume (202) 447–9003

Extension

- Food and Nutrition Service

Issuance Reconciliation report, Form FNS–46
FNS–46
Monthly
State or local governments; 4,656 responses; 37,248 hours
Ed Speshock (703) 756–3385

Farmers Home Administration
7 CFR 1951–A, Account Servicing Policies
On occasion
Individuals or households; Farms; Businesses or other for-profit; Small businesses or organizations; 130 responses; 33 hours
Jack Holston (202) 382–9736

Extension

- Rural Electrification Administration

Operating Report
REA Forms 12 a,b,c,d,e,f,g,h and i
Recordkeeping; Annually
Small businesses or organizations; 87 responses; 6,319 hours
Daphne L. Brown (202) 382–8810

New Collection

- Farmers Home Administration

7 CFR 1948–A, Local Technical Assistance and Planning Grants
Recordkeeping; On occasion; Monthly; Quarterly
Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 3,455 responses; 12,955 hours
Jack Holston (202) 382–9736

Reinstatement

- Farmers Home Administration

Application for FmHA Services
FmHA 410–1
On occasion
Individuals or households; Farms; Businesses or other for-profit; Small businesses or organizations; 47,000 responses; 47,000 hours
Jack Holston (202) 382–9736

Reinstatement

- Farmers Home Administration

7 CFR 1951–S, Farmer Programs Account Servicing Policies
FmHA 1951–39, –39A
On occasion
Individuals or households; State or local governments; Farms; Businesses or other for-profit; Small businesses or organizations; 97,992 responses; 7,846 hours
Jack Holston (202) 382–9736

- Farmers Home Administration

7 CFR 1924–B, Management Advice to Individual Borrowers and Applicants
FmHA 431–1, 2, 4; 432–1, 2, 10
Recordkeeping; On occasion
Individuals or households; Farms; Businesses or other for-profit; Small businesses or organizations; 197,790 responses; 1,629,936 hours
Jack Holston (202) 382–9736

Larry K. Roberson,
Deputy Departmental Clearance Officer.
[FR Doc. 91–23699 Filed 10–1–91; 8:45 am]
BILLING CODE 3410–01–M

Forest Service

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Sheep Hunting Closure

AGENCY: Forest Service, USDA, Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: By emergency order of the Federal Subsistence Board, Federal public lands within the Baird Mountains and Igichuk Hills area of Game Management Unit 23 is closed to sheep hunting by all individuals to ensure a healthy population of sheep in the area.

DATES: The emergency closure is effective August 10, 1991.

SUPPLEMENTARY INFORMATION: As empowered by 50 CFR 100.17(b), and 36 CFR 242.17(b), the Federal Subsistence Management Board has closed Federal public lands within the Baird Mountains and Igichuk Hills area of Game Management Unit 23 to the hunting of sheep effective August 10, 1991. The closure has been enacted due to dramatic declines in sheep populations associated with severe winters. This closure is enacted in order to ensure the biological integrity of the sheep population in the area.

Bruce Blanchard,
Acting Director, Fish and Wildlife Service.
Michael A. Barton,
Regional Forester, USDA—Forest Service.
[FR Doc. 91–23458 Filed 10–1–91; 8:45 am]
BILLING CODE 3410–11–M

Forest Service

Grand Island Advisory Commission Meeting Notice

AGENCY: Forest Service, USDA.

ACTION: Grand Island Advisory Commission Meeting.

SUMMARY: The Grand Island Advisory Commission will meet on October 20 at 1 p.m. at the Munising Ranger District Office in Munising, Michigan. An agenda for the two day meeting will mainly consist of discussions on the Forest alternatives for Grand Island development, update on further studies being done by the Core Team, Environmental Impact Statement update, update from both Houghton Tech and Michigan State Universities on studies.

Interested members of the public are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions about this meeting to Art Easterbrook, Staff Officer, Hiawatha National Forest, 2727 N. Lincoln Road, Escanaba, MI 49829, (906) 786–4062.

Dated: September 26, 1991.

William F. Spinner,

Forest Supervisor.

[FR Doc. 91–23689 Filed 10–1–91; 8:45 am]

BILLING CODE 3410–11–M

Packers and Stockyards Administration

Posting of Stockyards

Pursuant to the authority provided under section 302 of the Packers and Stockyards Act (7 U.S.C. 202), it was ascertained that the livestock market named below was a stockyard as defined by section 302(a). Notice was given to the stockyard owners and to the public as required by section 302(b), by posting notices at the stockyard on the date specified below, that the stockyard was subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*).

	Facility No., name, and location of stockyard	Date of posting
MA–107	Camara's New England Commission Auction, Inc., Swansea, Massachusetts.	April 1, 1991.
NV–103	Fallon Livestock Auction, Fallon, Nevada	Sept. 19, 1991.

Done at Washington, DC this 26th day of September, 1991.

Harold W. Davis,

Director, Livestock Marketing Division, Packers and Stockyards Administration.

[FR Doc. 91–23698 Filed 10–1–91; 8:45 am]

BILLING CODE 3410–KD–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket No. 910924–1224]

Foreign Availability Determination: Superconducting Quantum Interference Devices (SQUID)

AGENCY: Office of Foreign Availability, Bureau of Export Administration, Commerce.

ACTION: Notice of negative determination.

SUMMARY: On September 27, 1990, under the authority of the Export Administration Act of 1979, as amended (EAA), the Deputy Assistant Secretary for Export Administration determined that foreign availability of superconducting quantum interference devices (SQUID) controlled under 3A01A of the new Commerce Control List (formerly ECCN 1574A of the Commodity Control List) (15 CFR 799.1, Supp. 1), does not exist to controlled countries.

FOR FURTHER INFORMATION CONTACT: Steven C. Goldman, Director, Office of Foreign Availability, Room SB–097, Department of Commerce, Washington, DC 20230; Telephone: (202) 377–8074.

SUPPLEMENTARY INFORMATION:

Background

Although the Export Administration Act (EAA) expired on September 30, 1990, the President invoked the International Emergency Economic Powers Act and continued in effect, to the extent permitted by law, the provisions of the EAA and the Export Administration Regulations (EAR) in Executive Order 12730 of September 30, 1990.

Part 791 of the Export Administration Regulations (EAR) (15 CFR part 730 *et seq.*) sets forth the procedures and criteria for determining the foreign availability of goods and technology whose export is controlled for national security purposes. The Secretary of Commerce or his designee determines whether foreign availability exists.

With limited exceptions, the Department of Commerce may not maintain national security controls on exports of an item to affected countries if the Secretary or his designee determines that items of comparable quality are available in fact to such countries from a foreign source in quantities sufficient to render the controls ineffective in achieving their purpose.

The Department of Commerce undertook a foreign availability assessment of superconducting quantum interference devices (SQUID) as a result of an industrial claim of foreign availability. These devices are controlled under 3A01A of the new Commerce Control List (CCL). OFA provides its assessment and recommendation to the Deputy Assistant Secretary for Export Administration. The Deputy Assistant Secretary considered the assessment and other relevant information and determined that foreign availability to controlled countries does not exist within the meaning of section 5 of the EAA for superconducting quantum interference devices (SQUID). The Department provided all interested government agencies, including the Departments of State and Defense, the opportunity to review and comment on the assessment and determination. As a result of this negative determination, the Department of Commerce will not amend the existing export control of these items.

Nevertheless, OFA notes that with implementation of the new CCL, which became effective September 1, 1991, controls were removed from SQUID sensors specifically designed for biomagnetic measurements for medical diagnostics, except any instruments incorporating unembedded sensors. Controls, however, continue in effect on certain other, primarily unembedded, SQUID.

If OFA receives new evidence concerning this foreign availability determination, OFA may reevaluate its assessment. Inquiries concerning the scope of this assessment should be sent to the Director of the Office of Foreign Availability at the above address.

Dated: September 26, 1991.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 91–23726 Filed 10–1–91; 8:45 am]

BILLING CODE 3510–DT–M

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

BACKGROUND: Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with § 353.22 or 355.22 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

OPPORTUNITY TO REQUEST A REVIEW: Not later than October 31, 1991, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in October for the following periods:

	Period
Antidumping Duty Proceedings	
Italy: Pressure Sensitive Plastic Tape (A-475-059)	10/01/90-9/30/91
Japan: Steel Wire Rope (A-588-045)	10/01/90-9/30/91
Japan: Tapered Roller Bearings, 4 Inches or Less in Outside Diameter and Certain Components Thereof (A-588-054)	08/01/90-9/30/91
Japan: Tapered Roller Bearings, and Parts Thereof, Finished and Unfinished, Over 4 Inches (A-588-604)	10/01/90-9/30/91
The People's Republic of China: Barium Chloride (A-570-007)	10/01/90-9/30/91
The People's Republic of China: Shop Towels of Cotton (A-570-003)	10/01/90-9/30/91
Yugoslavia: Industrial Nitrocellulose (A-479-801)	04/24/90-9/30/91
Countervailing Duty Proceedings	
Argentina: Leather (C-357-803)	10/02/90-12/31/90
Brazil: Certain Agricultural Tillage Tools (C-351-406)	01/01/90-12/31/90
India: Certain Iron-Metal Castings (C-533-063)	01/01/90-12/31/90
Iran: Roasted In-Shell Pistachios (C-507-601)	01/01/90-12/31/90
New Zealand: Certain Steel Wire Nails (C-614-701)	01/01/90-12/31/90
Sweden: Certain Carbon Steel Products (C-401-401)	01/01/90-12/31/90
Thailand: Certain Steel Wire Nails (C-549-701)	01/01/90-12/31/90

In accordance with § 353.22(a) of the Commerce regulations, an interested party may request in writing that the Secretary conduct an administrative review of specified individual producers or resellers covered by an order, if the requesting person states why the person desires the Secretary to review those particular producers or resellers. If the interested party intends for the Secretary to review sales of merchandise by a reseller (or a producer if that producer also resells merchandise from other suppliers) which was produced in more than one country of origin, and each country of origin is subject to a separate order, then the interested party must state specifically which reseller(s) and which countries of origin for each reseller the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230. Further, in accordance with section 353.31 of the Commerce Regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review", for requests received by October 31, 1991.

If the Department does not receive by October 31, 1991 a request for review of entries covered by an order of finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: September 26, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91-23729 Filed 10-1-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-428-810 Germany; A-421-802 The Netherlands]

Initiation of Antidumping Duty Investigations: High-Tenacity Rayon Filament Yarn From Germany and The Netherlands

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: October 2, 1991.

FOR FURTHER INFORMATION CONTACT: Edward Easton, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-1777.

INITIATIONS:

The Petition

On September 6, 1991, we received a petition filed in proper form by the North American Rayon Corporation, the only producer of high-tenacity rayon filament yarn in the United States. Petitioners submitted supplementary information on September 19, 1991, and September 25, 1991. In compliance with the filing requirements of the Department's regulations (19 CFR 353.12), petitioner alleges that imports of high-tenacity rayon filament yarn from Germany and The Netherlands are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, by reason of imports from Germany and/or The Netherlands of high-tenacity rayon filament yarn. Petitioner also alleges that critical circumstances, as defined under 19 CFR 353.16, exist with respect to high-tenacity rayon filament yarn from Germany and The Netherlands.

Petitioner stated that it has standing to file the petition because it is an interested party, as defined under section 771(9)(E) of the Act, and because it has filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register

support for, or opposition to, this petition, please file a written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 353.14.

United States Price and Foreign Market Value

Petitioner based United States Price (USP) on price quotations obtained from certain of its U.S. customers which also purchased the subject merchandise from Germany and The Netherlands. The prices petitioner obtained were quoted on a delivered basis. Petitioner adjusted USP to account for U.S. inland freight, ocean freight, marine insurance, port charges, U.S. duty, foreign inland freight, and further processing where applicable. Petitioner, however, did not provide any information that these prices included services by converters; therefore, the Department recalculated USP to remove adjustments for converter margins, converter value-added, and inland freight for delivery to converters.

Petitioner claims that home market and third-country prices cannot be used as a basis for estimating foreign market value because these prices are below the cost of production for AKZO Chemie Verkoopkantoor N.V. ("AKZO"), the company that allegedly exports all of the subject merchandise to the United States from both Germany and The Netherlands. Therefore, petitioner based foreign market value on constructed value pursuant to section 773(e)(1) of the Act. Petitioner's estimate of constructed value consists of the cost of manufacture, credit expenses, research and development, selling, general and administrative expenses (SG&A), profit and packing. In an amendment to the petition filed September 19, 1991, petitioner changed the profit rate to reflect the statutory minimum of eight percent of the cost of materials, fabrication and general expenses, and derived an SG&A rate based on AKZO's 1990 consolidated financial statements.

To the extent that AKZO's company-specific costs were available, petitioner included them in the calculation of the constructed value. For example, petitioner's computation of constructed value included data on AKZO's cost of pulp (the major input material), depreciation expenses, and SG&A. For other components of constructed value, petitioner adjusted its own cost of manufacture for known differences in Germany and The Netherlands, and added both packing and the statutory minimum of eight percent profit.

The Department recalculated constructed value by adjusting petitioner's estimates for SG&A, credit expenses, and depreciation. SG&A was recomputed from AKZO's consolidated financial statements in accordance with Department practice. In the absence of company-specific information on AKZO's actual credit expenses, the Department excluded the adjustment for credit expenses that petitioner used to calculate constructed value. Depreciation was recalculated by using petitioner's own costs because the methodology employed by the petitioner was not specifically applicable to the production of the subject merchandise.

Based on a comparison of USP and FMV, petitioner alleges dumping margins ranging from 209.40 to 223.63 percent for subject imports from Germany, and from 205.04 to 262.25 percent for subject imports from The Netherlands. Based on our recalculation of both USP and constructed value as described above, we recalculated estimated margins ranging from 155.62 to 187.25 percent for Germany, and 199.30 to 209.10 percent for The Netherlands.

Initiation of Investigations

Pursuant to section 732(c) of the Act, the Department must determine, within 20 days after the petition is filed, whether the petition sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to petitioner supporting the allegation.

We have examined the petition on high-tenacity rayon filament yarn from Germany and The Netherlands and found that it complies with the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating antidumping duty investigations to determine whether imports of high-tenacity rayon filament yarn from Germany and The Netherlands are being, or are likely to be, sold in the United States at less than fair value.

Petitioner's analysis provides reasonable grounds to believe or suspect that AKZO has made sales in the home market and to third countries at prices below the cost of production. Specifically, petitioner has compared AKZO-specific prices to the cost of production which included AKZO-specific costs. Therefore, pursuant to section 773(b) of the Act, we are initiating an investigation to determine whether home market sales (or third country sales in the event that we determine that the home market is not viable) are made at prices below the cost of production.

If our investigations proceed normally, we will make our preliminary determinations by February 13, 1992.

Scope of Investigations

The product covered by these investigations is high-tenacity rayon filament yarn. It is defined as multifilament single yarn of viscose rayon with a twist of five turns or more per meter, having a denier of 1100 or greater, and a tenacity greater than 35 centinewtons per tex. This merchandise is classified by the Harmonized Tariff Schedule (HTS) under HTS item 5403.10.3040. The HTS reference is provided for convenience and customs purposes. The written description remains dispositive as to the scope of product coverage.

ITC Notification

Section 732(d) of the Act requires us to notify the ITC of these actions and to make available to it the information we used to arrive at these determinations. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

Preliminary Determinations by ITC

The ITC will determine by October 21, 1991, whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Germany and/or The Netherlands of high-tenacity rayon filament yarn. If its determinations are negative, these investigations will be terminated; otherwise, the investigations will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: September 26, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-23727 Filed 10-1-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-559-806]

Rescission of Initiation of Antidumping Duty Investigation and Dismissal of Petition: Certain Portable Electric Typewriters From Singapore

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 2, 1991.

FOR FURTHER INFORMATION CONTACT: Stephanie L. Hager or Ross L. Cotjanle, Investigations, Import Administration, International Trade administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-5055 or 377-3534, respectively.

RESCISSION OF INITIATION: We determine that the petition in this investigation was not filed by an interested party within the meaning of section 771(9)(C) of the Tariff Act of 1930, as amended ("the Act"). Therefore, the initiation is being rescinded and the proceeding terminated.

Case History

Since the publication of our notice of initiation (56 FR 22150, May 14, 1991), the following events have occurred.

On June 12, 1991, the International Trade Commission ("ITC") published its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Singapore of PETs that are alleged to be sold in the United States at less than fair value (56 FR 27033).

On May 29, 1991, the Department presented its questionnaire to Smith Corona (PTE), Ltd. ("SCPTE"). During the period of investigation ("POI"), SCPTE accounted for more than 60 percent of exports of PETs to the United States from Singapore.

On August 9, 1991, the petitioner, Brother Industries (USA), Inc., ("Brother") alleged that SCPTE's third country sales were made below the cost of production ("COP"). On August 22, 1991, the Department rejected petitioner's COP allegation because of certain deficiencies. Brother did not correct the deficiencies. Therefore, the Department did not initiate an investigation of sales below the cost of production.

Scope of Investigation

The merchandise that was covered by this investigation consisted of certain portable electric typewriters ("PETs") from Singapore as defined in the "Scope of Investigation" section of our notice of initiation (56 FR 22150, 22152).

Standing

We received several submissions from Smith Corona during the period April 29 through July 22, 1991, challenging Brother's standing to file the petition and requesting rescission of the initiation in this investigation. Smith Corona raised two standing issues: (1) Whether Brother is an interested party within the meaning of section 771(9)(C) of the Act and (2) whether Brother has filed on behalf of the domestic industry.

(1) Interested Party

Smith Corona contends that Brother, the subject of a circumvention inquiry in Portable Electric Typewriters from Japan (Brother Industries, Ltd. and Brother Industries (USA), Inc.); Negative Preliminary Determination of Circumvention of Antidumping Duty Order, 56 FR 46594 (September 13, 1991) ("PETs Circumvention Inquiry"), cannot qualify as an interested party. In addition, Smith Corona argues that regardless of the circumvention inquiry, Brother is merely an assembler of PETs and, therefore, not a manufacturer or producer. On June 25, 1991, Brother submitted a response to Smith Corona's challenge to Brother's standing as an interested party. Brother argues that Smith Corona's position is unsupported by substantial evidence and is not in accordance with the law. According to Brother, the facts compel the conclusion that it is an interested party as defined in section 771(9)(C) of the Act.

With respect to Smith Corona's allegation that Brother, as an alleged circumventer, cannot have interested party status to file the petition, on September 13, 1991, we issued a preliminary negative determination in the PETs Circumvention Inquiry. We do not believe that any conclusion about whether a party is circumventing an outstanding order controls the question of whether that party has standing as an interested party. The standard for determining whether circumvention is occurring is quite different from the standard to be applied to determine an interested party's standing. In circumvention, we must give consideration to the amount of value that is added outside the country subject to the order (including parts from third countries). For purposes of determining the standing of a firm as a domestic producer, we consider, among other things, the value added in the United States (excluding the value of third-country-sourced parts). Therefore, we reject Smith Corona's standing challenge based simply on Brother's status as an alleged circumventer.

When faced with a standing challenge that the petitioner is an assembler and not a manufacturer of the like product and, therefore, lacks interested party status to bring the petition, it is appropriate for the Department to consider the kind of factors applied by the ITC in its domestic industry determinations. See, e.g., PETs Circumvention Inquiry, 56 FR 46594 (September 13, 1991) and Final Determination of Sales at Less Than Fair Value; Personal Word Processors from Japan, 56 FR 31101 (July 9, 1991). The ITC examines the overall nature of production-related activities in the United States, including: (1) the extent and source of a firm's capital investment; (2) the technical expertise involved in the production activity in the United States; (3) the value added to the product in the United States; (4) employment levels; (5) the quantity and types of parts sourced in the United States; and (6) any other costs and activities in the United States directly leading to production of the like product. See, e.g., Cellular Mobile Telephones and Subassemblies Thereof from Japan, Inv. No. 731-TA-388 (Final), USITC Pub. 2163 (Mar. 1989) at 13-14. No single factor is determinative, nor is the list of criteria exhaustive. *Id.*

As part of its challenge to Brother's standing as an interested party, Smith Corona makes several comparisons between its own U.S. operations and those of Brother. We find, however, that use of the ITC's six criteria, rather than Smith Corona's U.S. operations, is more appropriate as a "benchmark" by which to measure U.S. PET manufacturing. Smith Corona has cited no authority for its comparative approach and we have found no statutory basis for it. This type of comparative analysis may simply lead to the irrelevant conclusion that one U.S. firm is "more interested" than another.

In determining whether the petitioner in this proceeding is an interested party, we considered all relevant information on the record of the investigation, as discussed below.

1. Extent and source of Capital Investment

Brother has invested $13 million in its Bartlett, Tennessee plant and most of that investment is related to the production of PETs and portable

automatic typewriters. The absolute amount of investment, itself, is not very instructive. Although the dollar amount arguably is substantial, this facility assembles a great many units.

2. Technical expertise

There are three product assembly lines and one PCB assembly line at Brother's Bartlett facilities. Two of the three assembly lines are devoted to PETs, and one to personal word processors. According to Brother, many of its 450 employees work on the assembly line, performing more than 300 separate tasks. In addition, there are three types of original manufacturing operations performed in Bartlett: (1) Chassis welding; (2) PCB assembly and fabrication, including both automatic and manual insertion and soldering; and (3) liquid crystal display ("LCD") circuit assembly and fabrication. We note, however, that LCD production in Bartlett is fairly recent and did not take place during the POI. The various steps in Brother's production process were observed by Department personnel during a factory tour of Brother's Bartlett facilities.

The technical expertise involved in Brother's U.S. plant can be characterized as what could be expected in any large assembly operation, particularly one engaged in the assembly of a large number of parts. While Brother's may be a complex assembly operation, it is not, in reality, more than assembly.

3. U.S. Value-Added

Brother's actual U.S. value-added figures are business proprietary and, therefore, cannot be disclosed. We have determined, however, that the value added by Brother, while perhaps not small is not significant. Standing alone, this factor is not dispositive, since one can envision cases in which a similar degree of domestic value is added by a firm determined to be a domestic producer. However, like the assembly characterization of the operation, the value added assumes additional importance when taken in combination with the other factors.

4. Employment Levels

Brother employes 450 people at its Bartlett, Tennessee facilities. Like investment, Brother's empoyment is not insignificant, but also not unusual, given the output. This factor is not paramount is our decision and it neither argues strongly for or against Brother's status as a domestic producer.

5. Quantity and Types of Domestically Sourced Parts

Brother sources some parts in the United States, including all plastic housing, ribbons and correction tapes, cartons and packing materials, and assorted other parts. While a small minority of Brother's parts usage is of U.S. origin, they can be characterized as primarily non-critical parts, *i.e.*, those not comprising the heart of the product, which confer upon a typewriter its essential character. The primary mechanical and electronic elements are imported.

6. Other Costs and Activities Leading to Production of the Like Product

Brother's products have been developed, designed, and engineered outside the United States over several years. While this, due to the fact that this product is not new, means that such activities are no longer large quantitatively, they remain an important factor in determining Brother's status as a domestic producer, because design is an essential part of producing a manufactured product. Though some market research is done by Brother in the United States, this is to be expected in the course of selling any product, domestic or imported. It is, however, much less critical to the manufacture of a product than is the research, development, design and engineering activity. This factor, when considered in combination with the nature of Brother's operation, the low number of domestic parts, and its domestic value-added, is one of the most compelling factors affecting our analysis.

The nature of Brother's operation is qualitatively different from the type of operation characterized by design, engineering, and the actual manufacturing of some of the essential parts, to which Congress intended to afford a remedy. Furthermore, since Brother is not a producer or manufacturer of PETs in the United States, Brother's PETs in the United States do not constitute domestically produced merchandise for purposes of the antidumping law. Therefore, Brother cannot be charcterized as a wholesaler of a domestically produced like product.

Therefore, because Brother neither manufactures nor produces a like product in the United States, nor wholesales a domestically produced like product, we conclude that Brother is not an interested party as defined in section 771(9)(C). Accordingly, Brother does not have standing to maintain this case and we are compelled to rescind our initiation of the investigation and dismiss the petition.

(2) "On Behalf of"

Because the Department determines that Brother's activities in the United States are not sufficient to qualify it as a U.S. manufacturer and, thus, an interested party as defined in section 771(9)(C), we need not address whether Brother's petition was filed "on behalf of" the domestic industry as provided for in section 732(b)(1) of the Act.

We will notify the ITC of these actions. This determination is published pursuant to section 732(c)(3) of the Act and 19 CFR 353.15(a)(4).

Dated: September 25, 1991.

Eric I. Garfinckel,

Assistant Secretary for Import Administration.

[FR Doc. 91-23728 Filed 10-01-91; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of its Mississippi/Louisiana Habitat Protection Advisory Panel (Advisory Panel) on October 10, 1991, from 9 a.m. to 4 p.m., at the Ramada Hotel, 1480 Nicholson Drive, Baton Rouge, Louisiana.

The Advisory Panel will discuss Council actions on the previous Mississippi/Louisiana Habitat Protection Advisory Panel Meeting Recommendations, the Corps of Engineers and NOAA Habitat Restoration/Creation Memorandum of Agreement, the Coastal Wetlands Planning, Protection, and Restoration Act, the Caernarvon Diversion Structure Initial Operation, the Corps of Engineers' Thin Layer Dredged Material Disposal National Demonstration Protect-Gulfport Harbor, an update on the Cameron-Creole, Bonnet Carré, and Davis Pond Projects, and an update on the Barataria/Terrebonne National Estuary Project.

For more information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL; telephone: (813) 228-2815.

Dated: September 26, 1991.

Richard H. Schaefer,

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

[FR Doc. 91-23672 Filed 10-1-91; 8:45 am]

BILLING CODE 3510-22-M

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will convene a public meeting of its Reef Fish Advisory Panel (Advisory Panel) on October 8, 1991, from 1 p.m. to 5 p.m., and October 9, 1991, from 8 a.m. to 3 p.m., at The Quality Inn New Orleans Airport, 1021 Airline Highway, Kenner, Louisiana.

The Advisory Panel will review stock assessments prepared by the National Marine Fisheries Service for red grouper, vermillion snapper, and greater amberjack. The Advisory Panel will also review reports by the Reef Fish Scientific Assessment Panel that recommend an acceptable biological catch range for each species and review a report by the Scientific Socioeconomic Assessment Panel on potential impacts of the total allowable catches (TACs). The Advisory Panel will develop recommendations to the Council on TAC, bag limits, and quotas for the 1992 season for the three species.

For further information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL; telephone: (813) 228-2815.

Dated: September 26, 1991.

Richard H. Schaefer,

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

[FR Doc. 91-23673 Filed 10-1-91; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Mauritius

September 26, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: October 1, 1991.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated June 3 and 4, 1985, as amended and extended, between the Governments of the United States and Mauritius establishes limits for the period October 1, 1991 through September 30, 1992.

A copy of the current bilateral agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State (202) 647-3889.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 26, 1991.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated June 3 and 4, 1985, as amended and extended, between the Governments of the United States and Mauritius; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on October 1, 1991, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Mauritius and exported during the twelve-month period beginning on October 1, 1991 and extending through September 30, 1992, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Knit group 345, 438, 445, 446, 645 and 646, as a group.	123,296 dozen.
Levels not in a group	
237	151,497 dozen.
331	401,467 dozen pairs.
335/835	60,221 dozen.
336	70,865 dozen.
338/339	283,704 dozen.
340/640	454,622 dozen of which not more than 281,053 dozen shall be in Categories 340-Y/640-Y [1].
341/641	319,835 dozen.
342/642/842	208,309 dozen.
347/348	568,746 dozen.
351/651	140,450 dozen.
352/652	1,191,016 dozen of which not more than 1,012,364 dozen shall be in Category 352.
442	11,122 dozen.
604-A [2]	299,800 kilograms.
638/639	326,260 dozen.
647/648/847	468,379 dozen.

[1] Category 340-Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640-Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[2] Category 604-A: only HTS number 5509.32.0000.

Imports charged to these category limits for the period October 1, 1990 through September 30, 1991 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the current bilateral agreement between the Governments of the United States and Mauritius.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-23724 Filed 10-1-91; 8:45 am]

BILLING CODE 3510-DR-F

Amendment of Import Limits and Export Visa Requirements for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Turkey

September 26, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending limits and visa requirements.

EFFECTIVE DATE: October 3, 1991 and November 1, 1991.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6582. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and the Republic of Turkey reached agreement, effected by exchange of notes dated July 29 and August 6, 1991, to amend the 1991 limits for certain textile products, produced or manufactured in Turkey. Also, the two governments agreed to merge Categories 638/639 with Categories 338/339 and to amend coverage of the visa arrangement.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 52 FR 6859, published on March 5, 1987; and 55 FR 52869, published on December 24, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 26, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 19, 1990, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Turkey and exported during the twelve-month period which began on January 1, 1991 and extends through December 31, 1991.

Effective on October 3, 1991, you are directed to amend the directive dated December 19, 1990 to increase certain limits and to merge Categories 638/639 with Categories 338/339 to become Categories 338/339/638/639 at an increased level. The charges already made to Categories 338/339 shall be retained.

Category	Adjusted twelve-month limit [1]
Fabric Group	
219, 313, 314, 315, 317, 326, 617, 625, 626, 627 and 628, as a group.	111,000,000 square meters of which not more than 25,365,763 square meters shall be in Category 219, 31,002,599 square meters shall be in Category 313, 18,037,876 square meters shall be in Category 314, 24,238,396 square meters shall be in Category 315, 25,365,763 square meters shall be in Category 317, 2,818,418 square meters shall be in Category 326, 16,910,509 square meters shall be in Category 617, 2,818,418 square meters shall be in Category 625, 2,818,418 square meters shall be in Category 626, 2,818,418 square meters shall be in Category 627 and 2,818,418 square meters shall be in Category 628.
Limits not in a Group	
200	1,070,279 kilograms.
300/301	5,211,115 kilograms.
335	225,000 dozen.
336/636	530,000 dozen.
338/339/638/639	3,300,000 dozen of which not more than 1,650,000 dozen shall be in Categories 338-S/339-S/638-S/639-S [2].
340/640	1,150,000 dozen of which not more than 327,076 dozen shall be in Categories 340-Y/640-Y [3].
341/641	1,135,680 dozen of which not more than 397,488 dozen shall be in Categories 341-Y/641-Y [4].
342/642	590,000 dozen.
347/348	3,210,000 dozen of which not more than 1,116,578 dozen shall be in Categories 347-T/348-T [5].
350	334,620 dozen.
351/651	535,000 dozen.
361	1,125,000 numbers.
369-S [6]	1,163,036 kilograms.
410/624	1,020,000 square meters of which not more than 660,000 square meters shall be in Category 410.
448	35,000 dozen.
604	1,342,485 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1990.

[2] Category 338-S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.3010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.0068, 6112.11.0030 and 6114.20.0005; Category 339-S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2010, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.0070, 6112.11.0040, 6114.20.0010 and 6117.90.0022; Category 638-S: all HTS numbers except 6109.90.1007, 6109.90.1009, 6109.90.1013 and 6109.90.1025; Category 639-S: all HTS numbers except 6109.90.1050, 6109.90.1060, 6109.90.1065 and 6109.90.1070.

[3] Category 340-Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640-Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[4] Category 341-Y: only HTS numbers 6204.22.3060, 6206.30.3010 and 6206.30.3030; Category 641-Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

[5] Category 347-T: only HTS numbers 6103.19.2015, 6103.19.4020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.3010, 6112.11.0050, 6113.00.0038, 6203.19.1020, 6203.19.4020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.3020, 6210.40.2035, 6211.20.1520, 6211.20.3010 and 6211.32.0040; Category 348-T: only HTS numbers 6104.12.0030, 6104.19.2030, 6104.22.0040, 6104.29.2034, 6104.62.2010, 6104.62.2025, 6104.69.3022, 6112.11.0060, 6113.00.0042, 6117.90.0042, 6204.12.0030, 6204.19.3030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.3010, 6204.69.9010, 6210.50.2035, 6211.20.1550, 6211.20.6010, 6211.42.0030 and 6217.90.0050.

[6] Category 369-S: only HTS number 6307.10.2005.

Textile products in Categories 638/639 which have been exported to the United States prior to January 1, 1991 shall not be subject to this directive.

Textile products in Categories 638/639 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

For the import period January 1, 1991 through August 30, 1991, you are directed to charge the following amounts to the amended limit for Categories 338/339/638/639 for 1991:

Category	Amount to be charged
638	11,150 dozen.
639	363 dozen.

Additional charges will be provided as data become available.

For visa purposes, you are directed to amend further the directive dated March 2, 1987 to include coverage of the following merged and part categories:

Category	Description
338/339/638/639.....	T-shirts and tank tops—all HTS numbers except those in Categories 338-S/339-S/638-S/639-S.
338-S/339-S/638-S/639-S.	Other than T-shirts and tank tops—see footnote 2 above.

Textile products in aforementioned merged and part categories which are produced or manufactured in Turkey and exported from Turkey on and after November 1, 1991 must be accompanied by the correct merged category or the correct part category corresponding to the actual shipment.

Merchandise in Categories 638/639 which is exported from Turkey prior to November 1, 1991 shall not be denied entry for lack of a visa.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-23725 Filed 10-1-91; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice

The Department of Defense 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)

Title, Applicable Form, and Applicable OMB Control Number: Nomination for appointment to the United States Military Academy, Naval Academy, and Air Force Academy; DD Form 1870; OMB No. 0701-0026.

Type of Request: Revision.

Average Burden Hours/Minutes per Response: 10 Minutes.

Responses per Respondent: 1.

Number of Respondents: 25,650.

Annual Burden Hours: 4,275.

Annual Responses: 25,650.

Needs and Uses: Members of Congress and other authorized personnel use the form to nominate individuals for appointment consideration to the service academies. The information for the form is provided by the prospective nominee.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington Virginia 22202-4302.

Dated: September 27, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-23691 Filed 10-1-91; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of request submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96-511, 44 U.S.C. 3501 et seq.). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before November 1, 1991. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395-3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI-73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 586-2171.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Energy Information Administration.
2. EIA-23, 23P, and 64A.
3. 1905-0057.
4. Oil and Gas Reserve System Surveys.
5. Extension.
6. Annually.
7. Mandatory.
8. Businesses or other for-profit.
9. 6,199 respondents.
10. 1 response.
11. 18.2 hours per response.
12. 113,039 hours.
13. The surveys collect data on reserves of crude oil, natural gas, and natural gas liquids, determine the status and approximate level of production, and provide data used to estimate natural gas liquids production and reserves. Data are published. Respondents are domestic oil and gas well operators, and natural gas processing plant operators.

Statutory Authority

Section 5(a), 5(b), 13(b), and 52, Pub. L. No. 93-275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, September 26, 1991.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 91-23721 Filed 10-1-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ES91-50-000, et al.]

Electric Energy, Inc., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Electric Energy, Inc.

[Docket No. ES91-50-000]

September 24, 1991.

Take notice that on September 18, 1991, Electric Energy, Inc. filed an application with the Federal Energy Regulatory Commission pursuant to section 204 of the Federal Power Act seeking authorization (1) to issue up to $60 million of long-term unsecured Senior Notes with a final maturity date of no later than December 31, 2006 and for exemption from the Commission's competitive bidding requirements, and (2) to issue up to $70 million of notes under the terms of certain unsecured revolving credit agreements or under terms substantially similar thereto from time to time over the 24 month period immediately following the date of the Commission's approval of the application.

Comment date: October 17, 1991 in accordance with Standard Paragraph E at the end of this notice.

2. James River II, Inc.

[Docket No. QF91-209-000]

September 24, 1991.

On August 22, 1991, James River II, Inc. (Applicant), of 300 Lakeside Drive, room 1140, Oakland, California 94612, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility is located at James River's St. Francisville Mill in St. Francisville, Louisiana, and consists of a black liquor chemical recovery boiler and a steam turbine generator. The primary energy source is black liquor. The net electric power production capacity of the facility is 12.5 MW. The facility was installed in 1965.

Comment date: November 1, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. Iowa Public Service Co.

[Docket No. ER91-642-000]

September 25, 1991.

Take notice that on September 12, 1991, Iowa Public Service Company (Iowa) tendered for filing a Unit Participation Agreement between Iowa and Interstate Power Company.

Comment date: October 8, 1991, in accordance with Standard Paragraph E end of this notice.

4. Iowa Public Service Co.

[Docket No. ER91-256-000]

September 25, 1991.

Take notice that on September 16, 1991, Iowa Public Service Company (IPS) tendered for filing a supplement to its FERC filing of March 26, 1991. On February 8, 1991, IPS filed an executed Contract for Electric Service (Nonfirm Energy Service) and Interconnection Agreement between Iowa Public Service Company and the U.S. Department of Energy, Western Area Power Administration, Pick-Sloan Missouri Basin Program, Eastern Division, and on March 26, 1991, filed an amendment to the original filing. On May 15, 1991, IPS requested FERC to defer taking action pending approval of Docket No. ER89-391-000. By this supplement, IPS is now requesting FERC to proceeding with taking action on Docket No. ER91-256-000.

Comment date: October 9, 1991, in accordance with Standard Paragraph E at the end of this notice.

5. Washington Water Power Co.

[Docket No. ER91-627-000]

September 25, 1991.

Take notice that on September 3, 1991, Washington Water Power Company tendered for filing Western Systems Power Pool Agreement subject to the action of the Commission on the filing of that Agreement in Docket No. ER91-195-002.

Comment date: October 8, 1991, in accordance with Standard Paragraph E at the end of this notice.

6. New England Power Pool Agreement

[Docket No. ER91-640-000]

September 25, 1991.

Take notice that on September 12, 1991, New England Power Pool Agreement (NEPOOL) tendered for filing the following rate schedule materials:

New England Power Pool Agreement, dated as of September 1, 1971, as amended, signature page executed by Norwood Municipal Light Department.

Comment date: October 9, 1991, in accordance with Standard Paragraph E at the end of this notice.

7. Central Maine Power Co.

[Docket No. ER91-457-002]

September 25, 1991.

Take notice that on September 16, 1991, Central Maine Power Company tendered for filing its Compliance Filing in compliance with the Commission's order issued on August 2, 1991.

Comment date: October 9, 1991, in accordance with Standard Paragraph E at the end of this notice.

8. Southern California Edison Co.

[Docket No. ER81-177-012]

September 25, 1991.

Take notice that on September 13, 1991, pursuant to Ordering Paragraph (C) of the "Order Granting in Part and denying in Part Motion to Vacate" in the above-captioned proceeding on May 22, 1991, Southern California Edison Company tendered for filing its Amendment No. 1 to the Integrated Operations Agreement (Palo Verde IOA) between the City of Vernon (Vernon) and Southern California Edison Company.

Edison requests that its compliance filing be made effective as of the date when it is accepted by the Commission. Copies of edison's submittal have been served upon all parties to the proceeding.

Comment date: October 9, 1991, in accordance with Standard Paragraph E at the end of this notice.

9. United States Department of Energy—Western Area Power Administration (Boulder Canyon Project)

[Docket No. EF91-5091-000]

September 25, 1991.

Take notice that on August 26, 1991 a stipulation and petition was filed in this docket on behalf of the Western Area Power Administration of the United States Department of Energy (Western) along with the Contractors for the purchase of power and energy from the Boulder Canyon Project. The stipulation provides for a request to the Commission not to act on the filing by Western in this docket of proposed rates for sales of power and energy from the Boulder Canyon Project until August 26, 1992.

Comment date: October 15, 1991, in accordance with Standard Paragraph E at the end of this notice.

10. Watsonville Cogeneration Partnership

[Docket No. QF88-440-002]

September 25, 1991.

On September 13, 1991, Watsonville Cogeneration Partnership (Applicant), of 257 East 200 South, suite 800, Salt Lake City, Utah 84111, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed 28.7 MW topping-cycle cogeneration facility will be located in Watsonville, California. The facility will consist of a combustion turbine generator, a heat recovery boiler (HRB) and an extraction/condensing steam turbine generator. The facility was originally certified by Commission Order issued September 19, 1988, Watsonville Cogen Corporation, 44 FERC ¶ 62,272 (1988). The instant recertification is requested due to the change in ownership from Watsonville Cogen Corporation to Applicant and the sale and leaseback of the facility.

Comment date: November 1, 1991, in accordance with Standard Paragraph E at the end of this notice.

11. Chambers Cogeneration Limited Partnership

[Docket No. QF87-433-001]

September 25, 1991.

On September 12, 1991, Chambers Cogeneration Limited Partnership tendered for filing an amendment to its filing in this docket.

The amendment supplements information concerning dispatch of the facility and certain aspects of facility's ownership structure.

Comment date: October 23, 1991, in accordance with Standard Paragraph E at the end of this notice.

12. Duke Power Co.

[Docket No. ER91-649-000]

September 25, 1991.

Take notice that Duke Power Company (Duke) on September 19, 1991, tendered for filing proposed changes in its electric resale Rate Schedule No. 10 presently on file with the Commission which is applicable to Municipalities and Public Utility Companies. Based on the test period 12 months ending December 31, 1992 conditions, Duke estimates that the proposed changes in resale base rates will increase annual revenues by $4,772,000. The Company is proposing to implement the increase in two steps. The first step, or "interim" rates would increase rates by approximately $3,195,000. The second step, or "proposed" rates would provide additional revenues of $1,577,000 for a total increase of $4,772,000.

Duke states that the increase in wholesale rates is needed to compensate the Company for the commercial operation of the Bad Creek Pumped Storage Hydroelectric Station in 1991 and increased operating and maintenance costs.

Copies of the filings were served upon all of Duke's jurisdictional Wholesale Customers, the North Carolina Utilities Commission, The Public Service Commission of South Carolina, and the Southwestern Power Administration.

Comment date: October 9, 1991, 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. 91-23644 Filed 10-1-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD91-09799T Mississippi-3 Addition]

State Oil and Gas Board of Mississippi; Determination Designating Tight Formation

September 25, 1991.

Take notice that on September 13, 1991, as clarified by letter received September 23, 1991, the State Oil and Gas Board of Mississippi [Mississippi] submitted the above-referenced notice of determination to the Commission, pursuant to § 271.703(c)(3) of the Commission's regulations, that the Selma Chalk Formation in the Gwinville Field, in Jefferson Davis and Simpson Counties, Mississippi, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The notice of determination covers the following geographical area:

Simpson County

T9N, R19W—all of Sections 3, 4 and 5

Simpson and Jefferson Davis Counties

T9N, R19W—all of Sections 8, 9, 10, 11, and 12

Jefferson Davis County

T8N, R18W—all of Section 6
T8N, R19W—all of Sections 1, 2, 3, 4, 10, 11, and 12
T9N, R18W—all of Sections 18, 19, 20, 29, 30, 31, 1n3 32
T9N, R19W—all of Sections 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 33, 34, 35, and 36

The notice of determination also contains Mississippi's findings that the referenced portion of the Selma Chalk Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR, §§ 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 91-23645 Filed 10-1-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD91-09807T Texas-10 Addition 7]

State of Texas; Determination Designating Tight Formation

September 25, 1991.

Take notice that on September 17, 1991, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that a portion of the Edwards Limestone Formation located in a portion of McMullen County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The notice covers approximately 22,275 acres in McMullen County and consists of the following sections of land:

Survey Name, Abstract and (Section/Description)

GWT & PRR, A-539 (15/All)
LI&M Co., A-552 (21/Portion)

J. I. Diaz, A–175 (03/Portion)
J. Poitevent, A–371 (05/All)
J. Poitevent, A–370 (09/All)
J. Poitevent, A–374 (07/Portion)
J. M. Houston, A–877 (31/All)
James Steele, A–828 (06/All)
James Steele, A–825 (08/All)
Antonio Torres, A–456 (19/Portion)
BS&F, A–582 (29/All)
Sanuel D. Pettus, A–353 (04/Portion)
Rafael Vesquez, A–487 (02/Portion)
Trinidad Benites, A–65 (01/Portion)
GWT & PRR, A–533 (07/All)
GWT & PRR, A–534 (05/All)
GWT & PRR, A–532 (03/Portion)
GWT & PRR, A–537 (11/All)
GWT & PRR, A–536 (09/All)
M. E. Lane, A–688 (10/All)
M. E. Lane, A–687 (20/Portion)
GWT & PRR, A–540 (17/All)
J. W. Lane, A–692 (18/All)
J. W. Lane, A–693 (26/All)
E. M. Rudder, A–939 (506/All)
W. R. Miller, A–934 (30/All)
GWT & PRR, A–538 (13/All)

This notice of determination also contains Texas' findings that the referenced portion of the Edwards Limestone Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 91–23646 Filed 10–1–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD91–09806T Texas–10 Addition 6]

State of Texas; Determination Designating Tight Formation

September 25, 1991.

Take notice that on September 17, 1991, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that a portion of the Edwards Limestone Formation located in the Buckley Prospect Area, in LaSalle County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The notice covers approximately 10,960 acres in LaSalle County and consists of the following sections of land:

Survey Name, Abstract & (Section/ Description)

J. Meyerhoffer, A–808 (319/All)
E.A. Hicks, A–878 (763/Portion)
H&G N.R.R., A–307 (235/All)
E.S. Buckley, A–956 (236/All)
H&G N.R.R., A–308 (237/N½)
H&G N.R.R., A–299 (203/All)
J. Dobson, A–985 (202/All)
H&G N.R.R., A–298 (201/All)
C. Sullivan, A–107 (226/N½)
D.M. Murphy, A–1063 (148/All)
Christoph Windisch, A–828 (320/All)
E. Buckley, A–952 (166/All)
H&G N.R.R., A–280 (165/All)
P. Johnston, A–1039 (162/All)
H&G N.R.R., A–281 (167/All)
J. Dobson, A–984 (164/All)
H&G N.R.R., A–279 (163/All)
H&G N.R.R., A–271 (147/All)
H&G N.R.R., A–272 (149/All)

The notice of determination also contains Texas' findings that the referenced portion of the Edwards Limestone Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 91–23647 Filed 10–1–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–224–000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

September 25, 1991.

Take notice that Northern Natural Gas Company (Northern) on September 24, 1991, tendered for filing to become part of Northern's FERC Gas Tariff, Third Revised Volume 1, the following tariff sheets:

Fifth Revised Sheet No. 52C.9
Second Revised Sheet No. 52E.2
Second Revised Sheet No. 52E.6
Fourth Revised Sheet No. 52F.11
Eighth Revised Sheet No. 59

Northern states that such tariff sheets, with a proposed effective date of October 24, 1991, are being submitted to modify its tariff to provide for temporary interruption procedures which Northern will follow in order to preserve the operational integrity of its system in the event of underdeliveries of nominated quantities of natural gas by Shippers on Northern's System.

Northern further states that copies of the filing have been mailed to each of its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 2, 1991. 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 in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91–23648 Filed 10–1–91; 8:45 am]

BILLING CODE 6717–01–M

Office of Energy Research

Special Research Grant Program Notice 91–15; Museum Science Education

AGENCY: Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Energy Research (OER) of the Department of Energy (DOE), in keeping with the energy-related mission of DOE, announces its interest in receiving special research grant applications from museums that will support the development of the media of informal energy-related science education. The media of informal science education include but are not limited to: Interactive exhibits, hands-on activities, and film/video productions. Examples of energy-related areas within the fundamental energy sciences include high energy and nuclear physics, nuclear science and technologies, global warming, waste management, energy efficiency, new materials development, fossil energy resources, renewable energy, health effects research including the human genome, emerging energy technologies, risk assessment, energy/ environment, space exploration initiative and other timely topics. The purpose of the program is to fund the development and use of creative informal science education media which focus on energy-related science and technology.

For the purpose of this notice "museum" means: An established nonprofit institution serving the public on a year-round basis, providing interactive exhibits, demonstrations, and informal educational programs designed to further public understanding of science and technology. The term also includes organizations referred to as science centers, science-technology centers and youth museums. Thus, museums, as defined in this document, are eligible to submit special research grant applications.

As part of DOE's effort to prompt public science literacy; enhance the Nation's mathematics, science, and engineering education; and fulfill the National Education Goal of "making our children first in the world of science" by the year 2000, eligibility for awards under this notice is restricted to U.S. museums which will offer informal energy-related science education. In accordance with 10 CFR 600.7 (b)(1), this restriction is necessary to support established U.S. institutions which provide a valuable supplement to formal science education. While this program anticipates awarding grants only from FY 1992 appropriations, the period of support of a grant may extend up to two years.

PREAPPLICATION AND FURTHER INFORMATION: Before preparing a formal application, potential applicants are asked to submit a brief preapplication in accordance with 10 CFR 600.10(d) (2) and (3) which consists of no more than two pages of narrative describing the major purpose and design; method of evaluation to be utilized by the applicant or its designee to determine the effectiveness of the intended exhibit or media forum; dissemination plan; work schedule; and approximate cost of the project to DOE as well as cost-sharing amounts and entities.

No electronic submissions (including fax) of pre- or formal applications under this Program Notice will be accepted. Preapplications to include an original and one copy are required and must be received by 4:30 p.m., November 4, 1991, and sent to the following address: Kasse Andrews-Weller, Program Manager, Office of University and Science Education Programs, ER–80, Office of Energy Research, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585. The purpose of the preapplication is to give the program staff the opportunity to determine the level and appropriateness of interest in the program. The program staff will also review the approach the museum is considering. Each museum will receive a written response to its preapplication. Once a preapplication has been submitted, a formal application may be submitted regardless of the written response to the preapplication. Telephone and telefax numbers are required to be part of the preapplication.

Formal applications must include an original and seven copies, a copy of the museum's Internal Review Service nonprofit status determination letter, and other documents required by guidelines as stated in 10 CFR part 605.

DATES: Preapplications should be received by November 4, 1991, To permit timely consideration for award in Fiscal Year 1992, formal applications submitted in response to this notice should be received no later than 4:30 p.m., February 5, 1992.

ADDRESSES: Completed formal applications referencing Program Notice 91–15 should be forwarded to: U.S. Department of Energy, Division of Acquisition and Assistance Management, ER–64, Office of Energy Research, Washington, DC 20585. Federal Express address is: U.S. Department of Energy, Division of Acquisition and Assistance Management, ER–64, Office of Energy Research, 19901 Germantown Road, Germantown, Maryland 20874.

FOR FURTHER INFORMATION CONTACT: Kasse Andrews-Weller, Program Manager, Office of University and Science Education Program, ER–80, Office of Energy Research, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8949.

SUPPLEMENTARY INFORMATION: The DOE is strongly committed to increasing the public's science literacy as well as increasing the number of students interested in science and technology careers. Projects which are designed to enhance public awareness of, and to encourage all young people to consider careers in, science and technology are strongly desired. While the application must be submitted by a museum, collaborative efforts are encouraged. Such efforts by potential applicants may include: Partnerships consisting of several small museums, or a small and large museum or a history museum and youth museum in collaboration with museum organizations; and cooperative enterprises which utilize the scientific and technical expertise of the DOE laboratories, industry, and the broader educational community in conjunction with a museum.

General information about development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and procedures are contained in the OER Special Research Grant Application Kit and Guide. The application kit and guide are available from the U.S. Department of Energy, Museum Science Education Program, Office of University and Science Education Programs, ER–80, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone requests may be made by calling (202) 586–8949. The Catalog of Federal Domestic Assistance Number for this program is 81.049.

Each application submitted for support under this notice must include as a minimum 50% cost-sharing of the total cost of the proposed project. Cost sharing must be derived from non-Federal sources. In accordance with 10 CFR 600.107, cost-sharing will be required under this notice due to the available funding anticipated for this program during FY 1992 and to maximize the program. Consequently, cost-sharing will enable DOE to participate on a broader basis in supporting public science literacy. Waivers to these requirements will not be permitted. Multiple applications are permissible; however, each application must be limited to a single project. DOE expects to make several grants in FY 1992 to meet the objectives of this program. It is anticipated that $1 million will be the total funds available in FY 1992, subject to the availability of appropriated funds.

This notice requests further that the "Detailed Description of Research Work Proposed" component of a complete grant application as established by 10 CFR part 605 should not exceed 15 double-spaced, typed pages. This description of work should include budget/cost estimate explanations; conceptual design and how that design relates to the program objectives; description of how the impact of the project will be maximized (dissemination); identification of the target audience(s) the project will serve and efforts planned to serve that audience; identification of the mechanisms to be used to organize and manage the project, including the rules and responsibilities, financial and otherwise, of any partnerships; clarification of the monitoring and evaluation plan, including how those plans can be used for possible project modification; delineation of the planned outcomes and how these outcomes will be assessed and reported; and discussion of the anticipated significance of the exhibit and how this will be confirmed. After an initial review of a formal application is performed to determine eligibility, each

formal application is evaluated using the FR merit review process and the criteria in 10 CFR part 605.

Issued at Washington, DC on September 23, 1991.

D.D. Mayhew,

Deputy Director for Management, Office of Energy Research.

[FR Doc. 91-23722 Filed 10-1-91; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 91-47-NG]

Ocean State Power II; Application for Blanket Authorization To Import and Export Natural Gas

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to import and export natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on July 15, 1991, of an application filed by Ocean State Power II (Ocean State II) for blanket authorization to import from and export to Canada up to 36.5 Bcf of natural gas over a two-year term beginning on the date of first delivery. This gas would be imported and exported at any point on the U.S./Canada border where existing pipeline facilities accessible to Ocean State II are located. No new pipeline construction would be involved.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, November 1, 1991.

ADDRESSES: Offices of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Thomas Dukes, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9590.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Ocean State II is a partnership that was formed to own and operate Unit II of a twin-unit 500 megawatt (MW) combined-cycle electric generating facility in Burrillville, Rhode Island. Ocean State Power (Ocean State), another partnership, independently owns and operates Unit I. Unit I began operating in 1990. Unit II will be operational in September 1991. By separate orders, DOE previously authorized Ocean State II and Ocean State to import Canadian gas over a 20-year term to be used as the primary fuel for their individual 250 MW units.

In this application, Ocean State II would use the proposed short-term, interruptible imports for initial operation of Unit II until firm gas service commences and to meet future peak day fuel requirements. The gas proposed for export would be volumes in excess of Unit II's requirements that would be resold to Canadian purchasers on a spot basis under individually negotiated agreements at market-responsive prices. DOE notes that Ocean State currently has blanket authorization to import and export gas from and to Canada identical to the arrangement proposed by Ocean State II. If its application is approved, Ocean State II said that it would comply with DOE's quarterly reporting provisions contained in previous blanket import authorizations.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the market served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications, the DOE considers the domestic need for the gas to be exported and any other issues determined to be appropriate in a particular case. Parties that may oppose this application should comment in their responses on these issues. The applicant asserts that the proposed import would be competitive and that the market-responsive nature of the export transactions makes it unlikely and exported volumes would be needed domestically during the proposed term. Parties opposing the arrangement bear the burden of overcoming these assertions.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notice of intervention, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through response to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and

responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Ocean State II's application is available for inspection and copying in the Office of Fuels Programs Docket Room 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on September 26, 1991.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fossil Energy.

[FR Doc. 91–23719 Filed 10–1–91; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 91–30–NG]

Wes Cana Marketing (U.S.) Inc.; Blanket Authorization To Import and Export Natural Gas, Including Liquefied Natural Gas

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of an order granting blanket authorization to import and export natural gas, including liquefied natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Wes Cana Marketing (U.S.) Inc. blanket authorization to import and export a combined total of up to 75 Bcf of natural gas, including liquefied natural gas, from and to any international market over a two-year period beginning on the date of first import or export.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 26, 1991.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs.

[FR Doc. 91–23750 Filed 10–1–91; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–180850; FRL 3941–4]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the 20 States as listed below. Also, there were 31 crisis exemptions initiated by various States. These exemptions, issued during the months of April and May, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific and crisis exemption for its effective date.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail: Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–1806).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Delaware Department of Agriculture for the use of cryolite on potatoes to control the Colorado potato beetle; May 31, 1991, to September 15, 1991. Delaware had initiated a crisis exemption for this use. (Libby Pemberton)

2. Hawaii Department of Agriculture for the use of hydramethylnon on pineapple fields to control bigheaded and Argentine ants; May 23, 1991, to May 22, 1992. (Jim Tompkins)

3. Idaho Department of Agriculture for the use of bifenthrin on hops to control hop aphids; May 15, 1991, to September 15, 1991. (Jim Tompkins)

4. Idaho Department of Agriculture for the use of fosetyl-aluminum (Aliette) on hops to control downy mildew; May 10, 1991, to September 1, 1991. (Susan Stanton)

5. Idaho Department of Agriculture for the use of cypermethrin on onions to control thrips; May 7, 1991, to September 15, 1991. (Andrea Beard)

6. Idaho Department of Agriculture for the use of sethoxydim on mint to control green foxtail and quackgrass; May 7, 1991, to July 15, 1991. (Susan Stanton)

7. Iowa Department of Agriculture for the use of pendimethalin on dry bulb onions to control weeds; May 13, 1991, to June 30, 1991. (Jim Tompkins)

8. Kansas State Board of Agriculture for the use of permethrin on small grains (barley, oats, rye, and wheat) to control cutworms. Kansas declared a crisis on December 19, 1990, and subsequently began applications which were completed prior to May 15, 1991. (Andrea Beard)

9. Maryland Department of Agriculture for the use of cryolite on potatoes to control the Colorado potato beetle; May 31, 1991, to September 15, 1991. (Libby Pemberton)

10. Michigan Department of Agriculture for the use of cryolite on potatoes to control the Colorado potato beetle; May 31, 1991, to September 30, 1991. (Libby Pemberton)

11. Michigan Department of Agriculture for the use of triadimefon on asparagus to control asparagus rust; May 15, 1991, to November 1, 1991. (Susan Stanton)

12. Michigan Department of Agriculture for the use of chlorothalonil on asparagus to control purple spot disease; May 10, 1991, to November 1, 1991. (Susan Stanton)

13. Michigan Department of Agriculture for the use of fosetyl-aluminum (Aliette) on head and leaf lettuce to control downy mildew; May 10, 1991, to October 15, 1991. (Susan Stanton)

14. Michigan Department of Agriculture for the use of cypermethrin on onions to control thrips; May 7, 1991, to September 1, 1991. (Andrea Beard)

15. Michigan Department of Agriculture for the use of oxytetracycline on apples to control streptomycin-resistant fireblight; May 3, 1991, to July 1, 1991. Michigan had initiated a crisis exemption for this use. (Susan Stanton)

16. Minnesota Department of Agriculture for the use of 2,4-D on wild rice to control common water plantain; April 8, 1991, to August 31, 1991. (Jim Tompkins)

17. New Hampshire Department of Agriculture for the use of clomazone on winter squash to control broadleaf weeds; May 15, 1991, to July 31, 1991. (Libby Pemberton)

18. New Jersey Department of Environmental Protection for the use of cryolite on potatoes to control the Colorado potato beetle; May 31, 1991, to October 31, 1991. New Jersey had initiated a crisis exemption for this use. (Libby Pemberton)

19. New Mexico Department of Agriculture for the use of cypermethrin on onions to control thrips; May 7, 1991, to July 15, 1991. (Andrea Beard)

20. New York Department of Environmental Conservation for the use of cryolite on potatoes to control the Colorado potato beetle; May 31, 1991, to October 15, 1991. (Libby Pemberton)

21. New York Department of Environmental Conservation for the use of vinclozolin on snap beans to control gray mold; May 30, 1991, to October 31, 1991. (Libby Pemberton)

22. New York Department of Environmental Conservation for the use of pendimethalin on dry bulb onions grown on organic soils to control weeds; May 15, 1991, to June 30, 1991. (Jim Tompkins)

23. Ohio Department of Agriculture for the use of pendimethalin on dry bulb onions grown on organic soils to control weeds; May 15, 1991, to September 30, 1991. (Jim Tompkins)

24. Oregon Department of Agriculture for the use of cypermethrin on onions to control thrips; May 7, 1991, to August 15, 1991. (Andrea Beard)

25. Oregon Department of Agriculture for the use of sethoxydim on mint to control green foxtail, quackgrass, and wild oats; May 7, 1991, to July 15, 1991. (Susan Stanton)

26. Oregon Department of Agriculture for the use of vinclozolin on snap beans to control gray and white mold; May 30, 1991, to September 30, 1991. (Libby Pemberton)

27. Oregon Department of Agriculture for the use of bifenthrin on hops to control hop aphids; May 15, 1991, to September 15, 1991. (Jim Tompkins)

28. Oregon Department of Agriculture for the use of glyphosate on wheat to control common rye; May 28, 1991, to June 30, 1991. (Susan Stanton)

29. Pennsylvania Department of Agriculture for the use of cryolite on potatoes to control the Colorado potato beetle; May 31, 1991, to October 31, 1991. (Libby Pemberton)

30. Rhode Island Department of Environmental Management for the use of cryolite on potatoes to control the Colorado potato beetle; May 31, 1991, to September 15, 1991. (Libby Pemberton)

31. South Carolina Division of Regulatory and Public Service Programs for the use of acephate on fresh market tomatoes to control stinkbugs; May 3, 1991, to December 1, 1991. South Carolina had initiated a crisis exemption for this use. (Jim Tompkins)

32. Virginia Department of Agriculture and Consumer Services for the use of cryolite on potatoes to control the Colorado potato beetle; May 31, 1991, to August 1, 1992. (Libby Pemberton)

33. Virginia Department of Agriculture and Consumer Services for the use of clomazone on sweet potatoes, cucumbers, snap beans, and squash to control annual broadleaf weeds; May 8, 1991, to September 30, 1991. (Libby Pemberton)

34. Washington Department of Agriculture for the use of vinclozolin on snap beans to control gray and white mold; May 30, 1991, to September 15, 1991. (Libby Pemberton)

35. Washington Department of Agriculture for the use of sethoxydim on mint to control green foxtail, quackgrass, and Bermuda grass; May 7, 1991, to July 15, 1991. (Susan Stanton)

36. Washington Department of Agriculture for the use of bifenthrin on hops to control hop aphids; May 15, 1991, to September 15, 1991. (Jim Tompkins)

37. Washington Department of Agriculture for the use of glyphosate on wheat to control common rye; May 28, 1991, to August 1, 1991. (Susan Stanton)

38. Wisconsin Department of Agriculture for the use of vinclozolin on snap beans to control white mold; May 30, 1991, to October 31, 1991. (Libby Pemberton)

39. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of cypermethrin on onions to control thrips; May 7, 1991, to August 31, 1991. (Andrea Beard)

40. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of clomazone on cabbage to control velvetleaf; May 15, 1991, to December 31, 1991. (Libby Pemberton)

41. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of sethoxydim on mint to control green, yellow, and giant foxtail; crabgrass; barnyardgrass; and quackgrass; May 23, 1991, to July 15, 1991. (Susan Stanton)

Crisis exemptions were initiated by the:

1. Alabama Department of Agriculture and Industries on May 22, 1991, for the use of clomazone on sweet potatoes to control broadleaf weeds. This program has ended. (Libby Pemberton)

2. Arkansas State Plant Board on May 10, 1991, for the use of bromoxynil on rice to control hemp sesbania, morningglory, smartweed, and cocklebur. This program will last until August 30, 1991. (Jim Tompkins)

3. Arkansas Office of the Governor on May 3, 1991, for the use of clomazone on cotton to control velvetleaf. This program has ended. (Libby Pemberton)

4. California Department of Food and Agriculture on May 14, 1991, for the use of cyfluthrin on oranges to control citrus thrips. This program has ended. (Libby Pemberton)

5. California Department of Food and Agriculture on April 18, 1991, for the use of chlorpyrifos on wheat to control Russian wheat aphids. This program has ended. (Andrea Beard)

6. Delaware Department of Agriculture on May 23, 1991, for the use of cryolite on potatoes to control the Colorado potato beetle. This crisis was revoked. (Libby Pemberton)

7. Florida Department of Agriculture and Consumer Services on April 5, 1991, for the use of ferbam on mangoes to control anthracnose. This program has ended. (Susan Stanton)

8. Florida Department of Agriculture and Consumer Services on May 24, 1991, for the use of iprodione on tobacco to control target spot. This program has ended. (Susan Stanton)

9. Georgia Department of Agriculture on May 30, 1991, for the use of permethrin on southern peas to control cowpea curculio. This program is expected to last until October 31, 1991. (Andrea Beard)

10. Illinois Department of Agriculture on May 29, 1991, for the use of nicosulfuron on field corn to control foxtail. This program has ended. (Jim Tompkins)

11. Louisiana Department of Agriculture on May 13, 1991, for the use of bromoxynil on rice to control smartweed, hemp sesbania, Texas weed, and morningglory. This program will last until August 30, 1991. (Jim Tompkins)

12. Louisiana Department of Agriculture and Forestry on May 13, 1991, for the use of triclopyr on rice to control alligatorweed, palmleaf, morningglory, and jointvetch. This program is expected to last until August 30, 1991. (Jim Tompkins)

13. Louisiana Department of Agriculture and Forestry on May 24, 1991, for the use of sodium chlorate as a desiccant on wheat. This program has ended. (Susan Stanton)

14. Minnesota Department of Agriculture on May 29, 1991, for the use of nicosulfuron on field corn to control annual and perennial grasses. This program has ended. (Jim Tompkins)

15. Mississippi Department of Agriculture on May 13, 1991, for the use of bromoxynil on rice to control broadleaf weeds. This program is expected to last until August 30, 1991. (Jim Tompkins)

16. Mississippi Department of Agriculture on May 28, 1991, for the use of triclopyr on rice to control alligatorweed, palmleaf, and morningglory. This program is expected to last until August 30, 1991. (Jim Tompkins)

17. Mississippi Department of Agriculture on May 29, 1991, for the use of sodium chlorate as a desiccant on wheat. This program has ended. (Susan Stanton)

18. Missouri Department of Agriculture on May 30, 1991, for the use

of nicosulfuron and primisulfuron on field corn to control annual and perennial grasses. This program has ended. (Jim Tompkins)

19. Montana Department of Agriculture on April 4, 1991, for the use of esfenvalerate on wheat, barley, and oats to control pale western and army cutworms. This program has ended. (Andrea Beard)

20. Nebraska Department of Agriculture on May 31, 1991, for the use of nicosulfuron and primisulfuron on field corn to control grasses. This program has ended. (Jim Tompkins)

21. New Jersey Department of Environmental Protection on May 28, 1991, for the use of cryolite on potatoes to control the Colorado potato beetle. This crisis was revoked. (Libby Pemberton)

22. New Mexico Department of Agriculture on April 9, 1991, for the use of chlorpyrifos on barley, oats, and wheat to control Russian wheat aphid. This program has ended. (Andrea Beard)

23. North Carolina Department of Agriculture on April 24, 1991, for the use of iprodione on tobacco to control target spot. This program has ended. (Susan Stanton)

24. Pennsylvania Department of Agriculture on May 31, 1991, for the use of cryolite on potatoes to control the Colorado potato beetle. This crisis was revoked. (Libby Pemberton)

25. South Dakota Department of Agriculture on April 22, 1991, for the use of chlorpyrifos on wheat to control pale western and army cutworms. This program is expected to last until December 15, 1991. (Andrea Beard)

26. Texas Department of Agriculture on April 19, 1991, for the use of chlorpyrifos on wheat to control Russian wheat aphid. This program has ended. (Andrea Beard)

27. Texas Department of Agriculture on May 15, 1991, for the use of sodium chlorate as a desiccant on wheat. This program has ended. (Susan Stanton)

28. Texas Department of Agriculture on May 22, 1991, for the use of triclopyr on rice to control alligatorweed and Texas weed. This program is expected to last until August 30, 1991. (Jim Tompkins)

29. Texas Department of Agriculture on May 22, 1991, for the use of permethrin on rice to control army worms. This program is expected to last until September 1, 1991. (Andrea Beard)

30. Wisconsin Department of Agriculture on May 31, 1991, for the use of nicosulfuron on field corn to control grasses. This program has ended. (Jim Tompkins)

31. Wyoming Department of Agriculture on April 30, 1991, for the use of chlorpyrifos on wheat to control Russian wheat aphids. This program is expected to last until December 1, 1991. (Andrea Beard)

Authority: 7 U.S.C. 136.

Dated: September 12, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 91-23711 Filed 10-1-91; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL MARITIME COMMISSION

Board of Trustees of the Galveston Wharves et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-010901-002.

Title: Board of Trustees of the Galveston Wharves and Del Monte Fresh Fruit Co. Terminal Agreement.

Parties: Board of Trustees of the Galveston Wharves Del Monte Fresh Fruit Company.

Synopsis: The amendment modifies Clause 2 B of the Agreement to provide that wharfage will be assessed on the gross weight of cargo or on the total weight of an empty container.

Dated: September 27, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-23730 Filed 10-1-91; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203-011347.

Title: Agreement for Settlement and Release of Claims Relating to the U.S. Atlantic Coast/Brazil Pooling Agreement 1987 to 1990 Brazil/U.S. Atlantic Coast Pooling Agreement 1987 to 1990.

Parties: Companhia de Navegacao Lloyd Brasileiro, Companhia de Navegacao Maritima Netumar, American Transport Lines, Inc., Hamburg-Sudamericanische Dampfschifffahrt-Gesellschaft Eggert & Amsinck (Columbus Line), United States Lines (S.A.) Inc., Van Nievelt Goudriian & Co. B.V. (Hopal Line).

Synopsis: The proposed Agreement would settle disputes among the parties over revenue pool accounting payments for the years 1987-1990 under pooling Agreement No. 212-010027 (the Brazil/U.S. Atlantic Coast Agreement) and pooling Agreement No. 212-009847 (the U.S. Atlantic Coast/Brazil Agreement). The parties have requested a shortened review period.

Agreement No.: 203-011348.

Title: Agreement for Settlement and Release of Claims Re Ivaran Line-Brazil/U.S. Atlantic Coast Pooling Agreement 1987, 1988 and 1989.

Parties: A/S Ivarans Rederi, Companhia de Navegacao Lloyd Brasileiro, Companhia de Navegacao Maritima Netumar, Empresa Lineas Maritimas Argentinas, A. Bottacchi S.A. de Navegacion C.F.I.I., American Transport Lines, Inc., United States Lines (S.A.) Inc., Van Nievelt Goudriaan & Co. B.V.

Synopsis: The proposed Agreement would settle disputes pertaining to the revenue pool accounting of amounts payable by A/S Ivarans Rederi under Agreement No. 212-010027, as amended, for the pool years 1987-1989. The parties have requested a shortened review period.

Agreement No.: 224-200565.

Title: Port Everglades Marine Terminal Operating Co., Inc. ("PEMTOC") Marine Terminal Agreement.

Parties: Eller & Company, Inc., Harrington & Company, Inc., S.E.L. Maduro (Florida), Inc., Strachan Shipping Company.

Synopsis: The Agreement, filed September 10, 1991, permits the parties to (1) discuss and agree on how PEMTOC is to be organized to carry on activities as a marine terminal operating company; (2) negotiate with the Port Everglades Authority to secure a terminal; and (3) rationalize the various terminal and freight handling activities now being performed individually be each of the parties.

Agreement No.: 224–200572.

Title: South Carolina State Ports Authority and Neptune Orient Line Terminal Management Agreement.

Parties: South Carolina State Ports Authority ("Authority") Neptune Orient Line ("NOL").

Synopsis: The agreement provides for Authority to manage NOL's container operations at the Authority's Wando Terminal. Authority will charge a management fee on a per container basis. NOL guarantees a certain minimum container throughout beginning with the third contract year. The Agreement's term is 15 years.

Dated: September 26, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–23643 Filed 10–1–91; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended: Holland America Line-Westours Inc., Wind Surf Limited and HAL Antillen N.V., 300 Elliott Avenue West, Seattle, WA 98119; Vessel: Statendam.

Dated: September 26, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91–23669 Filed 10–1–91; 8:45 am]

BILLING CODE 6730–01–M

[Docket No. 91–35]

Revenue Protection Services, as Agent for Bottacchi Line v. Krona Chemical, Inc.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Revenue Protection Services, as agent for Bottacchi Line ("Complainant") against Krona Chemical, Inc. ("Respondent") was served September 25, 1991. Complainant alleges that Respondent engaged in violations of section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. 1709(a)(1), by failing and refusing to pay ocean freight and other charges lawfully assessed pursuant to Complainant's applicable tariffs or service contracts for a shipment of synthetic resin from New Orleans, Louisiana to Santo Domingo, Dominican Republic in September 1989.

This proceeding has been assigned to Administrative Law Judge Norman D. Kline ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by September 25, 1992, and the final decision of the Commission shall be issued by January 23, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 91–23642 Filed 10–1–91; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

John C. Clark, 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 18, 1991.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. John C. Clark, Sharon, Tennessee; Frances S. Clark, Sharon, Tennessee; William E. Liggett, Greenfield, Tennessee; James E. Porter, Greenfield, Tennessee; Jack H. Porter, Greenfield, Tennessee; R. D. Robinson, Sharon, Tennessee; Robinson & Belew Partners, Sharon, Tennessee; R. Van Swaim, Martin, Tennessee; Michael G. Swaim, Martin, Tennessee; Medicare Rentals & Service, Inc., Martin, Tennessee; and Pharmaceutical Services, Inc., Martin, Tennessee; to acquire an additional 67.54 percent of the voting shares of Sharon Bancshares, Inc., Sharon, Tennessee, for a total of 75.60 percent, and thereby indirectly acquire City State Bank, Martin, Tennessee, and The Bank of Sharon, Sharon, Tennessee.

2. Hugh S. Potts, Jr., Kosciusko, Mississippi; to acquire up to an additional 4,000 shares of First M & F Corporation, Kosciusko, Mississippi, for a total of 11.02 percent, and thereby indirectly acquire Merchants and Farmers Bank, Kosciusko, Mississippi.

Board of Governors of the Federal Reserve System, Septebmer 26, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-23670 Filed 10-1-91; 8:45 am]

BILLING CODE 6210-01-F

First Evergreen 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 23, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First Evergreen Corporation, Evergreen Park, Illinois; to acquire 100 percent of the voting shares of Oak Lawn Trust and Savings Bank, Oak Lawn, Illinois.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Flatonia Bancshares, Inc., Flatonia, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Flatonia Bancshares-Delaware, Inc., Wilmington, Delaware, and thereby indirectly acquire Flatonia State Bank, Flatonia, Texas.

2. Flatonia Bancshares - Delaware, Inc., Wilmington, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of Flatonia State Bank, Flatonia, Texas.

Board of Governors of the Federal Reserve System, September 26, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-23671 Filed 10-1-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committee Meeting in October

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

ACTION: Correction of meeting notice.

SUMMARY: The public notice given in the **Federal Register** on September 9, 1991, Volume 56, No. 174 on page 45990 listed the meeting location as The River Inn, 924 25th Street, NW., Washington, DC 20037. The meeting location has been changed to: One Washington Circle Hotel, One Washington Circle, NW., Washington, DC 20037.

All other meeting information is correct.

Dated: September 26, 1991.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 91-23676 Filed 10-1-91; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

[Docket No. 91N-0332]

CADCO, Inc.; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) held by Cadco, Inc. The NADA provides for the manufacture of Type B medicated feed containing lincomycin. The firm requested the withdrawal of approval. In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending the animal drug regulations by removing the portion of the regulation that reflects approval of the NADA.

EFFECTIVE DATE: October 15, 1991.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8749.

SUPPLEMENTARY INFORMATION: Cadco, Inc., P.O. Box 3599, 10100 Douglass Ave., Des Moines, IA 50322, is the sponsor of NADA 132-658, which provides for the manufacture of a Type B medicated feed containing lincomycin. The firm requested the withdrawal of approval of the NADA because an NADA is no longer required to manufacture or distribute the Type B medicated feed. (See 51 FR 7382, March 3, 1986, and 55 FR 23423, June 8, 1990).

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 132-658 and all supplements and amendments thereto is hereby withdrawn, effective October 15, 1991.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending 21 CFR 558.325 by removing and reserving paragraph (a)(4) to reflect the withdrawal of approval.

Dated: September 23, 1991.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 91-23677 Filed 10-1-91; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committee Meeting; Cancellation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is canceling the meeting of the Ophthalmic Devices Panel of the Medical Devices Advisory Committee scheduled for October 4, 1991. The meeting was announced by notice in the **Federal Register** of September 19, 1991 (56 FR 47479).

FOR FURTHER INFORMATION CONTACT: Daniel W.C. Brown, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1080.

Dated: September 26, 1991.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-23680 Filed 10-1-91; 8:45 am]

BILLING CODE 4160-01-M

Investigational New Drugs; Procedure to Monitor Clinical Hold Process; Meeting of Review Committee and Request for Submissions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration's (FDA's) Center for Drug Evaluation and Research (CDER) is announcing: (1) The implementation of an experimental procedure for continuing review of its clinical holds on investigational new drug trials and (2) the November 1991 meeting of the committee to review selected clinical holds. FDA is asking interested drug companies to submit the name and number of any investigational new drug application (IND) that was on clinical hold during fiscal year 1991 that the drug company wants the committee to review. FDA imposes clinical holds on drug studies when it believes it necessary to protect the welfare of clinical subjects. Although the clinical hold process is delegated to the

reviewing Divisions within CDER, the Center has concluded that the process, as delegated, deserves continuing assessment. Therefore, CDER has established a special standing committee that will sample clinical holds and subject them to review. The experimental procedure will be implemented for 1 year.

DATES: The meeting will be held in November. Drug companies may submit review requests for the November meeting before October 15, 1991.

ADDRESSES: Submit clinical hold review requests to Amanda B. Pedersen, FDA ombudsman, Office of the Commissioner (HF–7), Food and Drug Administration, rm. 14–84, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1306.

FOR FURTHER INFORMATION CONTACT: Deborah Wolf, Center for Drug Evaluation and Research (HFD–362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8046.

SUPPLEMENTARY INFORMATION: FDA regulations at 21 CFR part 312 provide procedures that govern the use of investigational new drugs in human subjects. These regulations require that the sponsor of a clinical investigation submit an IND to FDA outlining the proposed use of the investigational drug. The IND must contain the study protocol, a summary of human and animal experience with the drug, and information about the drug's chemistry and pharmacology. FDA reviews an IND to ensure the safety and rights of subjects and to ensure that the quality of any scientific evaluation of drugs is adequate to permit an evaluation of the drug's efficacy and safety. An investigational new drug for which an IND is in effect is exempt from the premarketing approval requirements that are otherwise applicable and may be shipped lawfully for the purpose of conducting clinical investigations of that drug.

If FDA determines that a proposed or onoing study may pose significant risks for human subjects or, for Phase 2 or 3 studies, is otherwise seriously deficient, it may impose a clinical hold on the study. The clinical hold is FDA's primary mechanism for protecting subjects who are involved in investigational new drug trials. A clinical hold is an order that FDA issues to a sponsor to delay a proposed investigation or to suspend an ongoing investigation. The clinical hold may be placed on one or more of the investigations covered by an IND. When a proposed study is placed on clinical hold, subjects may not be given the investigational drug as part of that study. When an ongoing study is placed on clinical hold, no new subjects may be recruited to the study and placed on the investigational drug, and patients already in the study should stop receiving therapy involving the investigational drug unless FDA specifically permits it.

FDA regulations at 21 CFR 312.42 describe the grounds for the imposition of a clinical hold. FDA may impose a clinical hold on a proposed or ongoing Phase 1 study when it finds that human subjects would be exposed to unreasonable and significant risk of illness or injury, the clinical investigators named in the IND are not qualified to conduct the investigation described in the IND, the information provided by the sponsor in the investigator brochure is misleading, incorrect, or materially incomplete, or the IND does not contain sufficient information to assess the risks to human subjects of the proposed studies.

FDA may impose a hold on a proposed or ongoing Phase 2 or 3 study if it finds that any of the conditions listed above apply or the protocol provided for the investigation is deficient in design to meet its stated objectives. Additional grounds are provided in 21 CFR 312.42(b)(3) for the imposition of clinical holds on treatment IND's.

The regulations require that FDA follow regular procedures in its decisions to impose, and the imposition of, clinical holds. When FDA concludes that there is a deficiency in a proposed or ongoing clinical trial which may be grounds for the imposition of a hold order, FDA will attempt to resolve the matter through informal discussions with the sponsor. If that attempt is unsuccessful, the agency may order a clinical hold. In CDER, a clinical hold is ordered by or on behalf of the director of the Division that is responsible for review of the IND. The regulations require that the order identify the studies under the IND to which the hold applies and explain the basis for the action. The hold order may be made by telephone or other means of rapid communication, or in writing. Within 30 days of the imposition of the clinical hold, the Division director is required to provide the sponsor with a written explanation of the basis for the hold. Any sponsor who has not received a written explanation within 30 days should notify the Division and request that it be issued. In addition to providing a statement of reasons, this ensures that the hold is recorded in CDER's management information system.

The clinical hold order will specify whether the sponsor may resume the affected investigation without prior notification by FDA once the deficiency has been corrected. If the order does not permit this resumption, an investigation may resume only after the Division director or his or her designee has notified the sponsor that the investigation may proceed. Resumption may be authorized by telephone or other means of rapid communication. If all investigations covered by an IND remain on clinical hold for 1 year or longer, FDA may place the IND on inactive status.

FDA regulations at 21 CFR 312.48 provide dispute resolution mechanisms through which sponsors may appeal clinical hold orders. The regulations encourage the sponsor to attempt to resolve disputes directly with the review staff responsible for the review of the IND. If necessary, a sponsor may request a meeting with the review staff and management to discuss the hold. In addition, applicants may suggest that FDA seek the advice of outside experts, in which case FDA may hold a meeting and invite one or more members of its advisory commitees or other consultants. For major scientific and medical disputes that are not resolved within these informal meetings, FDA may refer the matter to one of its standing advisory committees for consideration. Most recently, the position of FDA ombudsman was established to receive and address unresolved administrative issues and complaints from outside the agency, including those pertaining to clinical holds.

Over the years, concerns about the clinical hold process have been expressed by investigational drug sponsors whose investigations have been suspended or delayed. While it is recognized that many holds are appropriate, some drug sponsors have suggested that there was too little opportunity for discussion and that there were often delays in communicating reasons for the holds and in taking steps to remove holds in response to additional data and information. It has been said that FDA does not always adhere to its own regulations in imposing the clinical holds, e.g., by failing in some cases to confirm in writing the clinical holds it orders, and by allowing individuals below the Division director level to impose holds. It has also been said that the dispute resolution mechanisms do not work well because sponsors do not wish to anger Division staff by appearing to question their judgment. The IND review process is delegated to the Division directors in CDER and, for practical purposes, must

remain so. The IND process requires frequent and timely interaction between FDA and IND sponsors; the imposition of additional levels of routine review would significantly reduce the efficiency of the process. Nonetheless, there is an interest in examining CDER's IND review process and assuring consistency, scientific rigor, timeliness, and adherence to required procedures.

Recently, CDER completed a Center-wide review of clinical holds recorded in its management information system. While some differences among Divisions in practice and procedures were discerned, it appeared that the procedures specified in the regulations were, in general, being followed and that holds were, with some exceptions, scientifically supportable. To provide continuing examination of the scientific and procedural quality of imposed clinical holds, CDER is adopting a new procedure for the periodic review of a sample of existing clinical holds. The procedure will, in addition, afford an opportunity for a sponsor who does not wish to seek formal reconsideration of a pending hold to have that hold considered "anonymously."

A committee has been established in CDER to periodically review selected clinical holds. The committee consists of the following officials: Deputy Director, CDER; Deputy Director, Scientific and Medical Affairs, CDER; Director, Office of Drug Evaluation I, CDER; Director, Office of Drug Evaluation II, CDER; Director, Office of Generic Drugs, CDER; FDA ombudsman; and Deputy Director, Center for Biologics Evaluation and Research. The committee will conduct quarterly meetings to review a limited number of IND's placed on clinical hold during the previous quarter and clinical holds that are more than 60 days old.

Clinical holds to be reviewed will be chosen randomly. In addition, the committee will review holds proposed for review by drug sponsors. In general, a drug sponsor should request review when it disagrees with the agency's scientific conclusions.

Sponsors should transmit IND's proposed for committee review to FDA's ombudsman, who will be responsible for compiling the list of IND's to be reviewed. Problems of a purely procedural natural should also be referred to the ombudsman, but those problems will ordinarily be considered separately by the ombudsman. They will, however, be referred to the committee if the ombudsman considers it necessary.

The committee (with the exception of the ombudsman) will be "blind" as to which of the holds to be reviewed were randomly chosen and which were submitted by sponsors. The committee will evaluate the selected clinical holds for scientific content and consistency with agency regulations and CDER policy. Because the deliberations of the committee will by their very nature deal with confidential commercial information, all meetings will be closed to the public.

The evaluations of the committee will be reported in the minutes of the meeting. Although those minutes will not be publicly available because they will contain privileged commercial information, summaries of the committee's deliberations, with all such privileged commercial information omitted, will be available from the ombudsman. If, following the committee's review, the status of a clinical hold changes, sponsors will be notified by the reviewing Division.

The committee will hold meetings in November 1991 and in February, May, and August 1992. The committee held a pilot meeting on August 7, 1991, and considered six clinical holds. Notice of future meetings will be announced in the **Federal Register** and will give drug companies approximately 1 month to submit requests for review of clinical holds at those meetings.

CDER invites drug companies to submit to the FDA ombudsman the number and name of any IND that is on clinical hold that they want the committee to review at its November meeting. Submissions should be made by October 15, 1991, to Amanda B. Pedersen, FDA ombudsman (address above).

Dated: September 26, 1991.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-23681 Filed 9-27-91; 11:59 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Final Announcement for the Disadvantaged Health Professions Faculty Loan Repayment Program

The Health Resources and Services Administration (HRSA) announces the final definitions, program requirements, review criteria and funding preference for the Disadvantaged Health Professions Faculty Loan Repayment Program (FLRP). The FLRP program is under the authority of the new section 761 of the Public Health Service Act (the Act), as added by the Disadvantaged Minority Health Improvement Act of 1990, Public Law 101-527.

Approximately $975,000 is available in FY 1991 for competing applications for FLRP. It is expected that 30 awards averaging $32,000 ($16,000 per year for two years) will be supported with these funds.

The program announcement published in the **Federal Register** on August 7, 1991 (FR 37559) invited public comment on the proposed definitions, program requirements, review criteria and funding preference. Comments from two professional associations were received during the 30-day comment period. Two comments related to the proposed funding preference. No comments were made on the proposed definitions, program requirements or review criteria One comment addressed a statutory provision for which public comment was not requested.

Two comments addressed contract provisions. These comments, and the Department's responses, are discussed under the Breach of Contract section below. A copy of the FLRP contract between the individual and the Secretary was published in the **Federal Register** on August 16, 1991 (56 FR 40904). An amended contract reflecting public comments is included at the end of this announcement.

In addition, the Division of Disadvantaged Assistance, which administers this program, has revised the waiver provision for FY 1991 to permit schools to individually demonstrate their particular current financial circumstances.

Purpose

The purpose of the FLRP is to attract and retain disadvantaged health professions faculty members for accredited health professions schools. The FLRP is directed at those individuals available to serve immediately or within a short time as full-time faculty members.

Eligible Individuals

Individuals from disadvantaged backgrounds are eligible to compete for participation in the FLRP if they:

1. Have a degree in medicine, osteopathic medicine, dentistry, nursing, pharmacy, podiatric medicine, optometry, veterinary medicine, or public health or from a school that offers a graduate program in clinical psychology; or
2. Are enrolled in an approved graduate training program in one of the health professions listed above; or
3. Are enrolled as a full-time student in the final year of health professions training, leading to a degree from an eligible school.

Prior to submitting an application, eligible individuals must sign a contract as prescribed by the Secretary, setting forth the terms and conditions of the FLRP. This contract requires the individual to also have entered into a contract with an eligible school to serve as a full-time member of the faculty, as determined by the school, for not less than two years, whereby the school agrees to pay a sum (in addition to faculty salary) equal to that paid by the Secretary towards the repayment of the applicant's health professions educational loans.

Eligible Schools

Eligible health professions schools are accredited public or nonprofit private schools of medicine, osteopathic medicine, dentistry, pharmacy, podiatric medicine, optometry, veterinary medicine, public health, or schools that offer a graduate program in clinical psychology as defined in section 701(4) of the Act, and which are located in States as defined in section 701(11) of the Act, and which are accredited as provided in section 701(5) of the Act, and schools of nursing as defined in section 853 of the Act.

Provisions of the Loan Repayment Program

Section 761 authorizes the Secretary to repay up to $20,000 of the principal and interest of a participant's educational loans, but not to exceed 50 percent of the amounts due on such loans for such year for each year of eligible faculty service.

The school is required, for each such year, to make payments of principal and interest due, in an amount equal to the amount of payment made by the Secretary for that year. These payments must be in addition to the faculty salary the participant otherwise would receive.

HRSA will pay on behalf of the participant the principal due for that year and interest on educational loans for the following expenses:

1. Tuition expenses;
2. All other reasonable educational expenses such as fees, books, supplies, educational equipment and materials required by the school, and incurred by the applicant;
3. Reasonable living expenses, as determined by the Secretary; and
4. Partial payments of the increased Federal income tax liability caused by the FLRP's payments and considered to be "other income," if the recipient requests such assistance.

Prior to entering an agreement for repayment of loans, the statute requires the Secretary to obtain satisfactory evidence of the existence and reasonableness of the individual's educational loans, including a copy of the written loan agreement establishing the loan, and a notarized statement that the copy is a true copy of the loan agreement.

Waiver Provision

In the event of undue financial hardship to a school, the school may obtain from the Secretary a waiver of its share of payments while the participant is serving under the terms of the contract. For FY 1991, to obtain consideration for a waiver, a school must submit documentation of "undue financial hardship," as seen by the individual school, on the basis of the school's particular financial status, such as budget cutbacks. Decisions will be made on a case-by-case basis, as supported by the school's documentation. An "Urgent Notice" of this change was mailed on September 5, 1991 to all those who had requested information on this program.

If the Secretary waives the school's payment requirement, the amount of the Federal loan repayment will not be subject to the 50 percent limit per year described above, but cannot exceed the $20,000 repayment limit applicable to the Secretary. The participant must pay that portion of loan payment due which is not covered.

Final Definition

For purposes of the FLRP in FY 1991, "Individuals from Disadvantaged Backgrounds" are defined as in 42 CFR, part 57, subpart S, is one who:

(1) Comes from an environment that has inhibited the individual from obtaining the knowledge, skill, and abilities required to enroll in and graduate from a health professions school, or from a program providing education or training in an allied health profession; or

(2) Comes from a family with an annual income below a level based on low income thresholds according to a family size published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index, and adjusted by the Secretary for use in all health professions programs. The Secretary will periodically publish these income levels in the **Federal Register.**

The following income figures determine what constitutes a low income family for purposes of the Faculty Loan Repayment Program for FY 1991.

Size of parents' family [1]	Income level [2]
1	$8,800
2	11,400
3	13,500
4	17,300
5	20,400
6 or more	23,000

[1] Includes only dependents listed on Federal income tax forms.
[2] Adjusted gross income for calendar year 1990, rounded to $100.

A revised definition of the term "individuals from disadvantaged backgrounds" is expected to be published for comment in separate notice for use in implementing various training grant, cooperative agreement, and student assistance programs under the authority of titles VII and VIII of the Act in the future.

Definitions

The term *Living expenses* means the costs of room and board, transportation and commuting costs, and other costs incurred during an individual's attendance at a health professions school, as estimated each year by the school as part of the school's standard student budget. (National Health Service Corps Loan Repayment Program, 42 CFR part 62, § 62.22).

The term *Reasonable educational expenses and living expenses* means the costs of those educational and living expenses which are equal to or less than the sum of the school's estimated standard student budgets for educational and living expenses for the degree program and for the year(s) during which the Program participant is/was enrolled in the school. (National Health Service Corps Loan Repayment Program, 42 CFR part 62, § 62.22).

The term *Unserved Obligation Penalty* means the amount equal to the number of months of obligated service that were not completed by an individual, multiplied by $1,000, except that in any case in which the individual fails to serve 1 year, the unserved obligation penalty shall be equal to the full period of obligated service multiplied by $1,000. (Section 338E of the Act). See "Breach of Contract" section below.

Program Requirements

The following requirements will be applied to the applicant and to the school.

The Applicant

The applicant will be required to do the following:

1. Submit a completed application, including the applicant's contract with

an eligible school to serve as a full-time faculty member for not less than 2 years;

2. Provide evidence that the applicant has completely satisfied any other obligation for health professional service which is owed under an agreement with the Federal Government, State Government, or other entity prior to beginning the period of service under this program; and

3. Certify that the applicant is not delinquent on any amounts which are owed to the Federal Government; and

4. Provide documentation to evidence the educational loans and to verify their status.

The School

The participating school will be required to do the following:

1. Enter into a contractual agreement with the applicant whereby the school is required, for each year for which the participant serves as a faculty member, to make payments of principal and interest due for that year, in an amount equal to the amount of such payments made by the Secretary. These payments must be in addition to the faculty salary the participant otherwise would receive.

2. Verify the participant's continuous employment at intervals as prescribed by the Secretary.

If the school is unable to meet the requirement of the FLRP for payment of principal and interest due because the requirement would impose undue financial hardship on the school, the school may request a waiver of this obligation from the Secretary.

The Secretary will pay participants in equal quarterly payments during the period of service.

Effective Date of Contract

After an applicant has been approved for participation in the FLRP, the Director, Division of Disadvantaged Assistance will send the applicant a contract with the Secretary. The effective date is either the date work begins at the school as a faculty member or the date the Director, Division of Disadvantage Assistance, signs the FLRP contract, whichever is later. The contract has been amended to include this provision. Service should begin no later than September 30, 1991.

Breach of Contract

The following areas under Breach of Contract are addressed in the appended contract:

1. If the participant fails to serve his or her period of obligated faculty service (minimum of 2 years) as contracted with the school, he/she is then in breach of contract, and neither the Secretary nor the school is obligated to continue loan repayments as stated in the contract. The participant must then reimburse the Secretary and the participating school for all sums of principal and interest paid on their behalf as stated in the contract.

2. Regardless of the length of the agreed period of obligated service (2, 3, or more years), a participant who serves less than the time period specified in his/her contract is liable for monetary damages to the United States amounting to the sum of the total of the amounts the Program paid his/her lenders, plus an "unserved obligation penalty" of $1,000 for each month unserved.

3. Any amount which the United States is entitled to recover because of a breach of the FLRP contract must be paid within 1 year from the day the Secretary determines that the participant is in breach of contract. If payment is not received by the payment due date, additional interest, penalties and administration charges will be assessed in accordance with Federal law.

The Department received comments from 2 respondents on the FLRP during the comment period. The comments and the Department's responses are summarized below.

One respondent requested that the Program state clearly that a school can offer an eligible individual a faculty employment contract on the condition that the school receives a waiver from the Secretary. The Department wishes to clarify that there are two separate contracts required in the FLRP. We received no comments on the contract between the Secretary and the individual for which comments were sought. The respondent's comment relates to the contract between the school and the individual. However, the school may wish to insert a conditional waiver clause in the contract that it has with the individual seeking a full-time faculty position under this program. The acceptance of the waiver request is subject to the approval of the Secretary.

A respondent requested that provisions for illness, death and total and permanent disability should be included in the contract with the Secretary. The provision for death is included in Cancellation, Suspension, and Waiver of Obligation, Section D(1). We have added clauses in Section D to provide guidance for illness and total and permanent disability. The Division of Disadvantaged Assistance will follow the same guidelines that are followed under Title VII programs such as the Health Professions Student Loan and Nursing Student Loan program. Individuals participating in the FLRP should contact the program officials of the Division of Disadvantaged Assistance for guidance on these issues. The amended contract may be found at the end of this announcement.

Other Consideration

In making awards, HRSA hopes to achieve equitable distribution among health disciplines and among geographic areas. Health needs of national significance will also be a consideration.

Final Review Criteria

The HRSA will review fiscal year 1991 applications taking into consideration the following criteria:

1. The extent to which the applicant meets the requirements of section 761 of the Act;
2. The completeness, accuracy, and validity of the applicant's responses to application requirements;
3. The submission of the signed contract with the school;
4. An applicant's earliest available date to begin service as a faculty member provided funding is available for that year; and
5. An applicant's availability to enter into a service contract for a longer period than the mandatory 2-year minimum.

In addition, a funding preference, allowing funding of a specific category or group of approved applications ahead of other categories or groups of applications, will be applied in determining the funding of approved applications:

A proposed funding preference was published for public comment in the **Federal Register** on August 7, 1991 (FR 56 37559). The Department received comments on its proposal from 2 respondents during the 30-day comment period. One comment related to a statutory provision on which public comment was not requested. The other comment and the Department's response are summarized below.

The respondent support the funding preference for those who are new to the field to teaching, but would like the preference expanded to include those new to the health professions as well. To clarify, the real intent of the preference is to attract individuals from disadvantaged backgrounds as new faculty in the health professions. It should be noted that it is not required that applicants request consideration for this funding preference. Applications that do not request consideration for the funding preference will be given full consideration for funding. The final funding preference will be retained as follows:

Final Funding Preference

A funding preference will be given to individuals from disadvantaged (including racial and ethnic minorities) backgrounds who are new to the field of teaching. The Department intends to target FLRP assistance to disadvantaged health professions graduates serving as new faculty. This funding preference is designed to attract such individuals to pursue teaching careers in the health professions.

Established faculty members are eligible to apply for funds under the FLRP, but new faculty repayments will be funded first.

National Health Objectives for the Year 2000

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The Disadvantaged Health Professions Faculty Loan Repayment Program is related to the priority area of Educational and Community-Based Programs. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (telephone (202) 783–3238).

Additional Information

Questions regarding program information should be directed to: Mr. Norman Roskos, Chief, Analysis and Evaluation Branch, Division of Disadvantaged Assistance, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 8A–09, Rockville, Maryland 20857, telephone: (301) 443–3680.

The application form and instructions have been submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act.

The Disadvantaged Health Professions Faculty Loan Repayment program is listed at 93.923 in the *Catalog of Federal Domestic Assistance.* It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: September 26, 1991.

John H. Kelso,

Deputy Administrator.

BILLING CODE 4160–15–M

CONTRACT FOR THE DISADVANTAGED HEALTH PROFESSIONS FACULTY LOAN REPAYMENT PROGRAM

WITH

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
PUBLIC HEALTH SERVICE
HEALTH RESOURCES AND SERVICES ADMINISTRATION
BUREAU OF HEALTH PROFESSIONS

Section 761 of the Public Health Service Act ("Act") [42 United States Code 294 et seq.], as added by Pub. L. 101-527, authorizes the Secretary of Health and Human Services ("Secretary") to repay the educational loans of applicants from disadvantaged backgrounds selected to be participants in the Loan Repayment Program Regarding Service on Faculties of Certain Health Professions Schools ("Faculty Loan Repayment Program"). In return for these loan repayments, applicants must agree to provide teaching faculty services at an approved accredited health professions school determined by the Secretary for a designated period of obligated service pursuant to section 761 of the Act.

Sections 761(e)&(g) of the Act require applicants to submit with their applications a signed contract with an accredited health professions school and a signed contract which states the terms and conditions of participation in the Faculty Loan Repayment Program. The Secretary shall sign only those contracts submitted by applicants who are selected for participation.

The terms and conditions of participating in the Faculty Loan Repayment Program are set forth below:

Section A-Obligations of the Secretary

Subject to the availability of funds appropriated by the Congress of the United States for the Faculty Loan Repayment Program, the Secretary agrees to:

1. Pay, in the amount provided in paragraph 2 of this section, the undersigned applicant's qualifying educational loans. Qualifying educational loans consist of the principal and interest on educational loans received by the applicant for the following expenses of enrollment:

   a. tuition expenses;

   b. all other reasonable educational expenses such as fees, books, supplies, educational equipment and materials required by the school, and incurred by the applicant; or

   c. reasonable living expenses as determined by the Secretary.

2. If the applicant agrees to serve 2 or more years:

   a. Except as provided in subparagraph b. of this paragraph, pay annually, for each year of service not more than $20,000 of the principal and interest of the qualified educational loans of such individual due for that year, but not to exceed an amount equal to 50 percent of such loan payments due for that year; or

   b. The Secretary's liability will not exceed a cap of $20,000 of principal and interest annually. This would include the amount waived under Sec. 761(f) of the Act for the school's proportionate share of the loan repayment amounts. The applicant must pay that portion not covered.

3. Make loan repayments for a year of obligated service no later than the end of the fiscal year in which the applicant completes such year of service.

4. The effective date of the Contract will be the date it is signed by the Director or the date employment begins as a faculty member at the contracting school whichever is later.

Section B-Obligations of the Participant

1. The applicant agrees to:

   a. Continue loan repayments to lenders for the first quarter after which the Secretary will make delayed quarterly payments to applicant for the years stated in paragraph c of this section. Applicant must pay lender(s) these payments.

   b. Serve his or her period of obligated faculty service as contracted with the school and as determined by the Secretary to be acceptable.

   c. Serve in accordance with paragraph b. of this section for _____ years. The applicant must serve a minimum of two years.

2. If the applicant's eligibility to participate in the Faculty Loan Repayment Program is based on section 761(b)(3) of the Act (i.e. based on his or her enrollment in an accredited health professions school), he or she also agrees to:

   a. Maintain full-time enrollment, (as determined by the School), in good academic standing as determined by the School, in the final year of the course of study leading to a degree in medicine, osteopathic medicine, dentistry, pharmacy, podiatric medicine, optometry, veterinary medicine, nursing, or public health, or schools offering graduate programs in clinical psychology in which the applicant is currently enrolled, until completion of such course of study;

   b. Enter into a contract with an accredited school described in subsection (c) of Section 761 to serve as a member of the faculty of the school for not less than 2 years according to the requirements described in subsection (e)(2) of section 761.

   c. Begin service obligation as contracted.

Section C-Breach of Written Loan Repayment Contract

1. If the participant fails to comply with section B.1.c. of this contract or is dismissed for disciplinary reasons or voluntarily terminates the contracts, neither the Secretary nor the School is obligated to continue loan repayments as stated in Sec. A of this Contract. The participant shall be liable to the United States and the School for the amounts specified in paragraph 2 of this section.

2. If the applicant agrees to serve as a full-time faculty member for two years or more and fails to serve the 2 year minimum requirement, he or she is liable to pay monetary damages to the United States amounting to the sum of (a) the total amounts specified in paragraph 2 of this section plus (b) an "unserved obligation penalty" of $1,000 for each month unserved as set forth in paragraph 3 of this section plus (c) interest, penalties and administrative charges for past due payments.

3. The Unserved Obligation Penalty" means the amount equal to the number of months of obligated service that were not completed by an individual, multiplied by $1,000 except that in any case in which the individual fails to serve 1 year, the unserved obligation penalty shall be equal to the full period of obligated service multiplied by $1,000.

4. If the applicant agrees to serve more than the 2-year minimum service obligation and has completed the 2-year minimum he or she will be liable for such sums paid for any months that are not a full year beyond the 2-year minimum requirement as agreed to in paragraph 2 of this contract, plus an "unserved obligation penalty" of $1,000 for each month unserved.

5. Any amount the United states is entitled to recover shall be paid within one year of the date the Secretary determines that the applicant is in breach of this written contract. Failure to pay by the due date will incur delinquent charges provided by Federal Law.

Section D-Cancellation, Suspension, & Waiver of Obligation

Any service or payment obligation may be canceled, suspended, or waived under certain circumstances described below: (1) In the event of death or permanent and total disability, the Secretary will cancel obligations under this contract. To receive cancellation in the event of death, the executor of the estate must submit an official death certificate to the Secretary. To receive cancellation for permanent and total disability, I or my representative must apply to the Secretary, submitting medical evidence of my condition, and the Secretary may cancel this obligation in accordance with applicable Federal statutes and regulations; (2) Upon receipt of supporting documentation the Secretary may waive or suspend service or payment obligation under this contract if the Secretary determines that: (a) meeting the terms and conditions of the contract is impossible or would involve extreme hardship; and (b) enforcement of the obligations would be unconscionable. (3) Deferment will be granted in the event of long term illness. Supporting documentation should be sent to: Division of Disadvantaged Assistance, Room 8A-09 Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

The Secretary or his/her authorized representative must sign this contract before it becomes effective.

Applicant Name **(Please Print)** Applicant Signature * Date

Secretary of Health and Human Services or Designee Date

* Before signing, be sure you have completed section B.1.c. on page 1 of this contract indicating the number of years of service you agree to perform.

[FR Doc. 91-23682 Filed 10-1-91; 8:45 am]
BILLING CODE 4160-15-C

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-020-4320-12]

Meeting and Agenda for Burley District Grazing Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting and agenda for Burley District Grazing Advisory Board.

SUMMARY: Notice is hereby given that the Burley District Grazing Advisory Board will meet on November 6, 1991. The meeting will convene at 9:30 a.m. in the conference room of the Bureau of Land Management Office at 200 South Oakley Highway, Burley, Idaho.

Agenda items for the meeting will include: (1) Leases/Subleasing; (2) NoMan's Land and Basalt Seeding AMP proposals; (3) Range Improvement Fund Use Policy; (4) Review FY-92 Proposed Range Improvement Projects; (5) Secretary/Treasurer's Report; (6) Items of Information (a) Vegetation Treatment EIS Status; (b) Idaho Livestock Grazing and Water Quality Review Policy; (c) Deep Creek Resource Area "Resource Management Plan (RMP).

The public is invited to attend the meeting. Interested persons may make an oral statement to the Board beginning at 10:30 a.m. or they may file a written statement for the Board's consideration. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager. Anyone wishing to make an oral statement or file a written statement must contact the District Manager by November 5, 1991 for inclusion in the meeting schedule.

Detailed minutes of the Board meeting will be maintained in the District Office and will be available for public inspection during regular business hours, (7:45 a.m. to 4:30 p.m., Monday thru Friday) within 30 days following the meeting.

DATE: November 6, 1991.

ADDRESS: Bureau of Land Management, Burley District Office, Route 3, Box 1, Burley, Idaho 83318.

FOR FURTHER INFORMATION CONTACT: Gerald L. Quinn, District Manager, (208) 678-5514.

Dated: September 23, 1991.

Gerald L. Quinn,

District Manager.

[FR Doc. 91-23684 Filed 10-1-91; 8:45 am]

BILLING CODE 4310-GG-M

Bureau of Land Management

[CO-930-4920-10-4329; COC-53301]

Prposed Withdrawal and Opportunity for Public Meeting, Colorado

September 23, 1991.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of Energy has requested withdrawal of public land near Gunnison, Colorado for 5 years. The land is proposed as a permanent disposal site for radioactive uranium mill trailings. If this site is designated for permanent disposal, administrative jurisdiction will be transferred to Department of Energy for management. This notice will segregate the land from operation of the public land laws including location and entry under the mining laws for up to 2 years. The land will continue to be open to mineral leasing.

DATES: Comments on the proposed withdrawal or request for a public meeting must be received on or before December 31, 1991.

ADDRESSES: Comments and meeting requests should be sent to the Colorado State Director, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215-7076.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, (303) 239-3706.

SUPPLEMENTARY INFORMATION: On September 16, 1991, the United States Department of Energy filed application to withdraw the following described public land from settlement, sale location or entry under the public land laws, including the mining laws, subject to valid existing rights, pursuant to the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714.

New Mexico Principle Meridian

GUNNISON SITE

T. 49 N., R. 1 E.,
Sec. 14, SW¼NE¼, S½NW¼, and N½S½;
Sec. 15, NE¼, E½E½NW¼, E½NE¼ SW¼, and N½SE¼.

The area described contains 580 acres in Gunnison County.

The purpose of this withdrawn is to segregate the land and provide protection until requirements are completed for a permanent transfer of administrative jurisdiction to the Department of Energy under the authority of the Uranium Mill Tailings Radiation Control Act of 1978; 42 U.S.C. 7801, as amended.

Effective on the date of publication, these lands are segregated from all forms of appropriation under the public lands laws, including the mining laws. The land remains open to mineral leasing subject to concurrence by the Department of Energy, the Nuclear Regulatory Commission, and the Department of the Interior. The lands will remain open to surface uses which are compatible with the project until the withdrawal is final and construction is started.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with this proposed withdrawal. If the authorized officer determines that a meeting should be held, the meeting will be scheduled and conducted in accordance with Bureau of Land Management Manual, § 2351.16B.

All persons who desire to submit comments, suggestions, or objections or who desire a public meeting for the purpose of being heard on this proposed action must submit a written request to the Colorado State Director within 90 days of the publication of this notice.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the Federal Register, the land will be segregated from operation of the public land laws as specified above unless the application is denied or cancelled or the transfer of administrative jurisdiction takes place prior to that date.

The temporary segregation of this land in connection with the application shall not affect the administrative jurisidication over the land and will not authorize any use of land by the Department of Energy.

Robert S. Schmidt,

Chief, Branch of Realty Programs.

[FR Doc. 91-23685 Filed 10-1-91; 8:45 am]

BILLING CODE 4310-JB-M

Bureau of Mines

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the

Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1032–0024), Washington, DC 20503, telephone 202–395–7340.

Title: Blast Furnace and Steel Furnace Report.
OMB approval number: 1032–0024.
Abstract: Respondents supply the Bureau of Mines with domestic production and consumption data on nonfuel mineral commodities. This information is published in Bureau of Mines publications including Volumes I, II, and III of the Minerals Yearbook and Mineral Commodity Summaries for use by private organizations and other Government agencies.
Bureau form number: 6–1067–A.
Frequency: Annual.
Description of respondents: Operations that produce pig iron.
Annual Responses: 40.
Annual burden hours: 160.
Bureau clearance officer: Alice J. Wissman (202) 634–1125.

Dated: September 24, 1991.

Robert Doyle,
Acting Director, Bureau of Mines.

[FR Doc. 91–23688 Filed 10–1–91; 8:45 am]
BILLING CODE 4310–53–M

Minerals Management Service

Outer Continental Shelf Advisory Board, Gulf of Mexico Regional Technical Working Group Meeting

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Gulf of Mexico Regional Technical Working Group (RTWG) meeting.

SUMMARY: Notice of this meeting is issued in accordance with the Federal Advisory Committee Act (Pub. L. No. 92–463). The Gulf of Mexico RTWG meeting will be held November 4, 1991, 9:30 a.m. to 5 p.m., at the Louisiana State University campus in Baton Rouge, Louisiana.

The business portion of the meeting will be held the morning of November 4, 1991, and we will only have the roundtable discussion and public comments. The afternoon will be devoted to a tour and briefing of the Louisiana Geological Survey's Geographic Information System.

FOR FURTHER INFORMATION CONTACT: This meeting is open to the public. Individuals wishing to make oral presentations to the committee concerning agenda items should contact Ann Hanks of the Gulf of Mexico OCS Regional Office at (504) 736–2589 by October 23, 1991. Written statements should be submitted by the same date to the Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico RTWG is one of six such Committees that advises the Director of the Minerals Management Service on technical matters of regional concern regarding offshore prelease and postlease sale activities. The RTWG membership consists of representatives from Federal Agencies, the coastal States of Alabama, Florida, Louisiana, Mississippi, and Texas, the petroleum industry, the environmental community, and other private interests.

Dated: September 25, 1991.

J. Rogers Pearcy,
Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 91–23732 Filed 10–1–91; 8:45 am]
BILLING CODE 4310–MR–M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information may be obtained by contacting the Bureau's clearance office at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029–0089), Washington, DC 20253, telephone (202) 395–7340.

Title: Exemption for Coal Extraction Incidental to Extraction of Other Minerals—30 CFR part 702
OMB Number: 1029–0089
Abstract: This part implements the exemption in Section 701(28) of the Surface Mining Control and Reclamation Act of 1977 (the Act), Public Law 95–87. It requires the regulatory authority to make a determination of exemption from the requirements of the Act for operators extracting less than 16⅔ tonnage of coal incidental to other minerals. This information will be used by the regulatory authority to make that determination
Bureau Form Number: None
Frequency: As Required
Description of Respondents: Producers of Coal and other Minerals
Estimated Completion Time: 29 hours
Annual Responses: 149
Annual Burden Hours: 4,358
Bureau Clearance Officer: Richard L. Wolfe (202) 343–5143.

Dated: August 22, 1991.

John P. Mosesso,
Chief, Division of Technical Services.

[FR Doc. 91–23686 Filed 10–1–91; 8:45 am]
BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigations No. 701–TA–311 (Preliminary) and Nos. 731–TA–532 through 537 (Preliminary)]

Certain Circular, Welded, Non-Alloy Steel Pipes and Tubes From Brazil, the Republic of Korea, Mexico, Romania, Taiwan, and Venezuela

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of preliminary countervailing duty and antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty investigation No. 701–TA–311 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil of certain circular, welded, non-alloy steel pipes and tubes,[1] that are alleged to be subsidized by the Government of Brazil.

The Commission also gives notice of the institution of preliminary antidumping investigations Nos. 731–TA–532 through 537 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication

[1] For purposes of this investigation, "certain circular, welded, non-alloy steel pipes and tubes" are welded, non-alloy steel pipes and tubes of circular cross section, regardless of wall thickness, not more than 406.4 mm (16 inches) in outside diameter, provided for in subheadings 7306.30.10 and 7306.30.50 of the Harmonized Tariff Schedule of the United States.

that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil, the Republic of Korea, Mexico, Romania, Taiwan, and Venezuela of certain circular, welded, non-alloy steel pipes and tubes,[2] that are alleged to be sold in the United States at less than fair value.

The Commission must complete preliminary countervailing duty and antidumping investigations in 45 days, or in this case by November 8, 1991.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: September 24, 1991.

FOR FURTHER INFORMATION CONTACT: Brian Walters (202–205–3198), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on September 24, 1991, by counsel on behalf of Allied Tube & Conduit Corp., Harvey, IL; American Tube Co., Phoeniz, AZ; Bull Moose Tube Co., Gerald, MO; Century Tube Corp., Pine Bluff, AR; Sawhill Tubular Div., Cyclops Corp., Sharon, PA; Laclede Steel Co., St. Louis, MO; Maruichi American Corp., Santa Fe Springs, CA; Sharon Tube Co, Sharon, PA; Western Tube & Conduit Corp., Long Beach, CA; and Wheatland Tube Co., Collingswood, NJ.

Participation in These Investigations and Public Service List

Persons (other than petitioners) wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register.** The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these preliminary investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register.** A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on October 15, 1991, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Brian Walters (202–205–3198) not later than October 11, to arrange for their appearance. Parties in support of the imposition of countervailing duties or antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions

As provided in §§ 201.8 and 205.15 of the Commission's rules, any person may submit to the Commission on or before October 18, 1991, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules.

Issued: September 26, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–23692 Filed 10–1–91; 8:45 am]

BILLING CODE 7020–02–M

[2] For purposes of the investigations involving Brazil, the Republic of Korea, Mexico, Romania and Venezuela, "certain circular, welded, non-alloy steel pipes and tubes" are welded, non-alloy steel pipes and tubes of circular cross section, regardless of wall thickness, not more than 406.4 mm (16 inches) in outside diameter, provided for in subheadings 7306.30.10 and 7306.30.50 of the Harmonized Tariff Schedule of the United States. For the investigation concerning imports from Taiwan, "certain circular, welded, non-alloy steel pipes and tubes" are welded, non-alloy steel pipes and tubes of circular cross section, with a wall thickness of less than 1.65 mm (0.065 inches), not more than 406.4 mm (16 inches) in outside diameter, provided for in subheading 7306.30.10, and welded, non-alloy steel pipes and tubes of circular cross section, with a wall thickness of 1.65 mm (0.065 inches) or more, exceeding 114.3 mm (4.5 inches) but not more than 406.4 mm (16 inches) in outside diameter, provided for in subheading 7306.30.50 of the Harmonized Tariff Schedule of the United States.

[Investigation No. 731–TA–335 (Court remand)]

Tubeless Steel Disc Wheels From Brazil

AGENCY: United States International Trade Commission.

ACTION: Schedule for remand proceedings.

SUMMARY: The Commission hereby gives notice of its remand proceedings ordered by the Court of International Trade with respect to the Commission's final antidumping duty investigation No. 731–TA–335 (Final), Tubeless Steel Disc Wheels from Brazil.

EFFECTIVE DATE: September 5, 1991.

FOR FURTHER INFORMATION CONTACT: Diane J. Mazur (202–205–3184), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–2810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background

In 1987, the Commission made a determination in investigation No. 731–TA–335 (Final) that an industry in the United States was threatened with material injury by reason of less than fair value (LTFV) imports from Brazil of tubeless steel disc wheels, provided for in item 692.32 of the former Tariff Schedules of the United States Annotated (TSUS), that had been found by the Department of Commerce (Commerce) to be sold in the United States at LTFV. Thereafter, in response to a remand of the United States Court of International Trade (*Borlem S.A. Empreedimentos Industriais* versus *United States*, 12 CIT 563, Slip Op. 88–77 (June 15, 1988)), Commerce, on September 8, 1988, amended its original affirmative LTFV determination to exclude from the scope of its affirmative determination imports of the subject product from a significant Brazilian manufacturer/exporter, FNV—Veiculos E Equipamentos S.A. (FNV).

On March 10, 1989, in the course of proceedings seeking judicial review of the Commission's final determination, the Court of International Trade (the Court) granted Borlem's motion to allow the Commission to make a finding as to whether it should reconsider its determination in view of the Commerce amendment and, if it found reconsideration to be appropriate, to make a new determination. In April 1989, the Commission reported to the Court its determination that the Commission should not reconsider its final affirmative threat of material injury determination.

Subsequently in 1989, the Court again remanded the Commission's final affirmative determination to the Commission for additional proceedings. The Court's remand order was stayed until the Court's resolution of *The Budd Company* versus *United States*, Court No. 88–09–00725, an action which sought review of the amended Commerce final determination referred to above. On September 5, 1991, the Court affirmed Commerce's amended final determination. Pursuant to the 1989 Court order, the Commission will reopen the record in the subject investigation to seek additional information to permit reconsideration.

Participation in the Proceedings

Only those persons who were interested parties and parties to the original proceeding (*i.e.*, persons listed on the Commission Secretary's service list) may participate in this remand determination. Pursuant § 201.11(d) of the Commission's rules, (19 CFR 11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who were interested parties and parties to the Commission's initial determination.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules (19 CFR 201.16(c) and 207.3)), each document filed by a party to the remand investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Written submissions

All legal arguments, economic analyses, and factual material relevant to the remand proceedings should be included in briefs, limited to twenty pages in length, in accordance with Commission rule § 207.24 (19 CFR 207.94) and must be submitted no later than close of business October 9, 1991. No new factual material may be submitted to the Commission other than that relating to the impact of the exclusion of imports of tubeless steel wheels from the Brazilian supplier, FNV.

All written submissions must conform with the provisions of § 201.8 of the Commission's rules. Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules.

Authority: These proceedings are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: September 24, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–23694 Filed 10–1–91; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 332–315]

Uranium and Uranium Enrichment Services: The Impact on the Domestic Industry of Imports Into the United States From Nonmarket Economy Countries

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of a public hearing.

EFFECTIVE DATE: September 25, 1991.

FOR FURTHER INFORMATION CONTACT: General inquires regarding the investigation may be directed to Mr. James A. Emanuel (202)–205–3367, Energy and Chemicals Division, Office of Industries, U.S. International Trade Commission, Washington, DC 20436. Industry-specific information regarding the investigation may be obtained from Mr. Jack Greenblatt (202)–205–3353, also located in the Energy and Chemicals Division, Office of Industries. For information on legal aspects of the investigation contact Mr. William Gearhart of the Commission's Office of the General Counsel (202)–205–3091.

SUMMARY: Following receipt on July 26, 1991, of a request from the Committee on Finance of the U.S. Senate, the Commission instituted investigation No. 332–315 under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) for the purpose of providing a report assessing the impact on the domestic industry of imports into the United States of enriched and nonenriched uranium and uranium enrichment services from the Union of Soviet Socialist Republics (USSR), the People's Republic of China (PRC), and other nonmarket economy countries, as appropriate. The Committee requested the Commission to provide its report no later than 1 year after receipt of the letter.

Specifically, the Committee requested that in its report, the Commission should, to the extent feasible in light of the difficulties in obtaining information, provide information regarding the uranium enrichment industry in the United States, the USSR, the PRC, and other nonmarket economy countries, as appropriate, including but not limited to the following:

(1) *The uranium enrichment industry in the United States (the Department of Energy (DOE)).* History, technological trends, number of operations, production and sales of enriched uranium and uranium enrichment services, employment and wages, capacity, major markets, inventories, costs, productivity, financial experience, DOE prices, market prices for enriched and nonenriched uranium and uranium enrichment services, changes in industry structure such as ownership changes, the influence of middle-men and brokerage firms, projections of the amount of enriched uranium that U.S. utilities will be able to purchase from sources other than the DOE, and steps the U.S. enrichment industry is taking to adjust to foreign competition.

(2) *The uranium enrichment industries in the USSR, the PRC, and other nonmarket economy countries, as appropriate.* History, technological trends, number of operations, production and sales of enriched uranium and uranium enrichment services, export capacity, major markets, industry structure, marketing strategy, prices, and projected short and long-term trends for these industries.

(3) *The impact of sales of enriched and nonenriched uranium and uranium enrichment services to the United States from the USSR, the PRC, and other nonmarket economy countries, as appropriate, on the domestic industry.* Listing of imports of uranium from the USSR, the PRC, and other nonmarket countries, as appropriate, listing of long and short-term contracts for enriched and nonenriched uranium secured in the United States by the USSR, the PRC, and other nonmarket economy countries, as appropriate, market strategies used by these countries to export enriched and nonenriched uranium or unranium enrichment services to the United States, strategies adopted by the DOE to adjust to and limit the impact of these imports, projected penetrations of the U.S. market by the USSR, the PRC, and other nonmarket economy countries, as appropriate, comparison of prices charged by these countries with prices charged by the DOE, quality of uranium enrichment services offered by the DOE compared with uranium enrichment services offered by the USSR, the PRC, and other nonmarket economy countries, as appropriate, and overview of the impact of imports of enriched and nonenriched uranium from the USSR, the PRC, and other nonmarket economy countries, as appropriate, on the domestic enrichment industry (the DOE) and on other uranium producers, including the U.S. uranium mining and milling industry.

The Committee requested that in preparing its report, the Commission should seek views and input from the private sector and utilize existing information available from U.S. Government agencies to the extent practicable.

Public hearing

A public hearing in connection with this investigation is currently scheduled to begin at 9:30 a.m. on January 17, 1992, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. All persons have the right to appear by counsel or in person, to present information, and to be heard. Persons wishing to appear at the public hearing must file a request with the Secretary, U.S. International Trade Commission, 500 E St. SW., Washington, DC 20436, not later than the close of business (5:15 p.m.), on January 3, 1992. In addition, persons testifying should file prehearing briefs (original and 14 copies) with the Secretary by the close of business on January 6, 1992. The deadline for filing post hearing briefs is the close of business on January 31, 1992. In the event that no requests to appear at the hearing are received by the close of business on January 3, 1992, the hearing will be cancelled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary of the Commission (202–205–1808) after January 6, 1992, to determine whether the hearing will be held.

Written Submissions

In lieu of or in addition to appearances at the public hearing, interested persons are invited to submit written statements concerning the investigation. Written statements are encouraged early in the investigative process, but should be received by close of business on January 31, 1992, to be considered by the Commission for the report. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC.

Hearing impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: September 25, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–23693 Filed 10–1–91; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31920]

Missouri Pacific Railroad Co.—Control Exemption—Chicago and Western Indiana Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Commission exempts the Missouri Pacific Railroad Company (MP) from the prior approval requirements of 49 U.S.C. 11343–11344 for its acquisition of complete control of the Chicago and Western Indiana Railroad Company (C&WI). MP is currently one of the four rail carriers that own equal share of all of the outstanding capital stock of C&WI. The exemption is subject to employee protective conditions.

DATES: The exemption is effective on November 1, 1991. Petitions for stay must be filed by October 15, 1991. Petitions for reconsideration must be filed by October 22, 1991.

ADDRESSES: Send pleading referring to Finance Docket No. 31920 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioners' representatives: Beverly S. Greer, 1416 Dodge Street, #830, Omaha, NE 68179, and Marvin F. Metge, 300 W. Washington, St., #1500, Chicago, IL 60606.

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, 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 25, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.

Secretary.

[FR Doc. 91–23718 Filed 10–1–91; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Armco Specialty Steel, et al.; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than October 15, 1991.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 15, 1991.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 16th day of September 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Armco Specialty Steel (Wkrs)	Baltimore, MD	09/16/91	09/05/91	26,317	Stainless Steel
Aztec Specialty Co. (Wkrs)	Oklahoma City, OK	09/16/91	08/12/91	26,318	Oil.
Barry of Goldsboro, Inc. (Wkrs)	Goldsboro, NC	09/16/91	08/30/91	26,319	Footwear.
BASF (USWA)	Hamtrmck, MI	09/16/91	09/05/91	26,320	Auto Paint.
Bentley Ind. (Wkrs)	Evans City, PA	09/16/91	09/05/91	26,321	Store Fixtures
Brockway Clay Co. (ABGW)	Brockway, PA	09/16/91	07/10/91	26,322	Pipes.
City of Pittsburgh, Finance Dept. (Wkrs)	Pittsburgh, PA	09/16/91	07/29/91	26,323	Steel.
Consolidated Industries, Inc. (Wkrs)	El Paso, TX	09/16/91	08/26/91	26,324	Missile Modifications.
Corbin & Russwin Architec. Hardware (IAM)	Berlin, CT	09/16/91	08/16/91	26,325	Dom Lock Cylinders.
Dowell Schumberger, Inc. (Wkrs)	Midland, TX	09/16/91	09/03/91	26,326	Oil and Gas.
Dyco Elec II (Wkrs)	Angola, NY	09/16/91	09/06/91	26,327	Electronic Components.
Hanes Hosiery (Wkrs)	LaGrange, GA	09/16/91	09/06/91	26,328	Pantyhose.
J.N.R. Shake (Wkrs)	Forks, WA	09/16/91	08/22/91	26,329	Red Cedar Shakes.
Joy Technologies, Inc. (Wkrs)	Franklin, PA	09/16/91	09/06/91	26,330	Machinery.
Keller Furniture of Indiana (USWA)	Linton, IN	09/16/91	09/04/91	26,331	Furniture.
McVay Drilling Co. (Wkrs)	Hobbs, NM	09/16/91	09/03/91	26,332	Oil & Gas.
Motion Control Industries (Wkrs)	Ridgway, PA	09/16/91	08/27/91	26,333	Truck and Trailer Brake Blocks.
MPC (Wkrs)	Monroe, WI	09/16/91	08/26/91	26,334	Vaumn Harnesses.
Republic Engineered Steels (Wkrs)	Gary, ID	09/16/91	08/06/91	26,335	Steel.
Republic Engineered Steels (Wkrs)	Willimantic, CT	09/16/91	08/06/91	26,336	Steel.
Republic Engineered Steels (Wkrs)	Beaver Falls, PA	09/16/91	08/06/91	26,337	Steel.
Republic Engineered Steels (Wkrs)	Chicago, IL	09/16/91	08/06/91	26,338	Steel.
Republic Engineered Steels, Inc. (USWA)	Canton, OH	09/16/91	08/06/91	26,339	Steel.
Rusty Clark Survey Co., Inc. (Co.)	Breaux Bridge, LA	09/16/91	08/29/91	26,340	Oil and Gas.
Spencer Industries, Inc. (Wkrs)	Dunmore, PA	09/16/91	09/04/91	26,341	Pants and Shorts.
Stiller Seafood (Wkrs)	FT Pierce, FL	09/16/91	08/29/91	26,342	Seafood.
Tektronix, Inc. (Wkrs)	Beaverton, OR	09/16/91	07/15/91	26,343	Integrated Circuits.
Tuboscope Inc. (Wkrs)	Great Bend, KS	09/16/91	09/03/91	26,344	Oil and Gas.
Universal Bedroom Furniture, Inc. (Co.)	Goldsboro, NC	09/16/91	08/30/91	26,345	Wood Furniture.
Universal Bedroom Furniture, Inc. (Co.)	Wendell, NC	09/16/91	08/30/91	26,346	Wood Furniture.
Zimmerman & Jansen, Inc. (USWA)	Glenshaw, PA	09/16/91	09/04/91	26,347	Steel.

[FR Doc. 91-23712 Filed 10-1-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25, 750]

Marceau Sports, Chaska, MN; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 31, 1991, applicable to all workers of Marceau Sports, Chaska, Minnesota. The notice will soon be published in the **Federal Register.**

Based on new information from the company, several workers are being retained for close down operations beyond the February 11, 1991 termination date. Therefore, the certification is amended by deleting the termination date. The amended notice applicable to TA-W-25, 750 is hereby issued as follows:

All workers of Marceau Sports, Chaska, Minnesota who became totally or partially separated from employment on or after April 11, 1990 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC this 23rd day of September 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-23713 Filed 10-1-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-26,041]

Nerco Oil and Gas, Inc., Vancouver, WA; Notice of Affirmative Determination Regarding Application for Reconsideration

On September 5, 1991 one of the petitioners requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was issued on August 30, 1991 and published in the **Federal Register** on September 10, 1991 (56 FR 46207).

The petitioner claims, among other things, that the decreased sales or production criterion would have been met had Nerco's two major acquisitions in 1991 not been included.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 20th day of September 1991.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91-23714 Filed 10-1-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25, 818-25,820 & TA-W-26,006-26,009]

Santa Fe Minerals, Inc., Dallas, TX and in Various Field Offices in OK, LA, AR and CA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Santa Fe Minerals, Inc, Dallas, Texas and in various field offices in Ok, La, Ar, and Ca. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-25,818-25,820, 26,006-26009; Santa Fe Minerals, Incorporated, Dallas Tx and in Various Field Offices in Ok, La, Ar, and Ca (September 20, 1991)

Signed at Washington, DC this 23th day of September, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-23715 Filed 10-1-91; 8:45 am]

BILLING CODE 4510-30-M

Union Metal Corp., et al.; Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of September 1991.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firms or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-26,083; Union Metal Corp., East Stroudsburg, PA

TA-W-25,991; Cartex Corp., Addison, IL

TA-W-25,968; Loth Lumber Co., Inc., Gold Bar, WA

TA-W-25,894; Eastern Gear Corp., Paterson, NJ

TA-W-26,115; Stan-Lite Corp., McAdoo, PA

TA-W-26,048; Signal Aparel Co., Inc., Chattanooga, TN

TA-W-26,104; General Kinetics, Inc., Cryptek Secure, Communication Div., Herndon, VA

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-26,079; Seagate Technology, Inc., Bloomington, MN

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-26,080; Sensus Technologies, Inc., Uniontown, PA

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-26,151; Dover Handbag Co., Inc., Netcong, NJ

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974

TA-W-25,978; Plumrose Dak, East Brunswick, NJ

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-26,109; Kitchens of Sara Lee, Deerfield, IL

U.S. imports of bakery products are negligible.

TA-W-26,118; Zenith Electronics Corp., El Paso, TX

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-26,117; Wheatly Gaso, Inc., Tulsa, OK

The investigation revealed that criterion (1) has not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification.

Affirmative Determinations

TA-W-25,750; Marceau Sports, Chaska, MN

A certification was issued covering all workers separated on or after April 11, 1990.

TA-W-26,039; Natale Cutting Services, Inc., Bloomfield NJ

A certification was issued covering all workers separated on or after June 4, 1990.

TA-W-26,024; Capri Coat Corp., Clifton, NJ

A certification was issued covering all workers separated on or after June 24, 1990.

TA-W-26,030; Esselte Pendaflex Corp., Parsiphany, NJ

A certification was issued covering all workers separated on or after June 17, 1990.

TA-W-25,989; Airshield Corp., Bridgeport, CT

A certification was issued covering all workers separated on or after January 1, 1991.

TA–W–25,935; Duglas & Lamason, Milan, TN

A certification was issued covering all workers separated on or after June 1, 1991.

TA–W–26,165; Millersburg Div of Calvin Klein, Millersburg, PA

A certification was issued covering all workers separated on or after July 18, 1990.

TA–W–26,091; Armstong Drilling, Inc., Wooster, OH

A certification was issued covering all workers separated on or after July 8, 1990.

TA–W–26,102; Frink America, Inc., Clayton, NY

A certification was issued covering all workers separated on or after July 8, 1990.

TA–W–26,180; Etonic/Tretorn, Richmond, ME

A certification was issued covering all workers separated on or after July 29, 1990.

TA–W–26,090; Amber Well Completion Rentals, D/B/A BPI Wireline, Tuscaloosa, AL

A certification was issued covering all workers separated on or after January 1, 1991 and before September 1, 1991.

TA–W–26,075; Oryx Energy Co., Dallas, TX

A certification was issued covering all workers separated on or after July 31, 1991.

TA–W–26,076; Oryx Energy Co., Gulf Coasts Production Region, Houston, TX & Operating at Various Locations in the Following States: A; TX, B; MS, C; LA

A certification was issued covering all workers separated on or after July 31, 1991.

TA–W–26,077; Oryx Energy Co., Southwestern Production Region, Midland TX

A certification was issued covering all workers separated on or after July 31, 1991.

TA–W–26,092; Atlas/Soundolier, Parsippany, NJ

A certification was issued covering all workers separated on or after July 11, 1990.

TA–W–26,078; Oryx Energy Co., Mid Continent Production Region, Oklahoma City, OK & Operating at Various Locations in The Following States: A; OK, B; CO, C; NM, D; CA, E; WY, F; MI, G; ND, H; KS

A certification was issued covering all workers separated on or after July 31, 1991.

I hereby certify that the aforementioned determinations were issued during the months of September, 1991. Copies of these determinations are available for inspection in room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: September 23, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91–23716 Filed 10–1–91; 8:45 am]

BILLING CODE 4510–30–M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 91–56; Exemption Application No. D–8533, et al.]

Grant of Individual Exemptions; City Capital Counseling, Inc. (CCC), et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

City Capital Counseling, Inc. (CCC) Located in Atlanta, GA

[Prohibited Transaction Exemption 91–56; Exemption Application No. D–8533]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) shall not apply to the acquisition, sale or redemption of limited partnership interests (the Interests) between CCC, the general partner of City Associates, L.P. (the Limited Partnership) and pension plans (the Plans) or individual retirement accounts (the IRAs) investing in the Limited Partnership,[1] provided the following conditions are satisfied:

(1) The investment of a Plan's assets in the Limited Partnership shall be approved by a Plan fiduciary who is independent of CCC and its affiliates.

(2) CCC shall determine and document, pursuant to a written procedure, that the investment decision is being made by a Plan fiduciary who is independent of CCC and its affiliates and who is capable of making an informed investment decision about investing in the Limited Partnership.

(3) Prior to making an investment in the Limited Partnership, each Plan fiduciary shall receive offering materials which disclose, among other things, all material facts concerning the purpose, structure and operation of the Limited Partnership as well as associated risk factors.

[1] The Plans and the IRAs are collectively referred to herein as the Plans.

(4) No participating Plan may invest an amount which exceeds 20 percent of the total assets of the Limited Partnership.

(5) At the time the transactions are entered into, the terms of the transactions shall be at least as favorable to the Plans as those obtainable in arm's length transactions between unrelated parties.

(6) No participating Plan shall pay a fee or commission by reason of the acquisition, sale or redemption of an Interest in the Limited Partnership.

(7) The total fees paid to CCC shall constitute no more than reasonable compensation.

(8) Each participating Plan shall receive, not later than 90 days after the end of the period to which the report relates, the following from CCC with respect to investing in the Limited Partnership:

(a) An audited financial statement of the Limited Partnership prepared annually by a qualified independent public accountant; and

(b) A quarterly statement of a Plan's percentage interest in the Limited Partnership and the value of such Interest.

Such reports shall also disclose the total fees paid to CCC by the participating Plans.

(9) CCC shall maintain, for a period of six years, the records necessary to enable the persons described in paragraph (10) of this section to determine whether the conditions of this exemption have been met, except that (a) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of CCC and/or its affiliates, the records are lost or destroyed prior to the end of the six year period, and (b) no party in interest other than CCC shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (10) below.

(10)(a) Except as provided in section (b) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (9) of this section shall be unconditionally available at their customary location during normal business hours by:

(1) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(2) Any fiduciary of a participating Plan which invests as a limited partner (the Limited Partner) or any duly authorized representative of such fiduciary;

(3) Any contributing employer to any Plan investing as a Limited Partner or any duly authorized employee representative of such employer;

(4) Any participant or beneficiary of any participating Plan investing as a Limited Partner, or any duly authorized representative of such participant or beneficiary; and

(5) Any other Limited Partner.

(b) None of the persons described above in subparagraphs (2)–(5) of this paragraph (10) shall be authorized to examine the trade secrets of CCC or commercial or financial information which is privileged or confidential.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on August 5, 1991 at 56 FR 37235.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Bobson Construction Company, Defined Benefit Pension Plan (the Plan), Located in Southfield, Michigan

[Prohibited Transaction Exemption 91–57; Exemption Application No. D–8717]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason for section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed loan by the Plan of amounts not to exceed the lesser of: (a) $495,000; or (b) 25 percent of its total assets, to Bobson Construction Company, Inc., the Plan's sponsor, on a recurring basis over a five-year period, under the terms and conditions described in the notice of proposed exemption, provided such terms and conditions are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on August 5, 1991 at 56 FR 37239.

TEMPORARY NATURE OF EXEMPTION: This exemption is effective for five years from the date of granting of this exemption.

Subsequent to the expiration of the exemption, the Plan may continue to hold any loan provided such loan was made during the five-year period.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Equitable Life Assurance Society of the United States (Equitable), Located in New York, New York

[Prohibited Transaction Exemption 91–58; Exemption Application No. D–8535]

Exemption

The restrictions of section 406(a), (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, effective April 30, 1989, to the sale of 50% equity interests in twelve regional shopping centers (the Properties) from Equitable's general account to Equitable's Separate Account No. 141 (the Separate Account), a single customer separate account maintained by Equitable under a group annuity contract on behalf of the International Business Machines Corporation (IBM) Retirement Plan (the Plan), which held the other 50% equity interests in the Properties, provided that the terms and conditions of the transaction were at least as favorable to the Separate Account as those between unrelated parties would have been.

The exemption is subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction consummated pursuant to the exemption.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 15, 1991, at 56 FR 22455.

EFFECTIVE DATE: This exemption is effective April 30, 1989.

WRITTEN COMMENT: The Department received one written comment with regard to the proposed exemption and no requests for a hearing. The comment was submitted by a Plan participant who stated that, in his opinion, the investment of Plan assets in the Properties was speculative and that he therefore objected to the exemption. The participant also alleged that participants and beneficiaries of the Plan were not adequately notified of the proposed exemption. He claimed that the bulletin boards on which the notice was posted in IBM facilities are rarely read by IBM employees because they contained government-required notices that are rarely changed.

In response to the participant's comment, Jackson Cross, the independent fiduciary, noted that it had performed an extensive review and analysis of the investment in the Properties and that on that basis, it concluded that the investments were appropriate for Plan investment and recommended that the Plan proceed with the transaction. In addition, the applicant noted that these types of investments are not unusual for pension plans, that the Separate Account has held an interest in each of the Properties since 1984, and that the subject transaction was designed to consolidate the Plan's interests in the Properties.

In response to the participant's other comment, IBM has responded that the notice was in fact well-publicized by being posted in conspicuous places in all of its sites. In large buildings, the notice was posted in more than one place. IBM also claims that employees do read notices so posted and states that it received inquiries from nearly 100 employees concerning the proposed exemption.

After consideration of the entire record, including the written comment received, the Department has decided to grant the exemption as proposed.

FOR FURTHER INFORMATION CONTACT: David Lurie of the Department, telephone (202) 523–7901. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representation contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 27th day of September 1991.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 91–23701 Filed 10–1–91; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D-8722, et al.]

Proposed Exemptions; Martens, Ryan and Steadman, M.D.'s P.C. Employees Pension Plan III, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the act) and/or the Internal Revenue Code of 1986 (the Code)

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N–5649, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue N.W., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register.** Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 11, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Martens, Ryan and Steadman, M.D.'s P.C., Employees Pension Plan III (the Plan) Located in New York, New York

[Application No. D–8722]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990.) If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed

purchase by the Plan of certain improved real property (the Property) from Anna M. Ryan (Mrs. Ryan), a disqualified person with respect to the Plan, provided the Plan pays the lesser of $173,900 [1] or the fair market value of the Property at the time of the purchase, less a sales commission which may otherwise have been paid by Mrs. Ryan in a sale of the Property to an unrelated party.

Summary of Facts and Representations

1. The Plan is a defined benefit plan with one participant, which as of July 31, 1991, had approximately $829,395 in total assets. The trustee and sole participant of the Plan is Samuel Ryan, M.D. (Dr. Ryan).[2] Mrs. Ryan is the wife of Dr. Ryan, and as such a disqualified person with respect to the Plan. The Plan sponsor is Martens, Ryan and Steadman, M.D.'s, P.C., a professional medical corporation incorporated in the State of New York.

2. The Property was purchased in June, 1981, by Mrs. Ryan for investment purposes for $105,000 from W. Robert Beer and Janet A. Hughes, who are independent third parties with respect to the Plan and the Employer. The purchase was financed by a loan from First Federal Savings and Loan, located in New Haven, Connecticut. The applicant represents that the loan was paid off on March 14, 1991. The Property has been leased to Diana Rothem (Ms. Rothem), an independent, third party since September, 1984. The Property is currently producing rental income of $12,000 a year. The applicant represents that the Property is not adjacent to any other properties owned by other disqualified persons.

3. The Property, located in Branford, Connecticut, is improved residential real estate and consists of 5 rooms, 2 bedrooms, 1 bath and 1 small partially finished room in the basement. The Property was appraised on July 29, 1991, by Edward T. Chieffo (Mr. Chieffo), an independent qualified appraiser with Edward T. Chieffo Appraisal Services. Mr. Chieffo primarily relied on the sales comparison appraisal method and concluded that the fair market value of the Property as of July 29, 1991, is $185,000.

4. The applicant proposes to sell the Property to the Plan, and the Plan will continue to lease the Property to Ms. Rothem. The applicant represents that the acquisition of the Property is administratively feasible, in the best interest and protective of the Plan. The transaction, which will involve approximately 21% of the Plan's total assets, will be a one-time cash transaction and the Plan will bear no expenses with respect to the purchase. Further. Mr. Chieffo represents that the real estate market in Branford, Connecticut appears to have stabilized. The applicant also obtained an opinion of Philip E. Carloni (Mr. Carloni), a realtor with Realty World-Carloni Associates in Branford, Connecticut. In his opinion, sales activity in the area is increasing and the prospect of appreciation for single family residences, such as the subject Property, is good over the next five years. Mr. Carloni also represents that in the State of Connecticut commission rates for residential real estate average six (6) percent. Also, the transaction is protective of the Plan because the fair market value of the Property has been determined by an independent, qualified appraiser. Finally, economic hardship will result if the transaction is denied because the Plan will forego an opportunity to invest in the Property which is expected to appreciate in value and is currently yielding rental income.

5. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 4975(c)(2) because:

(a) The proposed purchase will be a one-time cash transaction;

(b) The price paid by the Plan will be the lesser of $173,900 or the fair market value of the Property at the time of the purchase as determined by an independent, qualified appraiser less a sales commission, which may have otherwise been paid by Mrs. Ryan in a sale of the Property to an unrelated party;

(c) The Plan will pay no expenses associated with the transaction;

(d) The transaction will enable the Plan to acquire the Property which is currently yielding rental income and is expected to appreciate in value in the future; and

(e) Dr. Ryan as the sole participant of the Plan would be the only individual affected by the transaction.

Notice to Interested Persons

Because Dr. Ryan is the sole participant of the Plan, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due 30 days from the date of publication of this notice in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

General Motors Hourly-Rate Employees Pension Plan; and the General Motors Retirement Program for Salaried Employees (together, the Plans), Located in New York, New York

[Application Nos. D-8577 and D-8578]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(a)(1) (A) through (D) of the Code, shall not apply to the purchase on December 19, 1990 by the Plans of a commercial mortgage note (the Note) which is secured by a first deed of trust against certain improved real property (the Property), from The Prudential Insurance Company of America (Prudential), a party in interest with respect to the Plans, for $200,786,511, provided that such amount was not greater than the fair market value of the Note on the date of purchase.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective December 19, 1990.

Summary of Facts and Representations

1. The Plans are qualified defined benefit plans which were established to provide retirement benefits for eligible hourly and salaried employees of the General Motors Corporation (GMC) and its affiliates. The Plans covered a total of approximately 835,075 participants as of October 1, 1990. The aggregate fair market value of the assets of the Plans was approximately $34.7 billion, as of June 30, 1990.

The Plans are funded through several trusts (the Trusts) which are empowered to hold, manage and invest funds to be used for providing benefits under the Plans. Bankers Trust Company of New York (Bankers Trust) is the trustee of each of the Trusts. Bankers Trust has no discretionary authority over the investment management of the assets

[1] This figure represents the fair market value of the Property determined by an independent appraiser as of July 29, 1991 less a 6% sales commission, which it is represented in the standard real estate brokerage commission for a sale of this type in the State of Connecticut.

[2] Because Dr. Ryan is the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

held in the Trusts relating to the suject transaction.

2. The Pension Investment Committee on GMC (the PIC) is a committee established by the Finance Committee of the Board of Directors of GMC (the Finance Committee), the named fiduciary of the Plans. The PIC has been delegated responsibility for allocating funds among trustees and investment managers, determining asset mix in accordance with the broad investment guidelines established by the Finance Committee, and overseeing in-house investing for a portion of the assets of the Plans. The PIC is comprised of officers of GMC, all of whom are independent of Prudential and its affiliates.

3. On March 3, 1987, the Plans invested $72 million in a ten-year, shared appreciation second mortgage loan which was secured by the Property. The Property consists of three newly constructed high-rise office buildings, known as Pacific Corporate Towers, located in El Segundo, California. The Property contains approximately 1,544,000 rentable square feet of office and retail space and two multi-level parking structures for approximately 5,230 automobiles. The Property was owned by Pacific Realty Associates (Pacific Realty), an unrelated party. Pacific Realty acquired the Property from Prudential on March 3, 1987 for approximately $270 million. Prudential provided Pacific Realty with a $200 million first mortgage loan, which was evidenced by the Note. The Plans' second mortgage loan provided Pacific Realty with the remainder of the purchase price plus $2 million to cover third-party closing costs. In addition, Prudential agreed to set aside $39.5 million to be paid over time to cover the projected costs of leasing or re-leasing vacant space in the Property.

4. The Boston Company Real Estate Counsel, Inc. (The Boston Company) served as the investment manager and sole decision-maker for the assets of the Plans involved in the second mortgage loan. The applicant states that The Boston Company was a "qualified professional asset manager" (QPAM), as defined under section V(a) of Prohibited Transaction Exemption 84–14 (PTE 84–14, 49 FR 9494, March 13, 1984).[3] The Boston Company states that it did an extensive analysis of the second mortgage loan as a potential investment for the Plans, including a determination of various projected annual rates of return which could be anticipated by the Plans, the risks associated with such projected returns, and the creditworthiness of the borrower, Pacific Realty. The Boston Company made an independent determination that the second mortgage loan was a prudent and attractive investment in the Property which would be in the best interest of the Plans.[4] In this regard, The Boston Company determined that the value of the Property, when fully leased, would be approximately $328 million, based on a third party appraisal.

5. The Plans acquired the Property, through a wholly-owned corporation, PCT Acquisitions, Inc. (PCT), on June 12, 1990, upon a default by Pacific Realty of its payment obligations under the Plans' second mortgage loan. The Boston Company decided, on behalf of the Plans, to have PCT accept title to the Property from Pacific Realty in lieu of foreclosure, pursuant to the terms which the Plans had negotiated as part of the original transaction, with Prudential's consent.[5] PCT is a corporation which was established by the Plans for the exclusive purpose of acquiring and holding a real property investment, such as the Property. As a result of the Plans' acceptance, through PCT, of the Property in lieu of foreclosure, PCT became the owner of the Property subject to Prudential's first deed of trust which was evidenced by the Note.[6] PCT holds title to, and collects income from the Property and remits the entire amount of income from the Property (less expenses) to the Plans. The applicant represents that The Boston Company's decision to have PCT acquire the Property on June 12, 1990 was based on the following factors: (i) the Property was a very desirable and attractive piece of real estate that was approximately 93% leased; (ii) there were contemporaneous independent appraisals of the fair market value of the Property commissioned by the Boston Company which indicated that the Property was worth between $326 million and $340 million; and (iii) the terms of the Note which encumbered the Property were favorable to the obligor.

6. The Note has a face amount of $200 million with a maturity date of March 3, 1994. The Note requires payments of interest only each month at a rate of 8.63% per annum, but allows an optional minimum interest rate of 7.63% per annum with the balance of the interest accruing and added to the principal amount until April 1, 1992. On April 1, 1992, the obligor on the Note must make monthly payments of principal and interest which would fully amortize the unpaid principal balance of the Note, plus any accrued but unpaid interest, over a thirty year period using a 360 month amortization schedule. The entire unpaid principal balance of the Note, including all accrued and unpaid interest, is due and payable on March 3, 1994. However, the Note's maturity date may, under certain conditions, be extended until March 3, 1997. As of December 4, 1990, the Note had a principal balance, including accrued and unpaid interest, of $209.4 million.

7. On December 19, 1990, the Plans purchased the Note from Prudential for $200,786,511. The decision to purchase the Note was made, on behalf of the Plans, by the PIC. The PIC, rather than The Boston Company, made the decision to have the Plans purchase the Note in order to save the transaction costs and fees associated with having The Boston Company serve as a QPAM for the transaction. The applicant states that The Boston Company was aware of the PIC's desire to purchase the Note and at no time objected to the transaction. The Boston Company continues to have an ongoing relationship to the Plans as an investment manager for certain assets of the Plans, including the Property.

The Plans purchased the Note as an investment and have not extinguished the obligation represented by the Note even though the Property is owned by PCT, an entity wholly-owned by the Plans. The PIC decided that it would be

[3] The applicant states further that pursuant to Prohibited Transaction Exemption 88–95 (PTE 88–95, 53 FR 36803, October 3, 1988), The Boston Company was granted the right to function as a QPAM, even though its affiliation with E.F. Hutton & Company would have precluded The Boston Company from functioning as a QPAM as a result of section I(g) of PTE 84–14.

[4] The Department expresses no opinion as to whether The Boston Company's decision to have the Plans invest in a second mortgage loan secured by the Property violated section 404(a) of the Act. Section 404(a)(1) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan.

[5] The Department is also expressing no opinion in this proposed exemption as to whether The Boston Company's decision to have PCT acquire the Property, in lieu of a foreclosure on the Property by the Plans, violated section 404(a) of the Act.

[6] The applicant states that the Plans' acquisition and holding of the Property through PCT, an entity which holds "plan assets" as defined in 29 CFR 2510.3–101(h)(3), resulted in a prohibited transaction under the Act since Prudential was a party in interest with respect to the Plans and was the obligee on the Note. The applicant states further that the transaction was exempted by PTE 84–14 (as a result of PTE 88–95) since The Boston Company was acting for the Plans as a QPAM and the conditions necessary for relief under PTE 84–14 were met. However, the Department expresses no opinion in this proposed exemption as to whether the acquisition and holding of the Property by the Plans, as a result of decisions made by The Boston Company, met the conditions of PTE 84–14.

in the Plans' best interest to purchase and hold the Note. The PIC states that the Plans did not cancel the Note after it was purchased because the Plans may later resell the Note to a third party buyer at a profit.

8. Prudential is a mutual life insurance company, organized under the laws of the State of New Jersey, which is a party in interest and a fiduciary with respect to the Plans. In this regard, one of the Plans has a group annuity contract with Prudential and also participates in certain pooled and single client separate accounts managed by Prudential. In addition, Prudential is paid under direct (non-insurance) contracts to provide investment advisory and management services for certain assets of both of the Plans. However, neither Prudential nor any of its affiliates has acted or currently acts as a fiduciary or other service provider to the Plans for any assets invested in the Property or used to purchase the Note.

9. The PIC is the fiduciary for the Plans which was responsible for the retains all fiduciary liability with respect to the decision to purchase the Note. The PIC's investment staff was responsible for the negotiation of the terms of the transaction, the analysis of comparable commercial mortgage investments available at the time, and the recommendation to acquire the Note pursuant to an agreed upon purchase price. The PIC states that the decision to purchase the Note was the result of a due diligence review process which included an analysis of the Plans' investment and diversification objectives, current and projected cash flows, perceived benefits and risks associated with the investment, actual and projected returns as well as other appropriate investment considerations. The PIC states further that the investment staff members responsible for this review process were highly qualified and sophisticated individuals which were experienced in analyzing commercial mortgage investments.

The applicant represents that the PIC's negotiations with Prudential regarding the purchase of the Note by the Plans were conducted as they would have been with any unrelated party. As a result of these negotiations, Prudential and the PIC reached an agreement as to the yield to maturity which the Plans would earn on the Note. The applicant states that the parties agreed, consistent with standard commercial practice, that the scheduled remaining monthly mortgage payments on the Note and the principal balance due March 3, 1994, would be discounted at the agreed upon yield to maturity back to the December 19, 1990 purchase date in order to determine the present value of the expected cash flows and therefore the Plans' purchase price for the Note. The parties agreed that the Plans would pay a purchase price to Prudential such that the Plans would earn a yield of 300 basis points (i.e. 3%) above the yield on U.S. Treasury securities of comparable maturity. In this regard, the PIC states that it is accepted practice for all non-U.S. government debt securities, including commercial mortgages, to quote the yield offered in terms of a spread (or incremental yield) above U.S. Treasuries of comparable maturity.

The PIC and Prudential agreed to use the interest rate on comparable U.S. Treasuries which was in effect on December 12, 1990, one week prior to the scheduled closing date, for purposes of determining the actual yield to be earned by the Plans. Since there was no U.S. Treasury security which matured on the maturity date of the Note (i.e. March 3, 1994), the PIC calculated a market interest rate as of noon on December 12, 1990 using the current yield to maturity of the most actively traded U.S. Treasury securities with maturity dates nearest that of the Note. This calculation resulted in a yield to maturity to March 3, 1994 of 7.374% per annum. The applicant states that adding the agreed 300 basis points to the interest rate of 7.374% for comparable U.S. Treasuries provided a yield to maturity to the Plans on the Note of approximately 10.37% per annum. The PIC and Prudential agreed that discounting the scheduled cash flow of the Note back to the December 19, 1990 closing date at this yield resulted in a purchase price of approximately $200.8 million on that date. The Plans actually paid $200,786,511 in cash, an amount which the PIC represents was less than the fair market value of the Note on the date of purchase.

The applicant states the economic analysis performed by the PIC's investment staff indicated that competitive interest rates on commercial mortgages of comparable credit quality and maturity to that of the Note were earning approximately 180–200 basis points (i.e. 1.8%–2.0%) over the yield on U.S. Treasuries of comparable maturity. Therefore, the PIC believed that the yield of 300 basis over U.S. Treasuries negotiated for the Plans' purchase of the Note represented an extremely attractive rate of return on the Plans' investment versus alternative investments of similar credit risks and maturity [7] The applicant represents that the Plans, as holders of the Note, could resell the Note to a third party over the near term at a narrower spread of approximately 200 basis points over comparable U.S. Treasuries at a higher price than that paid by the Plans. The applicant states that the Plans have not been able to obtain a yield spread as great as the yield obtained for the Note on any comparable mortgage investment since the Note was purchased from Prudential on December 19, 1990.

Prudential, upon sale of the Note, realized a total return on its investment of 7.72% per annum, on a semi-annual basis, including payments it received from both Pacific Realty and PCT while holding the Note as well as the proceeds of the sale of the Note to the Plans. The applicant states that a favorable return on the Note was successfully negotiated the Plans primarily because of Prudential's desire to sell the Note prior to the end of 1990 in order to achieve certain corporate objectives.

The applicant represents that the Plans did not pay any commission or other expenses with respect to the purchase of the Note.

10. In summary, the applicant represents that the transaction satisfied the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because: (a) The purchase of the Note by the Plans was a one-time transaction for cash; (b) the Plans purchased the Note at a price which the PIC, a qualified fiduciary for the Plans which was independent of Prudential and its affiliates, determined was less than the fair market value of the Note based on an analysis of commercial mortgages of comparable credit quality and maturity; (c) the Plans did not pay any commissions or other expenses with respect to the transaction; and (d) the PIC determined that the acquisition and holding of the Note as an investment for the Plans would be in the best interests of the Plans and their participants and beneficiaries.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department at (202) 523–8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section

[7] For example, if the Note had been discounted to yield 200 basis points over comparable U.S. Treasury securities on December 12, 1990 (i.e. 9.374%, the Plans' purchase price would have been approximately $206.3 million. Thus, the above market yield of 300 basis points negotiated by the Plans for the Note resulted in an approximately $5.5 million lower purchase price.

4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 27th day of September 1991.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 91-23700 Filed 10-1-91; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL COMMISSION ON AMERICAN INDIAN, ALASKA NATIVE, AND NATIVE HAWAIIAN HOUSING

Meeting

AGENCY: The National Commission on American Indian, Alaska Native, and Native Hawaiian Housing.

ACTION: Notice of public hearings and meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Commission on American Indian, Alaska Native, and Native Hawaiian Housing announces the forthcoming public hearings and meeting of the Commission.

DATES: October 10 & 11, 1991, 9 a.m. to 5 p.m.

ADDRESSES: Camelot Hotel, 4958 South Peoria, Tulsa, OK 74105, (918) 747-8811.

FOR FURTHER INFORMATION CONTACT: Lois V. Toliver, Administrative Officer, (202) 275-0045.

TYPE OF MEETING: Open.

AGENDA: Call to Order, Roll Call, Chairman's Message, Introduction of Commissioners and Guests, Presentations from Invited Guests.

Lois V. Toliver,

Administrative Officer.

[FR Doc. 91-23637 Filed 10-1-91; 8:45 am]

BILLING CODE 6820-07-M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from September 7, 1991, through September 20, 1991. The last biweekly notice was published on September 18, 1991 (56 FR 47228).

Notice of Consideration of Issuance of Amendment To Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The Commission has made a proposed determination that the following amendment requests involve 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 amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

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, 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 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 1, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition 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 for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. 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 immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, 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 **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the 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 should be granted based upon a balancing of 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 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 local public document room for the particular facility involved.

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: August 26, 1991

Description of amendment request: The proposed change to Technical Specification 3.8.1.2.b.1 revises the minimum required level in the emergency diesel generator fuel oil day tank from 2670 gallons to 1457 gallons and adds a footnote to clarify the differences in assumed fuel oil specific gravities.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change only revises the minimum Technical Specification day tank fuel oil level from 2670 gallons to 1457 gallons. It does not change any existing EDG system components or the control/alarm logic. The normal, controlled amount of fuel in the day tank is unchanged. Therefore, there would be no increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change only revises the minimum Technical Specification day tank fuel oil level from 2670 gallons to 1457 gallons. It does not change any existing EDG system components or the control/alarm logic. In addition, the proposed change does not introduce any new components or system control/alarm logic, nor does it change the normal, controlled amount of fuel in the day tank. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The present design for automatic makeup and level alarm of the fuel oil day tank for each EDG is unchanged and exceeds the performance requirements of ANSI N195-1976, Section 6.1. The proposed change only reduces the volume of fuel oil in the day tank that places the system in a Technical Specification action statement. This change does not reduce the present setpoints for commencement of fuel oil makeup nor does it reduce the normal, controlled amount of fuel in the day tank. This volume reduction could reduce the overall operating time of the EDG by approximately 3 hours (from 9 days, 14 hours to 9 days, 11 hours); however, significant margin above the seven-day minimum required operating time continues to exist. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Entergy Operations, Inc., et al., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: January 11, 1991

Description of amendment request: The proposed amendment would delete the DC battery load profiles from Technical Specification (TS) 4.8.2.1.d.2. The battery load profiles being removed are contained in the Grand Gulf Nuclear Station (GGNS) Updated Final Safety Analysis Report (UFSAR). The Bases are also modified to include a description of the simulated emergency load profiles and their definition in the UFSAR.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. No significant increase in the probability or consequences of an accident previously evaluated results from this change.

a. Because battery testing will still be required to be performed in a manner which will demonstrate their operability for the design basis event and that the process for controlling design changes to the load profiles remains unchanged, these TS changes do not impact operation of the facility.

b. Therefore, the probability or consequences of previously analyzed accidents are not increased.

2. The change would not create the possibility of a new or different kind of accident from any previously analyzed.

a. The proposed change does not reflect the addition or deletion of any plant hardware. In addition, no new modes of plant operation or testing are introduced.

b. Therefore, operating the plant with the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. This change would not involve a significant reduction in the margin of safety.

a. Safety margin is established through the GGNS safety analyses as reflected in the TS, Limiting Conditions for Operations, and the Bases. The proposed change preserves all assumptions and results of the safety analyses.

b. Surveillance requirements for demonstrating the operability of the station batteries are still based on the recommendations of Regulatory Guide 1.129 and IEEE Standard 450-1980. The batteries are still required to demonstrate the ability to carry loads required under design basis emergency conditions.

c. In addition, the requirements of 10 CFR 50.59 will continue to ensure that changes that are made to the UFSAR load profiles will be reviewed and a safety evaluation completed in accordance with 10 CFR 50.59.

d. Therefore, this change will not involve a reduction in the margin of safety.

Therefore, based on the above evaluation, operation in accordance with the proposed amendment involves no significant hazards considerations.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Judge George W. Armstrong Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., 12th Floor, Washington, DC 20005-3502

NRC Project Director: Theodore R. Quay

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: August 15, 1991

Description of amendment request: The proposed amendment would relocate the negative moderator temperature coefficient (MTC) limit from Technical Specification (TS) 3.1.1.3.c to the Core Operating Limits Report (COLR).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

...[t]his change will not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated because [...] the negative [MTC] limit from the Crystal River Unit-3 (CR-3) [TS] has no influence or impact on the probability of a Design Basis Accident (DBA) occurrence.

The negative [MTC] limit will be relocated to the [COLR]. The requirements to operate CR-3 within the limit will continue to be maintained in [the TS].

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because the removal of the negative [MTC] limit has no influence [or] impact, nor does it contribute to the probability or consequences of an accident. The negative [MTC] limit is calculated using the [NRC-approved] methodologies, and the [TS] will continue to require [...] operation within the core operating limits.

3. Involve a significant reduction in the margin of safety because the margin of safety presently provided by [the] current [TS] remains unchanged. This proposed amendment still requires operation within the

core limits as obtained from the [NRC-approved] methodologies, and appropriate actions to be taken when, or if the limits are violated, remain unchanged.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629

Attorney for licensee: A. H. Stephens, General Counsel, Florida Power Corporation, MAC - A5D, P. O. Box 14042, St. Petersburg, Florida 33733

NRC Project Director: Herbert N. Berkow

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: June 26, 1991

Description of amendment request: The proposed amendment would revise Technical Specification Table 4.8.1.1.2-1, "Diesel Generator Test Schedule" which specifies weekly or monthly testing based on previous performance. The change would move the footnote from its current location under the "NUMBER OF FAILURES IN THE LAST 20 VALID TESTS" column to the "TEST FREQUENCY" column. This would allow resumption of monthly surveillance testing of a diesel generator (DG) when the requirements of the footnote have been satisfied regardless of the circumstances which required increased testing. In addition, Surveillance Requirement 4.8.1.1.3, "Reports", would be changed to require a report to be generated when the number of diesel generator failures in the last 100 valid tests is greater than or equal to 7 on a per diesel generator basis instead of on a "per nuclear unit" basis.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

1.No significant increase in the probability or the consequences of an accident previously evaluated results from this change because:

These proposed changes will still require that an acceptable reliability of greater than 90 percent over the last 20 valid tests has been restored for the affected DG prior to resuming monthly surveillance testing. Maintaining acceptable reliability of DGs assures that they will reliably perform their function of providing emergency standby power for safety systems designed to mitigate the consequences of accidents. The proposed changes to the reporting requirements in no way affect diesel generator operation. Therefore, these proposed changes do not result in a significant increase in the probability or consequences of any accident previously evaluated.

2.This change would not create the possibility of a new or different kind of accident from any accident previously evaluated because:

These proposed changes do not result in any change to the plant design or operation which could introduce a new failure mode. Therefore, these proposed changes cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

3.The change would not involve a significant reduction in the margin of safety because:

The ability to reduce unnecessary testing of DGs, following corrective actions to restore the DG's reliability, and demonstration that its reliability has been restored regardless of its demonstrated reliability prior to the corrective actions, should result in an increase in the margin of safety with respect to reliability. These proposed changes will still require that an acceptable reliability of greater than 90 percent over the last 20 valid tests has been restored for the affected DG prior to resuming monthly surveillance testing. Therefore, these proposed changes do not result in a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Attorney for licensee: Mark Wetterhahn, Esq., Bishop, Cook, Purcell and Reynolds, 1401 L Street, N.W., Washington, D.C. 20005

NRC Project Director: Suzanne C. Black

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: December 21, 1990

Description of amendment request: The licensee proposed changes to Technical Specification (TS) 3.4.9.3 regarding the Overpressure Protection Systems. The proposed changes would permit the licensee to stroke test a pressurizer Power Operated Relief Valve (PORV) following the performance of required maintenance or repairs as required by TS 4.0.5. Such testing is not possible under TS 3.4.9.3 as it is currently written. The licensee also proposed a revision to Action Statement a and new Action Statements b and c in accordance with Generic Letter 90-06. The proposed changes are more restrictive than those in the current TSs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed change does not involve a significant increase in the probability or consequences of a previously evaluated accident.

Administrative controls and procedures have been structured to aid the operator in controlling RCS pressure during low temperature operation. However to provide a backup to the operator, an automatic system is provided to maintain pressures within allowable limits.

Evaluations presented in the Safety Analyses Report have shown that one pressurizer PORV is sufficient to prevent violation of the limits established by ASME III, Appendix G due to anticipated mass and heat input transients. Redundant protection against a low temperature overpressure event is provided by using two pressurizer PORVs to mitigate potential pressure transients. The automatic system is required only during low temperature water solid operation when it is manually armed and automatically actuated. The STPEGS [South Texas Project, Units 1 and 2] PORVs are safety-related and Class 1E powered. They are designed in accordance with the ASME Code, are qualified via the Westinghouse pump and valve operability program, and are seismically and environmentally qualified.

Low temperature overpressure events have been previously evaluated in section 5.2.2.11 of the STPEGS UFSAR [Updated Final Safety Analysis Report]. These events result from potential increases in mass or heat input into the Reactor Coolant System (RCS) due to a charging/letdown flow mismatch or

inadvertent Reactor Coolant Pump actuation with a temperature mismatch between the RCS and the secondary side of the Steam Generators of 50° F. The probability of a low temperature overpressure event due to these initiators is unchanged since the proposed test does not involve any changes to plant systems, equipment or controls. During the ASME stroke test of two inoperable PORVs, overpressure protection will be provided by operation of two RHR trains. Each RHR discharge relief valve has sufficient capacity to relieve the flow resulting from the maximum charging flow and concurrent loss of letdown.

These RHR relief valves have a setpoint of 600 psi and will actuate at an RCS pressure of 485 psig due to the 115 psig RHR pump head. Therefore, the two OPERABLE and operating RHR trains, with the RHR auto closure interlock bypassed (or deleted), will provide adequate and redundant cold overpressure protection during the proposed test. If only one PORV is inoperable, redundant cold overpressure protection will be provided by the OPERABLE PORV and one OPERABLE and operating RHR train with the RHR auto closure interlock bypassed (or deleted). Operator action to terminate the overpressure event, actuation of the OPERABLE PORV, actuation of one or both of the RHR discharge relief valves, or actuation of the PORV(s) being tested will assure that the accident consequences remain unchanged. The consequences of a low temperature overpressure event, as previously evaluated in the UFSAR, show that the allowable limits as established by ASME III, Appendix G will not be exceeded and therefore Reactor Pressure Vessel integrity and plant safety will be maintained.

During operations with the RCS water solid and the COMS [cold overpressure mitigation system] PORV(s) unavailable, administrative controls will be implemented to minimize the potential for and severity of postulated overpressure transients. These controls incorporate the following:

a. When RCS pressure is being maintained by the low pressure letdown control valve, the normal letdown orifices are bypassed but not isolated.

b. Only one centrifugal charging pump (CCP) will be allowed to be operable; this minimizes the potential for a mass input overpressure transient.

c. Administrative controls will be in place to insure that the High Head Safety Injection (HHSI) pumps will not operate during water solid operations with the PORV(s) inoperable to minimize the potential for creating a cold overpressure transient.

d. The RPV [reactor pressure vessel] pressure will be controlled at the minimum value necessary to perform the required testing of the inoperable PORV(s) (325-400 psig).

e. A Reactor Coolant Pump shall not be started with one or more of the RCS cold leg temperatures less than or equal to 350° F unless the secondary side water temperature of each steam generator is less than 50° F above the RCS cold leg temperature (ref. Technical Specification 3.4.1.4.1.a).

f. The positive displacement pump will be demonstrated inoperable during the water solid operations to minimize the potential for a mass input overpressure event.

g. The RHR auto closure interlock will be bypassed (or deleted) during water solid operations to prevent the loss of letdown capability which could produce a mass input overpressure transient.

h. The Pressurizer Heaters will be inoperable during water solid operations to minimize the potential for a heat input overpressure transient.

As a result of the above administrative controls, the operability of the OPERABLE PORV, the operability of the RHR discharge relief valve(s), and the expected operation of the PORV(s) being tested, there is no significant increase in the probability or consequences of a low temperature overpressure event, as previously evaluated in the UFSAR. The allowable limits, as established by ASME III, Appendix G, will not be exceeded and therefore Reactor Pressure Vessel integrity and plant safety will be maintained.

(2) The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

Low temperature overpressure events resulting from inadvertent mass or heat input into the RCS have been previously evaluated in the STPEGS UFSAR. The use of additional administrative controls during water solid operations with one or both COMS PORVs inoperable does not result in the creation of a new or different kind of accident. Application of these additional controls while performing the required testing of the inoperable COMS PORV(s) ensures that the potential for a low temperature overpressure event is minimized.

(3) The proposed change does not involve a significant reduction in the margin of safety.

The margin of safety is provided by the difference between the ASME Appendix G limits and the actual pressure capability of the Nuclear Grade Reactor Pressure Vessel. The margins contained within the ASME Appendix G limits provide assurance that vessel integrity is maintained under all operating conditions. ASME Section III, Appendix G, establishes guidelines and limits for RCS pressure primarily for low temperature conditions ([less than or equal to] 350° F). Transient analyses have been performed to determine the maximum pressure for the postulated (credible) worst case mass input and heat input events.

The mass input transient is divided into two parts for plant operation in Mode 4 ([greater than] 200° F] and Mode 5 ([less than or equal to] 200° F). In Mode 4, the mass input transient assumes the operation of one high-head safety injection (HHSI) pump and one centrifugal charging pump (CCP) delivering normal charging flow through the reactor coolant pump (RCP) seals with letdown isolated. It should be noted that the safety injection (SI) signal which isolates letdown also isolates the normal charging line. In Mode 5, the mass input transient assumes the operation of one CCP delivering flow through the RCP seals with letdown isolated.

The heat input analysis was performed for an inadvertent RCP start assuming that the RCS was water solid at the initiation of the event and that a 50° F mismatch existed between the RCS and the secondary side of the Steam Generators. (At lower temperatures, the mass input case is the limiting transient condition.)

Both heat input and mass input analyses took into account the single failure criteria and therefore, only one PORV was assumed to be available for pressure relief. The evaluation of the transient results concludes that the allowable limits will not be exceeded and therefore cold overpressure transients will not constitute an impairment to vessel integrity and plant safety.

These margins are incorporated into the STPEGS Technical Specifications and are unchanged by the proposed PORV test. The administrative limits provided in the Technical Specification figure also contain additional margin due to accounting for possible instrument errors, inaccuracy and sensing delays, and valve opening time. The possibility of a cold overpressure event during the testing of the inoperable PORV(s) is considered remote. Even in the unlikely event that such an event were to occur, prompt operator action, actuation of the OPERABLE PORV, actuation of the RHR relief valve(s), or operation of the PORV(s) being tested will terminate the event before reaching the Appendix G limits. Consequently, the margins provided by the ASME III, Appendix G limits will be maintained.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room Location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton Texas 77488

Attorney for licensee: Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Suzanne C. Black

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendments request: April 16, 1991

Description of amendments request: The Technical Specifications (TS) definitions and requirements relating to Units 1 and 2 containment integrity and containment air lock operability and surveillance would be revised as follows; the definition of CONTAINMENT INTEGRITY (TS 1.8) along with its the related surveillance requirement (TS 4.6.1.1.b) and containment leakage limitations (TS 4.6.1.2.e) would be revised to indicate that for containment integrity to exist,

air locks must be in compliance with the applicable operability requirements. In addition, the proposed amendment would delete a Unit 1 surveillance requirement (TS 4.6.1.3.a) that air locks be visually inspected after each opening to verify that the seal has not been damaged.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided an analysis of the issue of no significant hazards consideration which is presented below:

1. No significant increase in the probability or consequences of an accident previously evaluated results from this change.

As described in Section 5.0 of the Updated Final Safety Analysis Report (UFSAR), the containment structure is designed to ensure that an acceptable upper limit of leakage of radioactive material is not exceeded under design basis accident (DBA) conditions. The containment air locks, which provide personnel access to both upper and lower containment, were designed and constructed and are periodically tested to ensure that the allowable leakage limits for containment are maintained. The proposed changes to 1.8, 4.6.1.1.b, and 4.6.1.2.e are consistent with and would clarify the use of the ACTION provision of 3.6.1.3 applicable when one air lock door is inoperable. The leakage test acceptance criteria for primary containment and air locks would remain unchanged. The proposed change to Unit 1 TS 4.6.1.3.a would make the TS consistent with Unit 2 and with the Westinghouse Standard Technical Specifications, and would relieve the operations staff of an unnecessary administrative burden. As such, the proposed changes are considered administrative in nature. The proposed changes do not increase the probability of a previously analyzed accident because the primary containment and air lock leakage rates are not factors contributing to the frequency of challenges to plant protective systems. The proposed changes do not increase the consequences of any previously evaluated accidents because the postulated leakage rates for those events are not affected.

2. The change would not create the possibility of a new or different kind of accident from any previously analyzed.

As described above, the proposed changes are for purposes of clarification, consistency between units, and reduction of administrative burden on operators. Containment integrity and air lock leakage rates would remain unchanged. The assumptions used in analyses of radiological consequences of accidents would not be affected. No physical modifications to the facility are involved. Accordingly, the proposed changes will not create the possibility of a new or different kind of any accident for any previously analyzed.

3. The change would not involve a significant reduction in the margin of safety.

As stated above, the proposed changes would reduce an administrative burden on control room operators and provide clarification and consistency of requirements. Leakage test acceptance criteria would not be changed; nor would any operating parameters or protective system set points be affected. Accordingly, the proposed changes would not reduce any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: L. B. Marsh.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: July 6, 1990 as supplemented by additional correspondence on August 30, 1991.

Description of amendment request: The amendment would revise the Technical Specifications by removing Rod Sequence Control System (RSCS) requirements and reducing the Low Power Setpoint for the Rod Worth Minimizer to 20% of rated power. In addition, it would revise the control rod operability and surveillance requirements for greater clarity and consistency with the Standard Technical Specifications and make administrative changes to Section 3.3.

The original July 6, 1990 application was amended by the August 30, 1991, submittal to include Rod Worth minimizer operability requirements in Section 3.3.C, Reactivity Control Systems.

The NRC issued a Safety Evaluation Report (SER) approving Amendment 17 to NEDE-24011-P-A (GESTAR II) on December 27, 1987. One of the requirements of the SER was that the Technical Specifications contain provisions for minimizing control rod operations without the Rod Worth Minimizer (RWM). These operational restrictions were not included in the original submittal because IELP believed them to be unnecessary in view of the reliability and availability of their Nuclear Measurement Analysis and Control (NUMAC) RWM system. However, the staff has not reviewed this system. Consequently, IELP changed their original submittal to include RWM operability requirements in Section 3.3.C, Reactivity Control Systems.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed change will not increase the probability of an accident because the RDA is dependent only on the control rod drive system and mechanisms themselves, and not on the RSCS or RWM systems. The changes to the TSs for these systems affect only the analysis of the RDA [rod drop accident].

The consequences of the RDA as evaluated in the FSAR will not be affected by this modification because an extensive probabilistic study was performed by the NRC staff which indicated that there was not a need for the RSCS. In addition, improvements in the RDA analysis methods indicated that the peak fuel enthalpies resulting from a RDA are significantly lower than previously determined by less refined methods.

The RSCS is redundant to the RWM. As long as the RWM is OPERABLE, control rod pattern errors are prevented and the RSCS is not needed. In the event the RWM is out of service, the TSs require that control rod movement and compliance with the prescribed control rod pattern be verified by a second licensed reactor operator. This verification process is controlled procedurally to ensure high quality, independent review of control rod movement Therefore, elimination of RSCS requirements from the TSs will not increase the consequences of an accident previously evaluated in the FSAR [Final Safety Analysis Report].

There will also be no increase in the consequences of a RDA as evaluated in the FSAR due to lowering the RWM LPSP [low power setpoint] from 30% to 20%. The effects of a RDA are more severe at low power levels and are less severe as power level increases. Although the original calculations for the RDA were performed at 10% power, to ensure conservatism, the NRC required that the generic BWR TSs be written to require that the RWM operates at any power level below 20% power. However, GE continued to perform the RDA analyses at and below 10% power because these produced more conservative analytical results. Recently more refined calculations by BNL [Brookhaven National Laboratory] have shown that even with the maximum single control rod position error, and most multiple

control rod error patterns, the peak fuel rod enthalpy reached during a RDA from these control rod patterns would not exceed the NRC limit of 280 cal/gm for RDAs above 10% power, confirming the original GE analyses. Therefore, lowering our RWM LPSP from 30% to 20% will not increase the consequences of an accident previously evaluated in the FSAR.

The control rod drive scram accumulators are part of the CRD [control rod drive] system and are provided to ensure adequate control rod scram under varying conditions. The scram accumulators are needed to scram the control rods when reactor vessel pressure is low. At higher reactor pressures, vessel pressure provides the primary energy to scram the control rods. If an accumulator is inoperable at normal operating pressures [greater than] 950 psig, the associated control rod may not meet all specified scram insertion times but reactor pressure will still ensure that a scram occurs. But, because of the large number of control rods available for scram and the assumed single failure of a control rod to scram in the safety analysis, a specified amount of time (8 hours) is allowed to restore the accumulator to OPERABLE status. The 8 hours is a conservatively short period of time and is the same time allowed by the Standard Technical Specifications for inoperable accumulators. Therefore, the changes to the inoperable accumulator LCO [limiting condition for opoeration] will not affect the probability or consequences of a previously evaluated accident.

The purpose of control rod position indication is to ensure that pre-established control rod patterns are being followed during operation. While control rod position cannot affect the probability of an accident previously evaluated, it can affect the consequences of a RDA. The new TSs for control rod position indication, however, only provide more information which better enables the reactor operator to determine control rod position. If a control rod's position cannot be determined by normal or alternate means, the rod is declared inoperable and the appropriate actions must be taken. Control rod patterns must still be followed and operation of the RWM is still required below the LPSP. Therefore, the changes to the control rod position requirements cannot affect the probability or consequences of the RDA or other previously evaluated accidents.

Demonstrating that all control rods are coupled reduces the probability that a RDA will occur and therefore provides protection against violation of fuel damage criteria during reactivity initiated accidents. Continued operation with an uncoupled control rod is not desirable and, therefore, recoupling must be accomplished within two hours. This period is in accordance with the Standard Technical Specifications' allowed outage times for uncoupled control rods. Coupling still must be demonstrated by the only valid indication of coupling, i.e., noting that the drive does not go to the overtravel position. The "full in" and "full out" indication was only required for operation of RSCS and does not adequately demonstrate control rod coupling. If a control rod cannot be coupled within the 2-hour period, it is declared inoperable and inserted to reduce the probability of a RDA. Therefore, the changes to the control rod coupling requirements will not affect the probability or consequences of an accident.

Although the TSs do not require that every control rod be operable, strict control over the number and distribution of inoperable rods is required to satisfy the assumptions of the safety analyses and to provide early indication of any potential generic problem in the CRD system. The organization of all inoperable rod requirements into one section better enables operators to ensure that these requirements are met. Inserting an inoperable control rod ensures that the shutdown and scram capabilities are not adversely affected. Elimination of the 5 x 5 array requirement and use of the 2 operable rod separation criteria meets the requirements of the banked position withdrawal sequence (BPWS) and therefore ensures that the control rod drop analysis remains valid. Therefore, the changes to the inoperable rod requirements will not significantly affect the probability or consequences of a previously evaluated accident.

The capability to insert the control rods ensures that the assumptions for scram reactivity in the safety analyses are not violated. The changes to the stuck control rod TSs ensure that these assumptions are met by specifically requiring that SDM [shutdown margin] be verified and by clarifying existing requirements. Exercising control rods at least once every 24 hours after a stuck rod is detected is a valid means to identify a common mode failure in the CRD system. However, exercising rods because two or more are inoperable (but not stuck) is not technically warranted. Therefore, the requirement to exercise all withdrawn or partially withdrawn control rods at least once every 24 hours when two or more rods are inoperable has been deleted. The changes to the stuck rod requirements will not significantly increase the probability or consequences of an accident.

As stated previously, the RWM cannot cause or prevent a RDA but can only limit the consequences. Verification of the correct sequence input to the RWM assures that the RWM will control rod movement so that the drop of an in-sequence rod from the fully inserted position to the position of the control rod drive would not cause the reactor to sustain a power excursion resulting in a peak fuel enthalpy in excess of 280 cal/gm. The RNWP [reduced notch worth procedure] currently in use with the RWM is an extension of BPWS [banked position withdrawal sequence] which was originally used to limit the consequences of a RDA and is still a valid rod control sequence (ref. NRC SER to Amendment 17). Therefore, use of BPWS or its equivalent RNWP cannot increase the probability or consequences of an accident previously evaluated.

The RBM [rod block monitor] provides local protection of the core i.e., the prevention of boiling transition in a local region of the core, from a single rod withdrawal error from a Limiting Control Rod Pattern. Requiring the functional test to be performed (within 24 hours of rod movement) when one RBM channel is inoperable does not affect this safety function. The RBM is demonstrated by its monthly instrument functional tests to be operable and is considered operable until proven otherwise. This is no different from other DAEC systems. If, however, one channel is inoperable, the Bases of Section 3.3 clearly indicate the need to test the remaining channel for operability. Therefore, the probability or consequences of a previously evaluated accident has not significantly increased.

Monitoring for reactivity anomalies guards against large, unexpected reactivity insertions which could have the potential for damaging the reactor. During normal plant operation, reactivity anomaly monitoring is relatively straight forward. Operation at off-rated conditions, however, makes it possible to operate with rod patterns significantly different from target rod patterns. Therefore, the technical specification for reactivity anomalies has been revised to allow for an investigation of the apparent anomaly. This requirement is similar to what is required by Standard Technical Specifications. Therefore, these changes cannot significantly increase the probability or consequences of a previously evaluated accident.

The various administrative changes to Section 3.3 (reorganization, renumbering, etc only serve to clarify and better define current requirements and do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The changes to the Bases of Section 3.3 only reflect the above changes to LCO and Surveillance Requirements and do not involve any increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility for an accident different from any previously evaluated because operation of the RSCS and RWM cannot cause or prevent an accident. They function to minimize the consequences of a RDA. The RDA is already evaluated in the FSAR, and the effect of the proposed changes on this analysis is discussed in item 1 above. Elimination of the RSCS and lowering the RWM setpoint will have no impact on the operation of any other systems and cannot create the possibility for an accident to occur which has not already been evaluated.

The changes to the control rod position indication and coupling requirements cannot create a new or different kind of accident; the revised TSs will only provide more detailed information to the operators. Rod position information and coupling are still required. If these requirements cannot be met, the rods must be declared inoperable and the appropriate actions taken.

The changes to the scram accumulator requirements cannot cause a new kind of accident because the accumulators only serve to minimize the consequences of previously evaluated accidents. The function and design of the accumulators and control rods has not been changed.

The changes to the TS requirements applicable to inoperable and stuck control rod requirements cannot cause a new kind of accident; the actions required by these TSs

only serve to minimize the consequences of accidents previously evaluated and assure that the assumptions of the safety analyses remain valid. No changes have been made which affect the operation of the control rods or any other system important to safety.

Use of the BPWS cannot create a new or different kind of accident because BPWS (and RNWP) only serve to limit the consequences of a RDA.

The RBM Surveillance Requirement cannot create the possibility of a different accident because the RBM system acts to prevent boiling transition in the core during single rod withdrawal errors with a Limiting Control Rod Pattern. This transient has been evaluated previously and the changes to the surveillance requirement do nothing to affect this analysis. No changes are being made which can affect other systems or create a new or different kind of accident.

The changes to the Reactivity Anomaly LCO and Surveillance Requirements cannot create a new and different kind of accident because no actual changes are being made to the plant and reactivity monitoring is still required at the specified intervals.

The various administrative changes to Section 3.3 (reorganization, renumbering, etc.) only serve to clarify and better define current requirements and do not create any new or different kind of accidents.

The changes to the Bases of Section 3.3 only reflect the changes to LCOs and Surveillance Requirements previously discussed and cannot create the possibility of an accident different from those previously evaluated.

3. The margin of safety will not be reduced by the elimination of RSCS. An extensive NRC study has determined that the possibility of a RDA resulting in unacceptable consequences is so low as to eliminate any need for the RSCS. The RSCS is redundant in function to the RWM; its elimination does not affect the monitoring of control rod pattern by the RWM.

The NUMAC RWM is a state-of-the-art system and has exhibited high reliability and availability during its operating history. If, however, the RWM is out of service below 20% power, control rod movement and compliance with prescribed control rod patterns will be verified by a second licensed operator. The procedure specifically requires that a second licensed operator verify the first operator's actions while he performs rod movements. The rod movement sequences with their respective sign-off sheets are provided for verification by the second operator of each step and rod movement made by the first operator.

The margin of safety will not be reduced by lowering the RWM LPSP from 30% to 20% because calculations performed by GE and BNL have shown that even with the maximum single control rod position error and multiple error patterns, the peak fuel rod enthalpy during a RDA from these patterns would not exceed the NRC limit (280 cal/gm) above 10% power.

In summary, GE has provided technical justification for the proposed changes in Amendment 17 to GESTAR II and the NRC has reviewed and accepted the GE analysis in the SER to Amendment 17. Therefore, there is no significant reduction in the margin of safety.

The margin of safety will not be affected by the changes to the control operability technical specifications or bases because the majority of the changes only reorganize or clarify previous requirements. The TSs still ensure that all assumptions of the safety and accident analyses are met and verified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036.

NRC Project Director: John N. Hannon.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: August 30, 1991

Description of amendment request: The amendment would revise the surveillance requirements for the station batteries to conform with current industry practices and manufacturers' recommendations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1) The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated because the requested revisions do not affect any FSAR analysis involving these systems.

The proposed revisions affect only the surveillance requirements for the station batteries to make them conform with the manufacturer's recommendations and current industry guidance. The proposed change will require testing in a way more representative of use of the batteries by applying the design load for the time period required. This test retains the capability of detecting a degraded cell or battery and reduces the time required for the batteries to recharge, thereby increasing the overall availability of safety-related batteries.

2) The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated because there is no equipment or design change associated with this change. The proposed amendment only changes the surveillance requirements for the batteries to conform to the current industry guidance.

3) The proposed amendment will not involve any reduction in a margin of safety because the station batteries will still be available to supply power to the associated safety-related loads. The amendment only revises the surveillance requirements such that the Performance Discharge Test (rated amp-hour discharge) will be performed less frequently (every 5 years) which will increase the useful life of the batteries. A Service Discharge Test (load profile) will be performed each cycle a Performance Discharge Test is not done. The Service Discharge Test will demonstrate each battery's ability to supply the required loads for the time required.

The proposed changes to the surveillance requirements for the station batteries do not change the probability or consequences of an accident previously evaluated, do not create the possibility of a new or different kind of accident and do not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, N.W., Washington, D.C. 20036.

NRC Project Director: John N. Hannon.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: August 30, 1991

Description of amendment request: The amendment would revise the Technical Specifications by eliminating the scram and Main Steam Line Isolation Valve closure requirements associated with the Main Steam Line Radiation Monitors (MSLRMs).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1) The proposed amendment does not involve a significant increase in the probability of an accident previously evaluated.

The probability of occurrence of these accidents is based on initial conditions and assumptions which are not dependent on the use of or interactions with the MSLRM system. Elimination of the scram and isolation function on a high radiation signal will not affect operation of other Reactor

Protection System or primary containment isolation functions.

The proposed amendment does not involve a significant increase in the consequences of an accident previously evaluated.

The analysis of the control rod drop accident is described in Section 15.4.7 of the DAEC Updated Final Safety Analysis Report (UFSAR). This analysis takes credit for closure of the MSIVs upon receipt of a MSLRM high radiation signal. This closure signal limits the release of radioactivity via the condenser. Removal of the MSLRM high radiation trip signal will delay the MSIV closure, allowing more radioactivity to reach the condenser and eventually be released. Although the resulting offsite doses calculated in the BWROG report are higher than those previously reported in the DAEC UFSAR, they are not a significant increase and remain well below the limits of 10 CFR Part 100.

2) The proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

This amendment only affects the trip functions of the MSLRMs. The sole purpose of these trip functions is to mitigate the consequences of a control rod drop accident (CRDA), a previously-analyzed event. Removal of the high radiation trip signal was justified by NEDO-31400 which has been reviewed and accepted by the NRC. Hence, the possibility of an accident of a new or different type is not created by this change.

3) The proposed amendment does not involve a significant reduction in the margin of safety.

The DAEC Technical Specification Bases state that these monitors were provided to detect gross fuel failure resulting from the CRDA and provide MSIV closure to maintain radiological releases below 10 CFR Part 100 limits. As discussed in the NRC's SER approving NEDO-31400, the calculated radiological release consequences of the bounding CRDA are well within the acceptable dose limits as specified in 10 CFR Part 100. Consequently this change will not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, N.W., Washington, D.C. 20036.

NRC Project Director: John N. Hannon.

Long Island Lighting Company, Docket No. 50-322, Shoreham Nuclear Power Station, Unit 1, Suffolk County, New York

Date of amendment request: October 9, 1990

Description of amendment request: The proposed amendment would change the Physical Security Plan.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a 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. A discussion of these standards as they relate to the amendment request follow:

(1) Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluate? The proposed changes allow reclassification of certain portions of the plant currently designated as "Vital Areas" or "Vital Equipment." These changes would also eliminate or modify certain other safeguards commitments that reflect this reclassification. One of the changes is to reduce security force consistent with the objectives of the revised Security program. Based upon the fact that the proposed change recognizes that the level of protection is still adequate to meet a test of "Radiological Sabotage: as defined in 10 CFR 73.2(a)," the proposed Security Plan change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated? The proposed changes do not result in any physical changes to the facility affecting a system that relates to accidents. Therefore, a new or different kind of accident from any previously evaluated cannot be created and the proposed change will not create the possibility of a new or different kind of accident previously evaluated.

(3) Do the proposed changes involve a significant reduction in a margin of safety?

The changes to the Security Plan will continue a level of protection that is adequate to meet a test of "Radiological Sabotage: as referred in 10 CFR 73.2(a)." The proposed changes do not involve a reduction in any margin of safety.

Local Public Document Room location: Shoreham-Wading River Public Library, Route 25A, Shoreham, New York 11786-9697

Attorney for licensee: W. Taylor Reveley, III, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212

NRC Project Director: Seymour H. Weiss

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of amendment request: November 5, 1990, as supplemented on April 22 and July 8, 1991.

Description of amendment request: The proposed amendment would remove cycle-specific operating limits from the Technical Specifications. These cycle-specific operating limits would then be the subject of a Core Operating Limits Report. This amendment is proposed in response to NRC Generic Letter 88-16, "Removal of Cycle-Specific Parameter Limits from Technical Specifications," dated October 4, 1988.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.92(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change to remove cycle-specific operating limits from the Technical Specifications and establish the Core Operating Limits Report has been evaluated against the standards of 10 CFR 50.92. This change has been determined not to involve a significant hazards consideration, because it does not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated.

The creation of a cycle-specific Core Operating Limits Report will neither modify the methods used to generate the subject limits, nor the manner in which the limits are used to control reactor operations. These limits have been determined by analyzing the same postulated events previously analyzed. The plant will continue to operate within the limits specified in the Core Operating Limits Report and will take the same corrective actions when or if these limits are exceeded, just as is required by the current Technical Specifications. Therefore, the proposed Technical Specification change incorporating the Core Operating Limits Report is administrative in nature and it is concluded not to increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

There are no physical alterations to the plant configuration, changes to setpoint values, or changes to the implementation of setpoints and limits associated with this proposed change. The existing accident basis, therefore, will remain as is and will continue to conservatively bound plant operation with this proposed change. We have concluded that operation using the Core Operating Limits Report does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety.

As indicated above, the Core Operating Limits Report makes use of the existing safety analysis methodologies and the resulting limits and setpoints for plant operation. Additionally, the safety analysis acceptance criteria for operations with this proposed change is not changed from that used in the latest core reload analysis. We have, therefore, concluded that Cycle 12 operations with the Core Operating Limits Report does not involve any reduction in a margin of safety.

Maine Yankee has concluded that these proposed changes to the Technical Specifications are administrative in nature and do not involve a significant hazards consideration as defined by 10 CFR 50.92.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578

Attorney for licensee: John A. Ritsher, Esquire, Ropes and Gray, One International Place, Boston, Massachusetts 02110-2624.

NRC Acting Project Director: Susan F. Shankman

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit 2, Scriba, New York

Date of amendment request: August 21, 1991

Description of amendment request: This amendment would revise Technical Specification 4.9.6.c to allow the normal uptravel limits for the refueling platform main and auxiliary hoists to be increased by six inches. By this change the fuel assemblies could be raised up to 6 inches higher than currently allowed during refueling operations. It would provide increased clearance margin between the fuel bundles and the transfer shield bridge, and reduce the potential for fuel damage during fuel transfer operations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change will increase by six (6) inches the maximum height that a fuel assembly can be lifted to during fuel transfers. The drop of a spent fuel assembly from its maximum lifted height (over the reactor core) is the most limiting fuel handling accident, as analyzed in NMP2 USAR [Updated Safety Analysis Report] Section 15.7.4. An evaluation, as described above, of the proposed change has determined that the additional 6 inches will not significantly affect the impact loads analyzed in USAR Section 15.7.4. Except for the maximum lifted height and associated limit switch modification, the proposed change will have no other effect on the lifting mechanisms or methods used in lifting fuel assemblies during fuel transfers. Therefore, neither the probability nor the consequences of the dropped spent fuel assembly accident, as analyzed in USAR Section 15.7.4., will be significantly increased.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change has been evaluated with respect to ALARA [as low as reasonably achievable] considerations of both the additional height from which a spent fuel assembly can be dropped, and the reduction in shielding (water covering the active fuel in a lifted assembly). For the fuel assembly drop accident the radiological consequences of the proposed change have been determined to be negligible. The projected slight increase in operator whole body dose rate has been determined to be acceptable, when compared to the reduced potential for possible fuel damage during transfer operations. Except for the increase in maximum lifted height of a fuel assembly and the associated limit switch modification, the proposed change will not modify any fuel lifting hardware or methods used in lifting fuel assemblies during fuel transfers. The proposed change will not alter the transfer path (between the reactor vessel and the spent fuel pool) of a lifted assembly. Therefore, the proposed change will not create the possibility of a new or different kind of accident from the fuel handling accident analyzed in USAR Section 15.7.4.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The proposed change has been evaluated and determined to have no significant effect on radiological considerations resulting from the increase in fuel assembly lifted height. In addition, except for the increased lifting height and associated limit switch modification, this proposed change will not alter the function of the Refueling Platform, the main and auxiliary hoists, the fuel grapple, or the methods used in lifting and transferring fuel assemblies. Therefore, this proposed change will not cause a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005-3502.

NRC Project Director: Robert A. Capra

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: August 30, 1991

Description of amendment request: The licensee requests an amendment to the Technical Specifications to change the required shutdown margin to a constant value of 1.3 percent delta k/k. The shutdown margin change is needed to support future reload designs of longer cycle lengths.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Consistent with the requirement of 10 CFR 50.92, the enclosed application is judged to involve no significant hazards based on the following information:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response:

No. Shutdown margin provides mitigation for reactivity increase transients from subcritical modes of operation and provides an assurance of subcriticality after reactor trip and is not an accident initiator. Changing the shutdown margin will not increase the probability of an accident previously reported in the FSAR [Final Safety Analysis Report]. In addition, the consequences of an accident previously evaluated will not be increased. All acceptance criteria for the

affected events have been met using the proposed reduced shutdown margin change. Therefore, there will be no effect on previously analyzed accidents.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response:

No. Shutdown margin is characteristic of typical reactor operation dependent upon various reactor parameters. The proposed change in shutdown margin in itself will not create the possibility of a new or different kind of accident than any already evaluated.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response:

No. The margin of safety will not be reduced. All applicable LOCA [loss-of-coolant accident] and non-LOCA events produce results bounded by the acceptance limits for those events when the proposed change is considered.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: September 6, 1991

Description of amendment request: This amendment request proposes changes to Technical Specification 3.8.4.4, "Reactor Protection System Electrical Power Monitoring" and Technical Specification 3.8.4.6, "Power Range Neutron Monitoring System Electrical Power Monitoring." Specifically, the channel functional test surveillance interval for the Reactor Protection System and Power Range Neutron Monitoring System Electrical Protection Assemblies would be changed from "at least once per six months" to "each time the plant is in cold shutdown for a period of more than 24 hours, unless performed in the previous 6 months."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes to the Hope Creek Generating Station Technical Specifications:

1. Do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed surveillance frequency will reduce the time that the plant is in a half scram or half isolation condition and thereby reduce the potential for inadvertent scrams or group isolations. In addition, the proposed Technical Specification change does not adversely affect the ability of any safety system to perform its intended safety function. We therefore conclude that the proposed change will not significantly increase the probability or consequences of a previously analyzed accident or malfunction of equipment important to safety.

2. Do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change requires no plant modifications, does not alter the function of any affected systems, and creates no new modes of plant operation. System and component performance is not adversely affected thereby assuring that the design capabilities of affected systems and components are not challenged in a manner not previously assessed. We therefore conclude that the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do not involve a significant reduction in a margin of safety.

As stated by the NRC in Generic Letter 91-09, the increased risk associated with the extended surveillance interval is more than offset by the safety benefits associated with the reduction in protective system challenges. As a result, implementation of this Technical Specification change would result in a net increase in plant safety and a corresponding increase in a margin of safety. We therefore conclude that the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Walter R. Butler

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: August 13, 1991

Description of amendment request: The proposed amendment would relocate the procedural details of the Radiological Effluent Technical Specifications (RETS) from the Technical Specifications (TS) to the Offsite Dose Calculation Manual (ODCM), Radiological Environmental Monitoring Program (REMP), or the Process Control Program (PCP). Also, new programmatic controls for radioactive effluents and radiological environmental monitoring are proposed for incorporation into TS Section 6, "Administrative Controls." These changes meet the intent of the guidance provided by NRC Generic Letter 89-01, "Implementation of Programmatic Controls for Radiological Effluent Technical Specifications in the Administrative Controls Section of the Technical Specifications and the Relocation of Procedural Details of RETS to the Offsite Dose Calculation Manual or to the Process Control Program."

Additionally, the proposed amendment would add the definition of UNRESTRICTED AREA and replace the definition of SOLIDIFICATION and DEWATERING with the more generic term, PROCESSING. Processing is relocated to the PCP per Generic Letter 89-01 and will cover both previous definitions. Also, the proposed amendment would delete the Iodine monitoring and treatment systems and their related specifications due to the absence of radioiodine in gaseous effluent, the short half-life of I-131 and I-133, the extended plant shutdown, and the absence of any radioiodine production mechanism in the defueled condition at Rancho Seco.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

The Sacramento Municipal Utility District has reviewed the proposed changes and determined that the proposed changes do not involve a significant hazards consideration because operation of the Rancho Seco Nuclear Generating Station in accordance with these changes would not:

a. Involve a significant increase in the probability or consequences of an accident previously evaluated. Since potential dose consequences from radioiodine exposure are negligible in the defueled condition, effluent control program reductions in this area have no adverse safety impact. There are only two credible accidents in the defueled condition, a fuel handling accident and a loss of offsite power (LOOP). The changes proposed do not increase the probability of either of these accidents since the LOOP is not controllable by the plant, and the requirements for testing

of the fuel handling bridge remain unchanged. The consequences of the two credible accidents are bounded by the previous analyses for these accidents. The fuel handling accident scenario remains unchanged, but the consequences of this accident are significantly reduced due to the length of the decay time of the fuel. Implementation of GL 89-01 with consideration of Rancho Seco's defueled condition has no affect on accidents previously evaluated.

b. Create the possibility of a new or different kind of accident from any accident previously evaluated. Implementation of GL 89-01 provides the appropriate Radioactive Effluent Control Program, REMP, and Solid Radioactive Waste requirements appropriate for a plant in the defueled condition. The existing licensing basis as evaluated for the defueled condition is retained without creating the possibility for a new or different kind of accident from any evaluated previously.

c. Involve a significant reduction in a margin of safety since the margin of safety for credible accidents in the defueled condition remain unchanged. Also, the design basis for the radioactive effluent and waste programs continue to be met and is retained in the programs' implementing documents in accordance with GL 89-01.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Martin Luther King Regional Library, 7340 24th Street Bypass, Sacramento, California 95822

Attorney for licensee: Jan Schori, Sacramento Municipal Utility District, 6201 S Street, P.O. Box 15830, Sacramento, California 95813.

NRC Project Director: Seymour H. Weiss

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of amendment requests: August 30, 1991

Description of amendment requests: The licensee proposes to revise Technical Specifications 3/4.3.1, "Reactor Protective System (RPS) Instrumentation" and 3/4.3.2, "Engineered Safety Features Actuation System Instrumentation." The change modifies the channel functional and logic units surveillance test intervals from monthly to quarterly.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Increasing the surveillance interval for the RPS and the ESFAS has two principle effects with opposing impacts on core melt risk. The first impact is a slight increase in core melt frequency that results from the increased unavailability of the instrumentation in question. The unavailability of the tested instrumentation translates to a failure of the reactor to trip or a failure of the appropriate engineered safety feature to actuate when required. The opposing impact is the corresponding reduction in core melt frequency that would result because of the reduced exposure to test induced transients.

Representative fault tree models for San Onofre Units 2 and 3 and the corresponding core melt frequency increases and decreases were quantified in CEN-327. The unavailability assumption described above includes the increased relay service time (relays are normally energized). The extended surveillance interval was found to result in the net reduction in core melt risk. A lower potential for test induced trips overshadows negative effects from increasing relay operating time.

Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Will the operation of the Facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

This amendment request does not involve any changes in equipment and will not alter the manner in which the plant will be operated. For this reason, this amendment will not create the possibility of a new or different kind of accident from any previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

The proposed changes do not alter the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined. Implementation of the proposed changes is expected to result in an overall improvement in safety due to the fact that reduced testing will result in fewer inadvertent reactor trips, less frequent actuation of ESFAS components, and less frequent distraction of operations personnel.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensees' analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713

Attorney for licensee: James A. Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770

NRC Project Director: James E. Dyer

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: July 12, 1991 (TS 295 and TS 298)

Description of amendment request: The proposed amendment would change the Browns Ferry Nuclear Plant (BFN) Units 1, 2, and 3 Technical Specifications (TS). A change is proposed to Definitions Sections 1.0.P, Secondary Containment Integrity, for all three units to better define the zonal concept of secondary containment. The proposed amendment also corrects typographical errors in the Unit 3 Technical Specifications such that the definition for secondary containment integrity is consistent for all three units. The proposed license amendment also revises Unit 3 TS Limiting Condition for Operation (LCO) 3.7.C to permit separating the Unit 3 reactor zone from the secondary containment envelope provided Unit 3 is defueled and its inter-zonal walls are qualified to maintain secondary containment around the operating unit. Revising LCO 3.7.C and upgrading Unit 3 inter-zonal walls will allow for unfettered construction activity on outer walls of Unit 3 reactor zone.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. This proposed change does not significantly increase the probability or consequences of an accident previously evaluated.

The proposed ... changes do not reflect any significant change to any precursor for the design basis events which are analyzed in Chapter 14 of the Browns Ferry Final Safety Analysis Report. Therefore, the probability of an accident previously evaluated is not significantly increased.

The proposed ... TS changes do not change the method of isolation or operation of secondary containment or the method of operating the Standby Gas Treatment System (SGTS). The SGTS is used to process radioactive effluents which could be released to the secondary containment following an accident. The allowable SGTS flow and corresponding reactor building in-leakage

will be maintained in accordance with the Technical Specification surveillance limit of 12,000 cfm at a negative pressure of 0.25 inch of water. Additionally, there is no change to the design flow rate (i.e., 18000 cfm); thus, there is no impact on either the 10 CFR 20 or 10 CFR 100 dose analyses. Therefore, these proposed changes do not significantly increase the consequences of an accident previously evaluated.

2. This proposed change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

The proposed ... changes do not affect the allowable statuses of any of the reactor zones or the refueling zone. The proposed ... changes allow for the following Unit 3 reactor zone statuses:

1. Reactor defueled and not required for secondary containment integrity, or

2. Reactor defueled but required for secondary containment integrity.

If Unit 3 is defueled and the Unit 3 secondary containment zone is not needed for operation for Unit 2, there is no requirement to maintain secondary containment in Unit 3 and no impact on the operability of secondary containment for the unit(s) requiring secondary containment. While the Unit 3 reactor is defueled, the Unit 3 secondary containment may be desired or required in order to maintain a qualified boundary entirely around a fueled reactor (i.e., qualified inter-zonal wall not maintained). In this event, the plant must return to a four zone secondary containment. The ... change ensures the operability of a Secondary Containment boundary for the operating unit (Unit 2) and will reinstate it before loading fuel in Unit 3. The Unit 1 secondary containment is considered a part of the Unit 2 boundary. Therefore, these proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. These proposed ... changes do not involve a significant reduction in a margin of safety.

Secondary containment integrity can be satisfied by having multiple zones forming a qualified secondary containment boundary entirely around the unit(s) requiring secondary containment. The addition of a statement to allow a unit reactor zone to be isolated from the secondary containment boundary is consistent with the definition requirements for secondary containment integrity and will not interfere with the ability of the plant to achieve a secondary containment boundary where required. Therefore, this proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: September 13, 1991 (TS 299)

Description of amendment request: The proposed amendment changes the Browns Ferry Technical Specifications for Units 1, 2, and 3 to extend the logic system functional test interval from "once every 6 months" to "once every 18 months" (i.e., each refueling outage) for the Common Accident Signal, 4kV Shutdown Board Undervoltage Start of the Diesel Generator, 480V Load Shedding, Residual Heat Removal Service Water (RHRSW) Initiation, Control Room Isolation, Reactor Building Isolation, and Standby Gas Treatment System.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequence of any accident previously evaluated.

Item 4.5.3 of Generic Letter 83-28 requested that licensees review the existing Reactor Protection System (RPS) on-line functional test intervals required by their plant TS. The licensees were to ensure that current and proposed test intervals are consistent with a goal of achieving high RPS availability considering uncertainties in component failure rates, uncertainties in common mode failure rates, reduced redundancy during testing, operators errors during testing, and component wear caused by the testing.

The Boiling Water Reactor Owners' Group (BWROG) decided to attempt to resolve these issues generically. It commissioned General Electric (GE) to perform generic analyses and apply the generic results to the individual BWR plants. The results of these analyses were documented in GE topical reports, NEDC-30936P and NEDC-30851P, and NEDC-30844A. Based on the results of these studies, the overall system reliabilities are not dominated by the reliabilities of logic systems but by that of mechanical components (e.g., pumps and valves). NEDC-30844A demonstrated that the existing BWR Standard Technical Specification (BWRSTS) RPS test intervals were adequate to achieve the high RPS availability goals requested by Generic Letter 83-28, item 4.5.3.

The proposed revisions to the logic system functional test intervals are consistent with the BWR STS.

Therefore, since the proposed amendment does not significantly degrade the reliability of systems and components relied upon to prevent or mitigate the consequences of an accident, TVA had determined that these revisions do not involve a significant increase in the probability or consequences of any accident previously analyzed.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment only changes the surveillance frequency for logic system functional testing and does not involve any changes to the surveillance requirements, any changes to system or equipment configuration, nor does it introduce any new mode of plant operation. Therefore, this change does not create the possibility for a new or different kind of accident from any accident previously analyzed.

3. The proposed amendment does not involve a significant reduction in a margin of safety.

The net effect of the proposed change in the surveillance interval does not involve a significant reduction in a margin of safety. The performance of these tests requires numerous temporary alterations, and are inherently prone to unplanned actuations and the potential for personnel error. Safety system redundancy is reduced and the systems are placed in a configuration which inhibits quick restoration if needed to respond to a design basis event during testing. Testing at a once per 6 months frequency results in additional emergency diesel generator and 4kV RHRSW pump motor starts and stops, thereby increasing component wear and decreasing life expectancy. (The reduction of diesel generator starts and stops is consistent with the guidance contained in Generic Letter 84-15.) The performance of these tests while the reactor is shutdown increases the operational margin of safety as a result of increased safety system availability during power operation, reduced potential for human error during testing, and reduced component wear. Therefore, TVA has concluded that the proposed amendment does not involve a significant reduction in the margin of safety.

The Commission has provided additional guidance for the application of criteria for no significant hazards consideration determination by providing examples of amendments that are considered not likely to involve significant hazards considerations (48 FR 14870). These examples include: '(vi) - A change which either may result in some increase to the probability or consequences of a previously analyzed accident or reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan (SRP): For example, a change resulting from the application of a small refinement of a previously-used calculational model or design method."

The proposed amendment is encompassed by this example in that the revision reflects the requirements established in the [STS]

(NUREG-0123) as endorsed by Chapter 16 of the SRP.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Furthermore, the NRC considers the proposed amendment to be consistent with an example of a type of amendment not likely to involve significant hazards consideration. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards Tconsideration.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: March 1, 1991; superseded September 6, 1991 (TS T90-01)

Description of amendment request: The proposed amendment would modify the Sequoyah Nuclear Plant, Units 1 and 2 Technical Specifications (TSs) to incorporate new reactor coolant system pressure-temperature (P-T) limit curves (TS Figures 3.4.2 and 3.4.3). The proposed changes would incorporate methodology described in Revision 2 of NRC Regulatory Guide 1.99 and result in the new P-T limit curves that would be applicable up to 16 effective full power years (EFPY) for both units. TS Bases Section 3/4.4.9, Pressure/Temperature Limits, would also be revised to reflect the EFPY changes and application of RG 1.99, Revision 2 methodology. The proposed changes are in response to NRC Generic Letter 88-11 issued July 12, 1988, and would specify new P-T limits for the reactor coolant system during plant heatup, cooldown, critical operation and hydrostatic leak tests.

By letter dated March 1, 1991, the licensee had proposed similar TS changes, which was noticed in the **Federal Register** on April 3, 1991 (56 FR T13669).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TVA has evaluated the proposed technical specifications (TS) change and has determined that it does not represent a significant hazard consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The present pressure-temperature (P-T) limits for SQN (TS Figures 3.4-2 and T3.4-3) are based on the methodology described in Westinghouse Electric Corporation WCAP-7924-A, "Basis for Heatup and Cooldown Limit Curves," and American Society of Mechanical Engineers (ASME) Section III, Appendix G. These P-T limits were computed using analytical projections of neutron embrittlement to the reactor vessel. The current TS P-T limits are applicable for the first 9.2 effective power years (EFPY) for Unit 1 and 16 EFPY for Unit T2.

TVA's revised P-T limits for SQN were computed using the methodology described in NRC Regulatory Guide (RG) 1.99, Revision T2, "Radiation Embrittlement of Reactor Vessel Materials." TVA's application of the Revision 2 methodology resulted in P-T limits applicable to 16 EFPY for both units. The increase in the projected EFPY on Unit 1 is because of the calculated decrease in the irradiation damage. There are two primary reasons why the reactor vessel irradiation is projected to be less than originally predicted by Westinghouse. The first reason is the change in criteria associated with the chemistry of the reactor vessel material. The second reason is SQN's low-leakage core configuration, which reduces the total neutron dose to SQN's reactor vessel (this was evidenced by the amount of damage measured by SQN's surveillance capsule samples).

TVA's modification to SQN's P-T limits complies with the calculative procedures and criteria contained in Revision 2 of RG T1.99. The new P-T limits for SQN continue to ensure prevention of nonductile reactor vessel failure. Accordingly, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously analyzed. TVA's proposed change to SQN's P-T limits complies with Generic Letter 88-11, "NRC Position on Radiation Embrittlement of Reactor Vessel Materials and Its Impact on Plant Operations," for utilizing the methodology provided in NRC RG 1.99, Revision 2. The new P-T limits do not result in a change to the plant configuration. Consequently, the proposed change does not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in a margin of safety. TVA's proposed TS change to incorporate new P-T limits for SQN remains consistent with the methodology provided in RG 1.99, Revision 2. Improvements in predicting radiation embrittlement of reactor vessel materials provide a quantitative basis for determining margin of safety. The proposed change does not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, T1001 Broad Street, Chattanooga, Tennessee 37402

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: August 27, 1991. (TS 91-09)

Description of amendment request: The proposed amendment would revise the Technical Specification (TS) Tables 3.3-3, 3.3-4, 3.3-5, 4.3-2, 3.3-6, 4.3-3 and the Bases for Section 3.9.3 related to the Containment Gas and Particulate Radiation Monitor System and the Containment Purge Air Radiation Monitor System. As a result of the proposed changes: (1) the isolation signal generated by the Containment Gas and Particulate Radiation Monitors would be deleted; (2) the exception to TS Section 3.0.4 would be applied to the Containment Purge Air Exhaust Monitor Radioactivity-High Isolation signals and to the Manual Containment Ventilation Isolation signals in Table T3.3-3; (3) Table 3.3-3, Action Statement 19, would be clarified to specify that the Containment Purge Supply and Exhaust Valves (not the containment ventilation isolation valves) must be shut when the requirements for the minimum number of operable channels for the Containment Purge Air Exhaust Radiation Monitor is not satisfied; (4) Table 3.3-6, Action Statement 28, would be changed to clarify the plant operating modes corresponding to the operability requirements for the Containment Air Purge Radiation Monitor; and (5) the footnotes and Table 3.3-3 would be clarified to indicate that two switches must be operated simultaneously to initiate a manual trip of the Containment Spray Actuation System and the Phase "B" Isolation Actuation System.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the

issue of no significant hazards consideration which is presented below.

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to SQN TSs involve equipment and the requirements for the equipment that monitor containment radiation conditions and initiate actions to mitigate significant releases of radiation to offsite. This equipment is not the source of any accident, and these changes will not increase the probability of an accident previously evaluated.

The removal of the containment ventilation isolation (CVI) initiation from the containment gas and particulate radiation monitors reduces the diversified means for automatically isolating the purge and containment radiation monitor penetrations; however, the SQN safety analysis does not take credit for this additional function. Therefore, this specification and bases change will not increase the offsite dose evaluation in the safety analysis and the change will not significantly increase the consequences of an accident. The exclusion to TS 3.0.4 for manual and containment purge air exhaust monitors will maintain the requirement to ensure the isolation of containment release paths to outside without limiting operation mode changes when an acceptable level of safety for continued operation is provided. By maintaining the containment purge line valves closed, there is no impact to the safety analysis for offsite dose and no increase in the consequences of an accident.

The change to the action requirements for the CVI instrumentation still ensures closure of release pathways to outside environs.

The lines for containment gas and particulate radiation monitors are not required to be maintained closed because they are closed loops that are qualified to containment Phase A pressure, and they can only communicate with the secondary containment, which provides for filtering and isolation on high radiation. These lines cannot communicate directly with outside and will isolate on safety injection and manual containment isolation Phase A a Phase B signals through the CVI logic. This action requirement change will allow operators to keep containment radiation monitoring equipment in service to diagnose potential accident conditions or equipment failures. This change will not affect the offsite dose evaluations found in SQN's safety analysis and therefore will not increase the consequences of an accident. The clarification of the containment purge air radiation monitor action requirements and correction of TS Table 3.3-3 footnote notation are administrative in nature and do not change the intent or application of any TS. Therefore, there is no increase in the consequence of an accident created by these administrative changes.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The equipment and specifications involved in the proposed change provide for containment radiation monitoring and the actuation of accident mitigation devices to limit offsite dose as assumed in the safety analysis. This equipment is not a source of any accident, and these changes will not modify any equipment or the operation of any equipment such that a new or different kind of accident is created.

3. Involve a significant reduction in a margin of safety.

The margin of safety provided for offsite dose considerations by SQN's safety analysis is unaffected by these proposed changes. The radiation release paths for offsite dose evaluations are maintained the same for the action requirements, and the CVI actuations are the same as assumed in the safety analysis. Therefore, there is no increase in the offsite dose for postulated accidents and these changes will not involve a significant reduction in any margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: August 21, 1989 as supplemented September 1, 1989

Description of amendment request: The proposed amendment would remove all line items using the term "status" in Technical Specification (TS) Table T3.3-10, "Post-Accident Monitoring Instrumentation," and TS Table 4.3-10, "Post-Accident Monitoring Instrumentation Surveillance Requirements." In addition, the line item on containment vessel hydrogen would be removed from the two above tables, and a monthly channel check for the hydrogen analyzers would be added to TS 3/4.6.4, "Combustible Gas Control." Also, changes to the bases would be made to clarify that the hydrogen analyzers are part of the plant post-accident monitoring instrumentation. Finally, several administrative changes would be made for clarification purposes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

The proposed changes do not involve a significant hazards consideration because the operation of the Davis-Besse Nuclear Power Station, Unit No. 1, in accordance with these changes would:

1. Not involve a significant increase in the probability or consequences of an accident previously evaluated because no hardware changes are involved and all accidents remain bounded by previous analyses and no new malfunctions have been created. [10 CFR 50.92(c)(1)]

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because the accident conditions and assumptions are not affected since no hardware changes are being made. On matters related to nuclear safety, all accidents are bounded by previously analysis and no new malfunctions are involved. [10 CFR 50.92(c)(2)]

3. Not involve a significant reduction in a margin of safety since the information provided by the line items being deleted is obtained by available instrumentation or annunciation and, therefore, the information available has not been reduced. [10 CFR 50.92 (c)(3)]

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

NRC Project Director: John N. Hannon

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: June 28, 1991

Description of amendment request: The proposed change to the Technical Specifications would incorporate the operability and surveillance requirements for power operated relief valves (PORVs) and block valves in accordance with the intent of Generic Letter 90-06.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the

licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated. The proposed change to the operability and surveillance requirements for the PORVs does not impact the probability or consequences of any previously evaluated accident. The proposed operability and surveillance requirements provide additional assurance that the PORVs are available to mitigate the consequences of a [s]team [g]enerator [t]ube [r]upture and overpressure events with the reactor coolant average temperature [less than] 350°F.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed operability and surveillance requirements do not impact the operation of the PORVs or their associated block valves. No new accident precursors are generated with the proposed change. Therefore, a new or different accident from those previously evaluated has not been created.

3. Involve a significant reduction in a margin of safety. The proposed change in operability and surveillance requirements does not modify or impact any accident analysis assumptions. These changes represent additional restrictions to further ensure that the PORVs are available to mitigate the consequences of a [s]team [g]enerator [t]ube [r]upture and an overpressure event with reactor coolant average temperature [less than] 350°F. Therefore, the change to the operability and surveillance requirements will not reduce the margin of safety.

Using the examples identified in the FEDERAL REGISTER, Vol 51, No. 44, of March 6, 1986 that are not considered likely to involve significant hazard considerations, the proposed changes are similar to examples (ii) and (vii). Example (ii) is "a change that constitutes an additional limitation, restriction, or control not presently included in the technical specification..." The proposed change formally incorporates additional limitations and restrictions regarding PORV operability which have not previously been included in the Technical Specifications.

Example (vii) is "a change to conform a license to changes in the regulations or regulatory requirement, where the license change results in very minor changes to facility operations, clearly in keeping with the regulations." The proposed change conforms with the regulatory requirements specified in Generic Letter 90-06 and requested pursuant to 10 CFR 50.54.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

NRC Project Director: Herbert N. Berkow

Notice of Issuance of Amendment To Facility Operating License

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application 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.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: November 5, 1990, as supplemented on June 11 and August 19, 1991.

Brief description of amendments: The amendments modify the Technical Specifications (TS) for both units in accordance with the guidance provided in the Nuclear Regulatory Commission's Generic Letter (GL) 88-17, "Loss of Decay Heat Removal," dated October 17, 1988. The changes to TS 4.9.8.1 will change the flow rates currently specified for Mode 6 (Refueling) operation. The changes requires that a minimum of 1500 gpm is required regardless of the Reactor Coolant System (RCS) inventory level. The reduced flow rates will decrease the likelihood of air ingestion into the RCS resulting in shutdown cooling in (SDC) pump vortexing which could lead to pump failure and subsequent loss of the decay heat removal capability.

The amendments also change the TS Bases 3/4.9.8 to support the change in the minimum specified flow rate for SDC during Mode 6 operation. The Bases also indicate that shutdown cooling flow must provide sufficient heat removal to match core decay heat generation and maintain the core exit temperature within the Mode 6 limit.

Date of issuance: September 11, 1991

Effective date: September 11, 1991

Amendment Nos.: 160 and 140

Facility Operating License Nos. DPR-53 and DPR-69: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 28, 1990 (55 FR 49446) The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated September 11, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: August 23, 1990, as supplemented on September 28, 1990, and June 28, 1991.

Brief description of amendments: The amendments change specific titles of managers throughout the Technical Specification (TS) Section 6.0, Administrative Controls, to be consistent with the organization of

Baltimore Gas and Electric Company at the Calvert Cliffs' facilities as of October 1, 1990. TS 6.5.1.2 deletes specific titles for members of the Plant Operations and Safety Review Committee (POSRC), denotes the areas of expertise for the POSRC members, and adds a requirement for the Plant General Manager to appoint the POSRC members. A new TS, 6.5.1.3, specifies that the POSRC Chairman and Alternate Chairman are appointed by the Plant General Manager. Several TS in Section 6.5 are renumbered, some removed, and the POSRC functions are changed. A new TS, 6.5.1.8d, is added requiring POSRC to evaluate root causes and recommended corrective actions.

TS Sections, 6.5.2 and 6.5.3, were added to describe and provide the requirements for the use of committees or individuals to perform selected reviews in lieu of reviews by the POSRC. Several TS in Section 6.8 Procedures were reorganized, renumbered, and new conditions relating to the Procedure Review Committee and Qualified Reviewer Program were added. A requirement to maintain records of the Procedure Review Committee was added to TS Section 6.10.

Date of issuance: September 11, 1991

Effective date: September 11, 1991

Amendment Nos.: 161 and 141

Facility Operating License Nos. DPR-53 and DPR-69: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 17, 1990 (56 FR 42092) The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated September 11, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: August 17, 1987, as supplemented May 30, 1990, June 29, 1990, August 8, 1991, and August 29, 1991.

Brief Description of amendments: The amendments change the licenses to extend the expiration dates of these licenses from February 7, 2010, to September 8, 2016, for Unit 1, and from February 6, 2010, to December 27, 2014, for Unit 2.

Date of issuance: September 12, 1991

Effective date: September 12, 1991

Amendment Nos.: 154/186

Facility Operating License Nos. DPR-71 and DPR-62. Amendments revise the licenses.

Date of initial notice in **Federal Register:** October 3, 1990 (55 FR 40460) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 12, 1991. Submittals dated August 8, 1991 and August 29, 1991, provided clarification and did not alter the initial action request or the No Significant Hazards Consideration Determination.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: May 15, 1991

Brief description of amendment: The amendment addresses commitments made by the licensee in response to NRC Generic Letter 90-06. The changes to TS T3/4.4.4, Relief Valves, and 3/4.4.9.4, Overpressure Protection Systems, are intended to increase the availability and reliability of the power operated relief valves.

Date of issuance: September 19, 1991.

Effective date: September 19, 1991.

Amendment No. 27

Facility Operating License No. NPF-63. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** June 26, 1991 (56 FR 29270) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 19, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of application for amendments: November 28, 1988, June 26, 1989, October 23, 1989, March 23, 1990 and July 26, 1991 (inadvertently published as October 10, 1989)

Brief description of amendments: The amendments revise the pressure/temperature operating limits to reflect the requirements of Regulatory Guide 1.99, Revision 2.

Date of issuance: September 5, 1991

Effective date: September 5, 1991

Amendment Nos.: 114 and 111

Facility Operating License Nos. DPR-19 and DPR-25. The amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** March 21, 1990 (55 FR 10530). The March 23, 1990 submittal provided additional clarifying information and did not change the initial no significant hazards consideration determination. The July 26, 1991, submittal provided clarification of the Bases section and did not change the technical content. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 5, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station Units 1 and 2, Lake County, Illinois

Date of application for amendments: June 2, 1989 as supplemented June 18, 1991

Brief description of amendments: The amendments revised the Reactor Coolant System section of the Technical specifications to allow the use of the Bechtel-KWU Alliance sleeving methodology for repair of the steam generator tubes.

Date of issuance: September 10, 1991

Effective date: September 10, 1991

Amendment Nos.: 130 and 119

Facility Operating License Nos. DPR-39 and DPR-48. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 26, 1989 (54 FR 31103) The June 18, 1991, submittal provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 10, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: August 20, 1990.

Brief description of amendment: This amendment extends surveillance intervals and allowed out-of-service time for instrumentation associated with

the reactor protection system, emergency core cooling system, control rod block function, and isolation function.

Date of issuance: September 6, 1991
Effective date: September 6, 1991
Amendment No.: 75
Facility Operating License No. NPF-43. The amendment revises the Technical Specifications
Date of initial notice in **Federal Register:** April 3, 1991 (56 FR 13662) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 6, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: January 30, 1991
Brief description of amendments: The amendments revise Technical Specification 6.8.2 to allow the Manager of Production Environmental Services or a designated Technical System Manager in the Production Support Department to review and approve Applied Science Center procedures which implement offsite environmental, technical, and laboratory activities.

Date of issuance: September 17, 1991
Effective date: September 17, 1991
Amendment Nos.: 125, 107
Facility Operating License Nos. NPF-9 and NPF-17: Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** March 20, 1991 (56 FR 11779) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 17, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Duke Power Company, Docket Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units 1, 2 and 3, Oconee County, South Carolina

Date of application for amendments: May 7, 1991, as supplemented May 13, August 1, and August 15, 1991.
Brief description of amendments: The amendments modify specifications having cycle-specific parameter limits by transferring these limits to a Core Operating Limits Report (COLR). In addition, the specified height of the active fuel assembly is revised to incorporate a new fuel design.

Date of issuance: September 16, 1991
Effective date: September 16, 1991
Amendment Nos.: 191, 191, 188
Facility Operating License Nos. DPR-38, DPR-47 and DPR-55. Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** June 26, 1991 (56 FR 29272) The August 1 and 15, 1991, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 16, 1991

No significant hazards consideration comments received: No.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Duquesne Light Company, et. al, Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of application for amendment: June 12, 1990 as supplemented by letters dated December 3, 1990, April 19, 1991, and July 25, 1991.
Brief description of amendment: The amendment modifies Technical Specification (TS) 3.4.9.3 relating to Overpressure Protection Systems (OPPS). Specifically, the amendment increases the maximum setpoint specified for the power-operated relief valves and increases the enable temperature below which the OPPS shall be operable. The amendment also modifies TSs 3.4.1.6, 3.5.4.1.2, 4.1.2.4.2, and 4.5.3.2 and the footnotes associated with TSs 3.1.2.4 and 3.5.3. Bases Sections 3/4 1.2, 3/4 4.9, 3/4 T5.2 and 3/4 5.3, and 3/4 5.4 would also be revised to reflect the changes described above.

T3Date of issuance: eptember 13, 1991
Effective date: September 13, 1991
Amendment No. 160
Facility Operating License No. DPR-66. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** September 19, 1990 (55 FR 38601). A revised notice was published June 12, 1991 (56 FR 27042). The licensee's letter dated July 25, 1991, provided a minor revision to the application but does not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 13, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: June 18, 1991
Brief description of amendment: The amendment revised Technical Specification 3.5.1.4 by adding the wording "...except during channel testing." The revision allows use of the shutdown bypass switch when testing the Reactor Protection System channels during power operation.

Date of issuance: September 9, 1991
Effective date: September 9, 1991
Amendment No.: 150
Facility Operating License No. DPR-51. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** August 7, 1991 (56 FR 37579) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 9, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: June 18, 1991 as supplemented July 22, 1991
Brief description of amendment: Figure 3.4-2 of the Arkansas Nuclear One, Unit 2 (ANO-2) Technical Specification (TS) entitled "Reactor Coolant System Temperature Limitations for 0 to 10 years of Full Power Operation," TS 3/4.4.9 and the associated Bases on the pressure/temperature curves were revised to reflect operational limitation through 21 effective full power years.

Date of issuance: September 10, 1991
Effective date: November 18, 1991
Amendment No.: 124
Facility Operating License No. NPF-6. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** August 7, 1991 (56 FR 37582) The additional information contained in the supplemented letter dated July 22, 1991, was clarifying in nature and thus, within the scope of the initial notice and did not affect the staff's proposed no significant hazards consideration determination. The Commission's

related evaluation of the amendment is contained in a Safety Evaluation dated September 10, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: April 9, 1991, as revised August 30, 1991

Brief description of amendment: The amendment changed Technical TSpecification 3.1.3.1 and its associated basis to allow continued plant operation for 72 hours with more than one full length or part length Control Element Assembly (CEA) inoperable due to an electronic or electrical problem in the Control Element Drive Mechanism Control System, provided that all affected CEAs remain trippable.

Date of issuance: September 18, 1991

Effective date: September 18, 1991

Amendment No.: 125

Facility Operating License No. NPF-6. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 12, 1991 (56 FR 27043) The additional information contained in the supplemented letter dated August 30, 1991, was clarifying in nature and thus, within the scope of the initial notice and did not affect the NRC staff's proposed no significant hazards considerations determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 18, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Entergy Operations, Inc., Docket Nos. 50-313 and 50-368, Arkansas Nuclear One, Unit Nos. 1 and 2, Pope County, Arkansas

Date of amendment request: October 26, 1989 as supplemented by letter dated June 18, 1991.

Brief description of amendments: The amendments revised the Technical Specifications (TSs) by adding requirements for additional Inadequate Core Cooling (ICC) Instrumentation. Specifically, operability and surveillance requirements for the Reactor Vessel Level Monitoring System (RVLMS) and the Hot Leg Level Measurement System (HLLMS) were added to the Unit 1 TS, and the operability and surveillance requirements for the RVLMS were added to the Unit 2 TS.

Date of issuance: September 9, 1991

Effective date: 30 days from the date of issuance

Amendment Nos.: 151 and 123

Facility Operating License Nos. DPR-51 and NPF-6. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 7, 1991 (56 FR 37582) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 9, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Entergy Operations, Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: November 9, 1990 and March 5, 1991

Brief description of amendment: The amendment revised the Technical Specifications to delete reference to the movable incore detector system (MICDS) and remove requirements for the associated containment penetration conductor over-current protective devices.

Date of issuance: September 16, 1991

Effective date: September 16, 1991

Amendment No.: 70

Facility Operating License No. NPF-38. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 12, 1991 (56 FR 27044) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 16, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Florida Power and Light Company, Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of application for amendment: April 17, 1991

Brief description of amendment: This amendment deletes the St. Lucie Unit 1 Technical Specification 3/4.2.2, "Total Planar Radial Peaking Factor - F^TG5XY" and all of its references.

Date of Issuance: September 10, 1991

Effective Date: September 10, 1991

Amendment No.: 109

Facility Operating License No. DPR-67: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 15, 1991 (56 FR 22466) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 10, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: April 6, 1990, as modified by letter dated May 2, 1991

Brief description of amendment: This amendment changes the surveillance requirements of TS 4.4.5 to permit the option of using the Babcock & Wilcox sleeving process for steam generator tube repair.

Date of issuance: September 11, 1991

Effective date: September 11, 1991

Amendment No.: 136

Facility Operating License No. DPR-72. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 22, 1990 (55 FR 34369) The information contained in the May 2, 1991, submittal provided additional clarifying information and did not affect the NRC staff's initial no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 11, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: November 29, 1990, as supplemented January 29, March 6, March 27, March 29, April 19, August 8, and August 19, 1991

Brief description of amendments: These amendments consist of changes to the Technical Specifications to provide for use of VANTAGE-5 fuel and increased operational flexibility.

Date of issuance: September 19, 1991

Effective date: Phase 1 - beginning with Unit 1 Cycle 4 startup Phase 2 - beginning with Unit 2 Cycle 3 star'up

Amendment Nos.: 43 and 23 (Phase 1); 44 and 24 (Phase 2)

Facility Operating License Nos. NPF-68 and NPF-81: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: May 1, 1991 (56 FR 20037), May 29, 1991 (56 FR 24211), and August 19, 1991 (56 FR 41147) The August 19, 1991 letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 19, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: November 29, 1990, as supplemented January 29 and March 6, 1991, and as revised March 29, 1991, as supplemented August 8, 1991

Brief description of amendments: The amendments changed the Technical Specifications to accommodate removal of the Resistance Temperature Detector (RTD) bypass system.

Date of issuance: September 19, 1991

Effective date: Phase 1 beginning with Unit 1 Cycle 4 startup and Phase 2 beginning with Unit 2 Cycle 3 startup

Amendment Nos.: 45 (Unit 1, Phase 1); 46 and 25 (Units 1 and 2, Phase 2)

Facility Operating License Nos. NPF-68 and NPF-81: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: May 28, 1991 (56 FR 24101) and August 19, 1991 (56 FR 41147) The letters dated July 16, August 5, and August 19, 1991, did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 19, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: June 11, 1991

Brief description of amendment: The amendment adds Technical Specification 4.3.I which requires an inservice inspection program for piping to be performed as identified in Generic Letter (GL) 88-01 or in accordance with alternate measures approved by the staff.

Date of Issuance: September 12, 1991

Effective date: September 12, 1991

Amendment No.: 154

Facility Operating License No. DPR-16. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: July 10, 1991 (56 FR 31434) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated September 12, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket No. 50-499, South Texas Project, Unit 2, Matagorda County, Texas

Date of amendment request: June 12, 1990, as supplemented by letter dated July 17, 1991 (published in Federal Register as June 6, 1990).

Brief description of amendment: The amendment deleted the autoclosure interlock portion of the Surveillance Requirements pertaining to TS T3/4.5.6, Residual Heat Removal System.

Date of issuance: September 18, 1991

Effective date: September 18, 1991 and to be implemented prior to restart from the second refueling outage, which is presently scheduled to begin in September 1991.

Amendment No.: Amendment No. 18

Facility Operating License No. NPF-80. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 22, 1990 (55 FR 34371) The July 17, 1991, submittal provided additional clarifying information and did not change the initial no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 18, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment requests: September 15, 1989 and January 8, 1991, as amended on May 23, 1991.

Brief description of amendments: The amendments revised the Technical Specifications (TSs) by relocating several cycle-specific core operating limits from the TS to the Core Operating Limits Report (COLR). The impacted TSs are amended to note that the limit has been relocated to the COLR and the reference to the Radial Peaking Factor Report is replaced by a reference to the COLR. Additionally, the COLR description in the Administrative Controls section of the TS has been expanded to provide more information.

Date of issuance: September 9, 1991

Effective date: September 9, 1991

Amendment Nos.: Amendment Nos. 27 and 17

Facility Operating License Nos. NPF-76 and NPF-80. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: December 26, 1990 (55 FR 53071) and March 6, 1991 (56 FR 9380) The May 23, 1991, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 9, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy, Center, Linn County, Iowa

Date of application for amendment: April 1, 1991

Brief description of amendment: The amendment revised License Condition 2.B(4) by replacing the numerical limits for special nuclear material, source, and byproduct materials with a more generalized description. Condition 2.B(5)

was deleted, and Condition 2.B(6) was renumbered 2.B(5).

Date of issuance: September 13, 1991
Effective date: September 13, 1991
Amendment No.: 176
Facility Operating License No. DPR-49. Amendment revised the License.
Date of initial notice in **Federal Register:** August 7, 1991 (56 FR 37586) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 13, 1991. No significant hazards consideration comments received: No.
Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S. E., Cedar Rapids, Iowa 52401.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy, Center, Linn County, Iowa

Date of application for amendment: March 8, 1991
Brief description of amendment: The amendment revised the Operating License by extending the effective date of the "Plan for the Integrated Scheduling of Plant Modifications, for the Duane Arnold Energy Center" from May 3, 1991 to May 3, 1996.
Date of issuance: September 13, 1991
Effective date: September 13, 1991
Amendment No.: 177
Facility Operating License No. DPR-49. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** August 7, 1991 (56 FR 37585) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 13, 1991. No significant hazards consideration comments received: No.
Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S. E., Cedar Rapids, Iowa 52401.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: June 6, 1991
Brief description of amendment: The amendment changes TS 3/4.6.4.2, "Electric Hydrogen Recombiners" to replace TS Figure 3.6-2, "Hydrogen Recombiner Acceptance Criteria Flow vs. Containment Pressure" with a series of equations to be incorporated in plant procedures. In addition, the hydrogen recombiner temperature and flow requirements currently addressed in TS 4.6.4.2.4.b.4 are addressed in TS 4.6.4.2.b.4 and 4.6.4.2.b.5, respectively.
Date of issuance: September 19, 1991
Effective date: September 19, 1991
Amendment No.: 63
Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** June 26, 1991 (56 FR 29278) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 19, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: December 21, 1990 (Reference LAR 90-13)
Brief description of amendments: These amendments revised the combined Technical Specifications for the Diablo Canyon Power Plant Unit Nos. 1 and 2 to (a) allow operation of the subsystems of the emergency core cooling system (ECCS) associated with the centrifugal charging pumps (CCPs) with the recirculation (miniflow) lines open during the injection phase of ECCS operation, (b) provide additional margin between the minimum and maximum CCP and safety injection (SI) pump flow requirements, and (c) provide a surveillance requirement and additional margin for the difference between minimum and maximum individual injection line flows (flow imbalance) for both the CCP lines and the SI pump lines.
Date of issuance: September 5, 1991
Effective date: September 5, 1991
Amendment Nos.: 65 and 64
Facility Operating License Nos. DPR-80 and DPR-82: The amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** January 23, 1991 (56 FR 2252) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 5, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: March 18, 1991 and May 3, 1991 (reference Licence Amendment Request LAR 91-02)
Brief description of amendments: These amendments revised the combined Technical Specifications for the Diablo Canyon Power Plant Unit Nos. 1 and 2 by changing TS 3/4.7.7.1, "Snubbers," and the associated Bases to make the snubber visual inspection intervals and corrective actions conform to the recommendations of Generic Letter 90-09, "Alternative Requirements for Snubber Visual Inspection Intervals and Corrective Actions."
Date of issuance: September 6, 1991
Effective date: September 6, 1991
Amendment Nos.: 66 and 65
Facility Operating License Nos. DPR-80 and DPR-82: The amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** May 15, 1991 (56 FR 22471) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 6, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Portland General Electric Company, et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: September 9, 1988
Brief description of amendment: The amendment revises the pressurizer low-pressure safety injection setpoint. This new setpoint is necessary to accommodate a change to a different transmitter design used to measure narrow-range pressurizer pressure. The different transmitter design was adopted because of repeated failures of the previous design.
Date of issuance: September 13, 1991
Effective date: September 13, 1991
Amendment No.: 171
Facility Operating License No. NPF-1: The amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** March 3, 1989 (56 FR 9111) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 13, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Branford Price Millar Library, Portland State University, 934 S.W. Harrison Street, P.O. Box 1151, Portland, Oregon 97207

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: February 20, 1991 and supplements dated July 1, 1991 and July 30, 1991.

Brief description of amendments: These amendments revised the general requirements on the applicability of limiting conditions for operation and surveillance requirements in Section 3.0.3, 3.0.4, 4.0.3 and 4.0.4 and update the corresponding Bases section in accordance with guidance provided in Generic Letter 87-09.

Date of issuance: September 17, 1991

Effective date: Both units, effective as of date of issuance and shall be implemented within 90 days of the date of issuance.

Amendment Nos. 131 and 110

Facility Operating License Nos. DPR-70 and DPR-75. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 15, 1991 (56 FR 22475) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 17, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of application for amendments: June 28, 1991

Brief description of amendments: These amendments revise TS 3/4 5.2, "ECCS Subsystems - avg Greater Than or Equal to 350°F," and 3/4 6.3, "Containment Isolation Valves." These amendments add a surveillance requirement to TS T3/4 5.2 which would verify, every twelve hours, the position of the containment emergency sump isolation valves, and the emergency core cooling pump and containment spray pump mini-flow valves. Valve alignment clarification has been added to TS 3/4 6.3 for the containment emergency sump valves listed in TS Table 3.6-1 and addressed by the surveillance being added to 3/4 5.2. An action statement has been added to TS 3/4 5.2 to invoke TS 3/4 6.1.1 in the event containment integrity is breached.

Date of issuance: September 5, 1991

Effective date: September 5, 1991

Amendment Nos.: Unit 2; 98 and Unit 3; 87

Facility Operating License Nos. NPF-10 and NPF-15:

The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 24, 1991 (55 FR 33961) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 5, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant Units 1 and 2, Hamilton County, Tennessee

Date of application for amendment: May 24, 1991 (TS 91-06)

Brief description of amendment: These amendments would revise the snubber visual examination requirements to be consistent with the guidance contained in Generic Letter 90-09, "Alternative Requirements for Snubber Visual Inspection Intervals and Corrective Actions."

Date of issuance: September 10, 1991

Effective date: September 10, 1991

Amendment No.: 153 for Unit 1; 143 for Unit 2

Facility Operating License Nos. DPR-77 and DPR-79: Amendments revise the technical specifications.

Date of initial notice in **Federal Register:** June 26, 1991 The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 10, 1991.

No significant hazards consideration comments received:

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: March 15, 1991

Brief description of amendment: This amendment revised Technical Specification 4.6.1.1.a to clarify that some valves which provide reactor primary containment integrity are manual while other valves are automatic but deactivated and secured in a closed position.

Date of issuance: September 11, 1991

Effective date: September 11, 1991

Amendment No.: 62

Facility Operating License No. NPF-30. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 29, 1991 (56 FR 24221) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 11, 1991. No significant hazards consideration comments received: No.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: March 5, 1991, and supplemented by letter dated July 24, 1991.

Brief description of amendment: This amendment changes Technical Specification Sections 4.4.9.3.2, 4.5.2.d, and associated Bases to delete surveillance testing requirements associated with the Autoclosure Interlock (ACI) feature for the Residual Heat Removal suction isolation valves. This change allows implementation of plant modifications which will delete the ACI feature from these valves.

Date of Issuance: September 12, 1991

Effective date: September 12, 1991

Amendment No.:

Amendment No. 49

Facility Operating License No. NPF-42. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 3, 1991 (56 FR 13673) The July 24, 1991, submittal provided additional clarifying information and did not change the initial no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 12, 1991

No significant hazards consideration comments received: No.

Local Public Document Room Locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621.

Dated at Rockville, Maryland, this 25 day of September 1991.

For the Nuclear Regulatory Commission
Bruce A. Boger,
Director, Division of Reactor Projects - III/IV/V Office of Nuclear Reactor Regulation
[Doc. 91-23602 Filed 10-1-91; 8:45 am]
BILLING CODE 7590-01-D

[Docket No. 50-461]

Illinois Power Co., et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 59 to Facility Operating License No. NPF-62 issued to the Illinois Power Company (IP) and Soyland Power Cooperative, Inc., (the licensee) for operation of the Clinton Power Station, Unit 1, located in DeWitt county, Illinois. The amendment was effective as of the date of issuance.

This amendment to the surveillance requirements in Technical Specification 4.8.1.1.2 revised the conditions for test starting of the diesel generators consistent with the recommendations in NRC Generic Letter 84-15.

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 licensee amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this act was published in the **Federal Register** on February 18, 1988 (53 FR 4920). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact related to this action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated October 30, 1987 and revised June 30, 1989; (2) Amendment No. 59 to License No. NPF-62; (3) Safety Evaluation dated September 24, 1991; and (4) Environmental Assessment and Finding of No Significant Impact dated January 22, 1991 (56 FR 4309). All of these items are available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street NW., Washington, DC, and at the Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III/IV/V.

Dated at Rockville, Maryland this 24th day of September 1991.

For the Nuclear Regulatory Commission.
John N. Hannon,
Director, Project Directorate III-3, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.
[FR Doc. 91-23690 Filed 10-1-91; 8:45 am]
BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-29732; File No. SR-GSCC-91-01]

September 24, 1991.

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Temporarily Approving a Proposed Rule Change Relating to Yield Trades Converted to Priced Trades at the Time of Comparison

On April 24, 1991, pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-GSCC-91-01) concerning comparison and netting of pre-auction, when-issued trades in U.S. Treasury securities. Notice of the proposal was published in the **Federal Register** on May 22, 1991, to solicit comments from interested persons.[2] No comments were received. This Order approves the proposal until January 31, 1992.

Description

The proposed rule change will allow GSCC to compare and net, prior to the U.S. Treasury Department ("Treasury") auction,[3] trades between participating members in Treasury note and bond issues that have been executed on the basis of the current market yield.[4] Such trades will be eligible for netting if they otherwise meet GSCC eligibility requirements.[5]

Currently, once yield trades are compared and reported to members, the data is deleted from GSCC's system. Members, therefore, are required to resubmit yield trades after the Treasury auction for final comparison and netting on a final price basis.

The proposed rule change will allow GSCC to maintain yield trades in its system.

Under the proposal, members will submit to GSCC trade data for yield trades by 10 p.m.[6] The member will

[1] 15 U.S.C. 78s(b).

[2] Securities Exchange Act Release No. 29195 (May 15, 1991), 56 FR 23604.

[3] The Treasury relies on auctions carried out by the Federal Reserve System to sell new notes and bonds. The Treasury announces a new issue a week or more before the auction date. The announcement states the amount to be issued, the maturity date of the securities and their denomination. In addition the announcement designates the series and the identifying CUSIP numbers for the securities to be issued. Once the auction is completed, the actual price is established based on the successful bidder's yield bid so that the yield that was bid equals the actual yield-to-maturity. For example, if the Treasury has allocated $155 billion to 10 year Treasury bonds, and a yield bid of 7.41% is entered, the price of the 10 year bonds would be $9,812.70 billion. The price, however, is usually expressed in terms of $100 of maturity value carried to three decimal places (*e.g.*, 98.127). See Federal Reserve Bank of New York, fedpoints 41.

[4] GSCC members frequently trade not only before issuance of the securities but also before an issuance price has been set. GSCC member purchases and sales of securities prior to the auction date ("when issued trades") which have been successfully compared typically are scheduled for settlement on a later date ("forward settling trades"). The term "forward trades" encompass trades executed prior to the Treasury auction commonly known as "when, as, and if, issued trades" ("when-issued trades"). "When-issued trading extends from the day the auction is announced until the issue day of the Treasury security traded. Securities Exchange Act Release Nos. 25740, May 24, 1988), 53 FR 19839 (approving GSCC's comparison service for forward settling trades); and 27902 (April 12, 1990) 55 FR 15055 extending GSCC's netting system to the settlement of forward settling trades that have been successfully compared on a final price basis).

[5] GSCC standards in this regard include the following: (1) The trade data must have been compared through GSCC's comparison system; (2) the trade data on the trade must be listed on a GSCC report that was made available to netting members; (3) netting of the trade will occur on or before its scheduled settlement date (*i.e.*, a trade is eligible for GSCC's netting system only if the trade will be settled through GSCC's facilities); (4) both parties to the trade are netting members, and (5) the underlying securities are eligible netting securities. Notwithstanding these requirements, GSCC may exclude any trade or trades from the netting system. GSCC Rules and Procedures, R. 11 section 2.

[6] Consistent with GSCC's procedure for submitting trade data for priced trades, members may submit trade data on trade day or a subsequent day, however, in order for GSCC to include the data in GSCC's automated processing cycle, the data must be submitted by 10 p.m. Any trade data received after automated processing begins will be processed on the following day. GSCC expects all of its members will submit their yield trades (if any) to GSCC for comparison, even if those members elect not to submit their yield trades netting.

indicate the yield in the appropriate information field and leave the price field blank.[7] GSCC will compare the trade on the basis of the yield. Successful comparison only will occur if the information submitted by both sides to the trade agree as to quantity, security identification, contraparty and trade value.[8] If comparison does not generate a matched trade, the trade will pend in GSCC's system until the trade is either compared or deleted by GSCC.[9] On each business day, GSCC will report to its members through the comparison system output, each of the member's yield trades that have been converted to a priced trade.

In some cases, clearing members cannot submit the commission amount for the trade or submit the wrong commission amount. In order to avoid generating uncompared trades because a clearing member has failed to submit the commission, or the dealer has submitted a commission that does not agree with the Commission submitted by the broker, if the trades compares in all other respects, GSCC will compare the trade based on the commission amount submitted by the broker. Once a yield trade is compared by GSCC, the compared trade will constitute a valid, binding, and enforceable contract between the parties to the trade in every respect. Clearing members will have an ongoing obligation to resolve the commission discrepancies. To facilitate resolution of the commission discrepancy, GSCC will make available to the counterparties of any trade with a commission difference daily reports reflecting previous trade data.

At the time of conversion, GSCC will calculate the assumed coupon rate based on the par weighted average yield ("par weighted average") of trades compared by GSCC in each CUSIP[10] adjusted down to the nearest ⅛%. For example, assume a 30-year Treasury bond will be issued on September 15, 1992. The announcement date of the issue is September 1, 1992, and the auction date is September 8, 1992. If the par weighted average yield for trades compared by GSCC on September 1 is 8.30%, GSCC will adjust the par weighted average yield down to the nearest ⅛% (8.25%) and convert an eligible yield trade (in the same CUSIP) that was submitted on September 1 to a priced trade using 8.25% as the assumed coupon. If the par weighted average yield for yield trades compared on September 2 is 9%, meaning that the issue is trading at 9%, GSCC will convert an eligible yield trade submitted on September 2 to a priced trade using 9% as the assumed coupon. In addition, on September 2, GSCC will recalculate the assumed price for trades submitted on September 1 using the 9% as the new assumed coupon.

GSCC will use the U.S. Treasury standard conversion formula[11] to convert yield trades for any member that has not opted out of the conversion process.[12] The conversion process will generate a price for each trade so that *A* (*i.e.*, the price of the note or bond multiplied by the sum of one, and the nominal rate of return received in semi-annual installments) is equal to *B* (*i.e.*, the present value of the note or bond plus the assumed coupon rate.)[13]

For example, assume a yield trade occurs on March 20 involving a two-year Treasury note, to be issued on March 31, 1992, with a coupon rate of 7.125%, due on March 31, 1994, with interest payments on September 30 and March 31, having a yield of 7.19%. The assumed coupon as determined by GSCC would be 7.125,[14] and the converted price of the yield trade would be 99.881 per 100.[15] Each day until the coupon rate is

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[7] Upon submission of trade data, GSCC will validate and match the information in order to ensure that the details of each trade are in agreement. Securities Exchange Act Release No. 27902 (April 12, 1990), 55 FR 15066 at note 14.

[8] In the case of yield trades, the "trade value" will be the market yield. *Id.* In addition, GSCC may require or permit the member to submit additional or different identifying data. GSCC Rules and Procedures, Proc. II(B)(1). *E.g.*, a member may submit an internal identification number for the contraparty rather than a GSCC identification number. Telephone conversation between Jeffrey F. Ingber, Associate General Counsel, GSCC, and Sonia G. Burnett, Attorney, Branch of Transfer Agent Regulation, Division of Market Regulation, Commission, August 13, 1991.

[9] Periodically, GSCC issues to its netting members a Schedule for the Deletation of Uncompared Trade Data. GSCC's revised Schedule for the Deletion of Trade Data provides that uncompared trade data for yield trades will remain pendent in GSCC's comparison system until the issue date or reissue date. GSCC Rules and Procedures, R. 7, 4. See also, File No. SR–GSCC–91–01.

[10] The market yield of trades in each CUSIP that were submitted to GSCC on the day that comparison takes place will be weighted based on the relative size of each trade.

[11] See Federal Reserve Bank of Richmond, *Buying Treasury Securities*, Part II, section 8 and appendix A (1990). Government securities dealers comprising the over-the-counter ("OTC") trading market in when-issued securities use a Treasury Department conversion formula and an assumed coupon rate to calculate an assumed price for trades that have been executed on a yield basis. The assumed price is used by the dealers for internal control or surveillance purposes. See File No. SR–GSCC–91–01.

[12] Initially, participation in the conversion process will be voluntary. Yield trades between a member who has elected not to participate in the conversion service and a participating member will be compared by GSCC, but will not enter the net. Once the trade is compared, the trade data will be deleted from GSCC's trade processing system. GSCC may retain the trade data submitted by the non-participating member to monitor the member's credit exposures. See note 19 *infra* and accompanying text. GSCC's Board of Directors ("Board") believes that as GSCC and its members gain experience with the conversion process, it would be appropriate to require all netting member to participate. At the time GSCC desires to make the procedure mandatory, GSCC will file a proposed rule change with the Commission to that effect. Participating netting members will pay 15 cents for each side of a trade that is converted from a yield basis. See letter from Jeffrey F. Ingber, Associate General Counsel and Assistant Secretary, GSCC, to Ester Saverson, Branch Chief, Branch of Transfer Agent Regulation, Division of Market Regulation, Commission, dated June 14, 1991.

[13] The U.S. Treasury formula for converting note and bond yields to equivalent prices is:

$P[1+(r/s)(i/2)]=(C/2)(r/s)+(C/2)a\bar{n}+100\ v/^{n}$, where

P = price per $100, carried to three decimal places;

C = the annual stated interest rate;

i = nominal annual rate or return or yield, based on semi-annual interest payments;

n = number of full semi-annual periods from the issue date to maturity. If the issue date is a coupon frequency date, *n* will be one less than the number of full semi-annual periods remaining to maturity. Coupon frequency dates are the two semi-annual dates based on the maturity date of each note or bond issue;

r = either: (1) The number of days from the issue date to the first interest payment (regular or short first payment period); or (2) the number of days in fractional portion of long first payment period;

s = either: (1) The number of days in the full semi-annual period ending on the first interest payment date (regular or short first payment period), or (2) the number of days in the full semi-annual period in which the fractional portion of a long first payment period falls, ending at the onset of the regular portion of the first interest payment;

$v=/(1+i/2)$;

v^{n} = present value of *1* due at the end of *n* periods, which is $1/(1+i/2)^{n}$;

$a\bar{n}$ = present value of *1* per period for *n* periods;

A = accrued interest, if any.

[14] If the par weighted average for trades on March 20th was 7.130, GSCC would adjust the weighted average down to 7.125. In this example, the actual coupon rate of the note is equal to the par weighted average coupon, adjusted down to the nearest 1/8%. In reality, the actual coupon may be near, but not equal to GSCC's assumed coupon.

[15] In the example, C = 7.125, i = .0719, r = 183, s = 183, n = 3 (There are 4 full semi-annual periods, but *n* is reduced by *1* because the issue date is a coupon frequency date.), $v^{n}=1/(1+.0719/2)^{3}$ or .899463648, and $a\bar{n}=(1=899463648)/.03595$, or 2.796560556.

Resolution:

(1) P[1 + .033595] = 3

.5625 = 9.962746981 + 89.9463648

(2) P[1.0395] = 103.471661781

(3) P = 103.471611781/1.03595

(4) P = 99.880893654

(5) P = 99.881.

set and publicly available, GSCC will recalculate the assumed coupon rate for the issue, convert new yield trades to priced trades and adjust the prices of previously converted, compared and netted yield trades.

GSCC will net each participating clearing member's trades with other participating members. Trades involving non participating members will not be netted and will be deleted from GSCC's system after the trades are reported to members as compared trades.

Consistent with GSCC's procedure for netting forward trades, GSCC will calculate a member's forward net settlement position on each successive business day from the first day when the price and the settlement value of a forward trade is compared until the processing cycle immediately prior to the scheduled settlement date for such position ("forward period"). GSCC will calculate a member's forward net settlement position by comparing the aggregate per value amount of each purchase and each sale of the securities with a distinct CUSIP that comprise the forward trades underlying such positions.

GSCC will report each forward net settlement position by CUSIP number in a report issued on the morning of each business day during the pre-auction period. At that time, the delivery or receive obligation is novated. GSCC, therefore, becomes the counterpart to the net delivery, receive, and related payment obligations between netting members that were created by the yield trades. The netted deliver or receive obligation in the when-issued security will be carried on GSCC's books until the settlement date. The netted delivery or receive obligation on forward trades automatically will convert into a net settlement position on its scheduled settlement day. At that time, for its own purposes and to lodge the necessary delivery and receive instructions with its clearing bank, GSCC will allocate deliver and receive obligations on a random basis to netting members with corresponding receive and deliver obligations of like quantity of the security with the same CUSIP number.

During the pre-auction period, GSCC will calculate the clearing fund contribution.[16] and the forward mark allocation [17] for participating and non-participating members. Converted trades comprising part or all of a netting member's forward net settlement position will be included in the calculation of the netting member's clearing fund contribution and forward mark allocation requirement if those trades involve two participating members. If a participating member traded with a non-participating member, the trade will not enter the net, so the participating member will not be required to pay forward mark allocations or clearing fund contributions for that trade (to the extent the trade would have offset or reduced the participating member's forward mark allocation or clearing fund contribution, the participating member also would gain to benefit). Obviously, GSCC will not routinely collect forward mark allocations or clearing fund contributions from non-participating members. Nevertheless, to monitor non-participating member financial condition and credit exposures, GSCC will calculate a non-participating member's forward mark allocation and clearing fund requirement based on the assumption that matched trades with participating members were included in the net. If at any time during the pre-auction period GSCC determines that the non-participating clearing member no longer satisfies GSCC's membership criteria for financial respnsibility reasons,[18] GSCC will collect the forward mark allocation and clearing fund contribution on account of matched trades excluded from the net.[19]

Converted trades will remain pendent in GSCC's system until final price data is submitted. At that time, the trades will be compared and netted on a final price basis. If the actual price of the trade differs from conversion price, GSCC will adjust the clearing member's forward mark payments and clearing fund contribution accordingly. The excess will be returned to, or the deficit collected from, the netting member.

II. Discussion

The Commission believes that GSCC's proposal is consistent with Section 17A of the Act. Specifically, the Commission believes that extending GSCC's netting system to trades executed on a yield basis will promote the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds in GSCC's custody or under GSCC's control consistent with Sections 17A(b)(3)(A) [20] and 17A(b)(3)(F).[21]

GSCC's proposed rule change is part of GSCC's continuing effort to integrate trades in Government securities into a centralized and automated clearance and settlement system.[22] Since its inception as a facility for the comparison of Government securities trades, GSCC has included in its net forward settling trades [23] and zero-coupon securities.[24] The Commission

[16] The required clearing fund deposit is based on the netting member's net settlement position. The total amount of the clearing fund required deposit equals: A+B, where, A=1.25(v), and B={Σ[x(y)−x]}÷20. For a detailed discussion of the calculation of the required clearing fund deposit, see Securities Exchange Act Release No. 27901 (April 12, 1990), 55 FR 15055.

[17] The forward mark allocation amount is the amount owed to GSCC based on the securities that GSCC anticipates that a netting member will be obligated, on the scheduled settlement date for the position, to either receive from GSCC or deliver to GSCC. See Securities Exchange Act Release No. 27902 (April 12, 1990), 55 FR 15066 for a detailed description of the calculation of the forward mark allocation.

GSCC will compute the required deposits based on the "system price" of the trade. The "system price" is the value as determined by GSCC that is as close as possible to the closing inter-dealer price. This calculation takes into consideration the average price for all trades compared for netting, weighing each trade according to its relative size. The calculation of the system price will be based on the par value of the trade and will take into account the assumed coupon rate, the price and accrued interest, if applicable. See Securities Exchange Act Release No. 27901 (April 12, 1990), 55 FR 15055.

[18] GSCC's Rules require registered brokers or dealers to maintain net worth of $50 million and excess net capital of $10 million; Government securities brokers or Government securities dealers are required to maintain $50 million net worth and $10 million excess liquid capital; inter-dealer brokers are required to maintain liquid capital or net capital of at least $4.2 million; and banks are required to maintain minimum equity capital of $250 million. See GSCC Rules and Procedures, R. 15.

[19] The contraparty to the yield trade will not have access to deposits collected by GSCC. The use of the forward mark allocation payments and required clearing fund deposits collected from members for activity in yield trades will be limited to the satisfaction of a clearing member's liability to GSCC for the clearing member's failure to fulfill its obligations to GSCC, and use as a source of collateral for financing member transactions. Telephone conversation between Jeffrey F. Ingber, Associate General Counsel and Assistant Secretary, GSCC, and Sonia G. Burnett, Attorney, Branch of Transfer Agent Regulation, Division of Market Regulation, Commission, August 13, 1991. See also, GSCC Rules and Procedures, R. 4, 6.

[20] 15 U.S.C. 78q–1(b)(3)(A).

[21] 15 U.S.C. 78q–1(b)(3)(F).

[22] GSCC was formed as a subsidiary of NSCC on May 24, 1988, to provide comparison services for Government securities. Securities Exchange Act Release No. 25740 (May 24 1988), 53 FR 19839. In August 1988, GSCC implemented its trade comparison system. Since that time, GSCC has expanded its services significantly. Among other things, GSCC has implemented and expanded its netting system for Government securities. Securities Exchange Act Release Nos. 27006 (July 7, 1989), 54 FR 29798; and 27901 (April 12, 1990), 55 FR 15055.

[23] Securities Exchange Act Release No. 27901, note 22 *supra*.

[24] Securities Exchange Act Release No. 28842 (January 31, 1991), 56 FR 5032

believes the proposal will promote the prompt and accurate clearance and settlement of securities transactions consistent with section 17A(b)(3)(A) in that the proposal will extend the benefits of GSCC's centralized, automated netting system to netting members that execute yield trades.

The Commission believes the proposal is consistent with section 17A(b)(3)(A) because it facilitates the safeguarding of securities or funds in GSCC's custody or control or for which it is responsible. The proposal will reduce netting member exposure to the risk arising from a contraparty default prior to settlement of the transaction. GSCC will interpose itself between parties to the trade and guarantee performance of each netting member's obligation sooner than under GSCC's current system for processing yield trades. In the event of a netting member default, GSCC will allocate the loss to netting members *pro rata* after applying any collateral GSCC holds from the defaulting member.[25] The netting of outstanding trades, coupled with GSCC's collection of forward mark allocation deposits from participating members will provide substantial additional protection to GSCC members.

Yield trades that are included in GSCC's netting system will increase the risk exposure to GSCC. The Commission believes that GSCC's proposal represents a reasonable approach designed to protect GSCC and to minimize the risk associated with the netting of yield trades. In order to reduce the risk, GSCC only will net trades where both sides of the trade are participants in the conversion service. GSCC's proposal will enable GSCC to measure the market risk and potential financial exposure presented by a specific transaction. In addition, GSCC has various mechanisms, including the forward mark allocation and clearing fund contribution to reduce the likelihood of exposure to GSCC.

Moreover, GSCC will monitor the financial condition of non-participating members. The monitoring and oversight provisions of the proposal may result in an increased clearing fund deposit if GSCC determines that the member's positions present an increased likelihood of exposure.

GSCC's method of converting yield trades to priced trades is based upon the Treasury's standard conversion formula. Government securities brokers and dealers that have used the conversion formula for internal surveillance purposes will be able to submit yield trades to GSCC for netting and receive the protections of GSCC's netting system as soon as the night the trade occurs. The Commission believes that to the extent GSCC members have relied on the conversion formula for internal surveillance purposes, the conversion of member trades using the Treasury's conversion formula will provide a reasonable basis on which to determine a participating member's clearing fund requirements.

The Commission believes that GSCC has the capacity to accommodate yield trades in its netting system. GSCC has satisfactorily operated its netting system for netting member trades in Government securities for more than two years without any operational problems. Eligible yield trades will be submitted to GSCC only in book-entry form and once the trades are converted to priced trades, settlement of net delivery obligations between each netting member and GSCC will be made over Fedwire. GSCC has represented to the Commission that it will be able to include yield trades in its netting system while continuing to operate its netting system accurately and within time frames established by GSCC during future average daily and peak processing days.

The Commission believes that GSCC's method of converting yield trades is reasonable in light of the historical use of the conversion formula by Government securities brokers and dealers who are GSCC members. The Commission notes, however, that because GSCC's proposal is voluntary, GSCC will need time to become familiar with managing the conversion service, and in particular the monitoring and oversight provisions.

The Commission, therefore, is approving the proposal on a temporary basis in order to allow GSCC and its membership to become familiar with netting yield trades. At the end of the temporary approval period the Commission expects that GSCC will make the conversion service mandatory for all GSCC netting members who execute yield trades. At that time, the Commission will consider GSCC's proposal for approval on a permanent basis.

For the reasons discussed above, the Commission preliminarily finds that the proposal is consistent with section 17A of the Act.

III. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–GSCC–91–01) be, and hereby is, approved on a temporary basis until January 31, 1992.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-23641 Filed 10-1-91; 8:45 am]

BILLING CODE 8010-01-M

[25] In the event a clearing member fails to satisfy its obligations to GSCC, GSCC will satisfy any loss by application of the defaulting clearing member's forward mark allocation payments and clearing fund deposits. Any remaining loss will be identified as a loss resulting from direct transactions (*i.e.*, a loss resulting from transactions executed directly between clearing members without the use of a Government securities broker) or a loss resulting from brokered transactions. Losses resulting from direct transactions will be allocated *pro rata* among clearing members that traded with the defaulting member (except inter-dealer brokers) based on the dollar value of trades with the defaulting member that are scheduled for settlement on the day of default. As for brokered transactions, 10% of a remaining loss that resulted from brokered transactions will be allocated among inter-dealer brokers on an equal basis, and 90% of the remaining loss will be allocated among all other netting members *pro rata* based on the dollar value of the trades with the defaulting member that are scheduled for settlement on the day of default. See GSCC Rules and Procedures, R. 4, section 8.

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Incorporated

September 26, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Belmac Corp.
Common Stock, $.02 Par Value (File No. 7–7282)

Datametrics Corp.
Common Stock, $.01 Par Value (File No. 7–7283)

International Game Technology
Common Stock, $.005 Par Value (File No. 7–7284)

International Specialty Products
Common Stock, $.01 Par Value (File No. 7–7285)

Lone Star Industries, Inc.
Common Stock, $1.00 Par Value (File No. 7–7286)

Nuveen Quality Income Municipal Fund
Common Stock, $.01 Par Value (File No 7–7287)

Revell-Monogram, Inc.
Common Stock, $.01 Par Value (File No. 7–7288)

Rhone-Poulenc S.A.
Units consisting of 1 American Depository Shares and 1 Warrant (File No. 7–7289)

Royal Oak Mines, Inc.
Common Stock, No Par Value (File No. 7–7290)

SPI Pharmaceuticals, Inc.
Common Stock, $.01 Par Value (File No. 7–7291)

United Merchants & Manufacturers
Common Stock, $1.00 Par Value (File No. 7–7292)
Xytronyx, Inc.
Common Stock, $.02 Par Value (File No. 7–7293)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 18, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–23640 Filed 10–1–91; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Region VIII Advisory Council Meeting

The U.S. Small Business Administration Region VIII Advisory Council, located in the geographical area of Denver, will hold a public meeting at 9 a.m. on Wednesday, November 6, 1991, at the U.S. Custom House, 721 19th Street, room 106, Small Business Administration, Denver, Colorado, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

FOR FURTHER INFORMATION CONTACT: Mr. Antonio Valdez, District Director, U.S. Small Business Administration, 999 18th St., Suite 701, Denver, Colorado, 80202, telephone (303) 844–3673.

Dated: September 20, 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91–23654 Filed 10–1–91; 8:45 am]

BILLING CODE 8025–01–M

Region VI Advisory Council Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of Oklahoma City, will hold a public meeting from 1:30 p.m. to 5 p.m. on Thursday, October 17, 1991, at Metro Tech Conference Center, 1900 Springlake Drive, Oklahoma City, Oklahoma, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

FOR FURTHER INFORMATION CONTACT: W. Bruce Robinson, District Director, U.S. Small Business Administration, 200 NW. 5th Street, suite 670, Oklahoma City, Oklahoma 73102, telephone (405) 231–5237.

Dated: September 20, 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91–23655 Filed 10–1–91; 8:45 am]

BILLING CODE 8025–01–M

Region III Advisory Council Meeting

The U.S. Small Business Administration Region III Advisory Council, located in the geographical area of Richmond, will hold a public meetng from 9 a.m. to 2 p.m. on Tuesday, October 15, 1991, at Piedmont Virginia Community College, room 814, Charlottesville, Virginia, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

FOR FURTHER INFORMATION CONTACT: Dratin Hill, Jr., District Director, U.S. Small Busines Administration, P.O. Box 10126, Federal Building, Richmond, Virginia 23240, telephone (804) 771–2741.

Dated: September 20, 1991.

Jean M. Nowak,

Director, Office of Advisory Councils

[FR Doc. 91–23652 Filed 10–1–91; 8:45 am]

BILLING CODE 8025–01–M

Region VI Advisory Council Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of Corpus Christi, will hold a public meeting from 1:30 p.m. on Tuesday, October 15, 1991, at the U.S. Small Business Administration, Corpus Christi Branch Office, 400 Mann Street, suite 403. Corpus Christi, TX to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

FOR FURTHER INFORMATION CONTACT: Gail E. Goodloe, Jr., District Director, U.S. Small Business Administration, 400 Mann Street, suite 403, Corpus Christi, TX 78401, telephone (512) 881–3301.

Dated: September 20, 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91–23653 Filed 10–1–91; 8:45 am]

BILLING CODE 8025–01–M

Small Business Investment Co., Maximum Annual Cost of Money to Small Business Concerns

13 CFR 107.302(a) and (b) limit maximum annual Cost of Money (as defined in 13 CFR 107.3) that may be imposed upon a Small Concern in connection with Financing by means of Loans or through the purchase of Debt Securities. The cited regulation incorporates the term "Debenture Rate", which is defined elsewhere in 13 CFR 107.3 in terms that require SBA to publish, from time to time, the rate charged on ten-year debentures sold by Licensees to the public, Notice of this rate will be published upon change in the Debenture Rate.

Accordingly, Licensees are hereby notified that effective the date of publication of this Notice, and until further notice, the Debenture Rate to be used for computation of maximum cost of money pursuant to 13 CFR 107.302 (a) and (b) is 8.33 percent per annum.

13 CFR 107.302 does not supersede or preempt any applicable law imposing an interest ceiling lower than the ceiling imposed by its own terms. Attention is directed to section 308(i) of the Small Business Investment Act, as further amended by section 1 of Public Law 99–226, December 28, 1985 (99 Stat. 1744), to that law's Federal override of State usury ceilings, and to its forfeiture and penalty provisions.

(Catalog of Federal Domestic Assistance Program No. 59.011, small business investment companies

Wayne S. Foren,

Associate Administrator for Investment.

Dated: September 25, 1991.

[FR Doc. 91–23656 Filed 10–1–91; 8:46 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

Bureau of Diplomatic Security

[Public Notice 1489]

Public Information Collection Requirements Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

SUMMARY: Under authority of 22 U.S.C. 4084, preemployment medical examinations of candidates for Foreign Service and their dependents are necessary before an appointment action can be made. The following summarizes the information collection proposal submitted to OMB:

Type of request—Reinstatement.
Originating office—Office of Medical Services.
Title of information collection—Medical History and Examination for Foreign Services.
Frequency—On occasion.
Form No.—DS–1843 (For persons 12 years and over) and DS–1622 (For children 11 years and under).
Respondents—Candidates for Foreign Service appointments and their dependents.
Estimated number of respondents—2,879.
Average hours per response—15 minutes.
Total estimated burden hours—720.
Section 3504(h) of Public Law 96–511 does not apply.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook (202) 647–3538. Comments and questions should be directed to (OMB) Marshall Mills (202) 395–7340.

Dated: September 20, 1991.

Sheldon J. Krys,

Assistant Secretary for Diplomatic Security.

[FR Doc. 91–23683 Filed 10–1–91; 8:45 am]

BILLING CODE 4710–43–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of noise Compatibility Program Boca Raton Airport, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the Noise Compatibility Program submitted by the Boca Raton Airport Authority, under the provisions of Title I of the Aviation Safety and Noise Abatement Act (ASNA) of 1979 (Public Law 96–193) and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On February 20, 1991, the FAA determined that the noise exposure maps submitted by the Boca Raton Airport Authority, under part 150, were in compliance with applicable requirements. On August 19, 1991, the Administrator approved the Boca Raton Airport Noise Compatibility Program. Eleven (11) of the fifteen (15) recommendations of the program were approved. Three (3) elements were disapproved for the purposes of part 150 and one (1) element was disapproved pending the submission of additional information.

EFFECTIVE DATE: The effective date of the FAA's approval of the Boca Raton Airport Noise Compatibility Program is August 19, 1991.

FOR FURTHER INFORMATION CONTACT: Tommy J. Pickering, P.E., Federal Aviation Administration, Orlando Airports District Office, 9677 Tradeport Drive, suite 130, Orlando, Florida 32827–3596, (407) 648–6583. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the Noise Compatibility Program for Boca Raton Airport, effective August 19, 1991. Under section 104(a) the Aviation Safety and Noise Abatment Act (ASNA) of 1979, (hereinafter referred to as "the Act") an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such program to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of part 150 program recommendations is measured according to the standards expressed in part 150 and the Act, and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against type or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal government.

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control system, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitation with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office, Orlando, Florida.

The Boca Raton Airport Authority submitted to the FAA on September 25, 1990, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from April, 1989, through September, 1990. The Boca Raton Aiport Noise exposure maps were determined by FAA to be in compliance with applicable requirements on

February 20, 1991. Notice of this determination was published in the **Federal Register** on March, 7, 1991.

The Boca Raton Airport study contains a proposed Noise Compatibility Program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to/or beyond the year 1992. It was requested that FAA evaluate and approve this material as a Noise Compatibility Program, as described in section 104(b) of the Act. The FAA began its review of the program on February 20, 1991, and was required by a provision of the Act to approve or disapprove the program within 180 days. Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained fifteen (15) proposed actions for noise mitigation on and off the airport. The FAA completed its review and determination that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective August 19, 1991.

Outright approval was granted for eleven (11) of the fifteen (15) specific program elements. Three (3) elements were disapproved for the purposes of part 150 and one (1) element was disapproved pending the submission of additional information. The approval action was for the following program elements:

Measure and description	NCP pages
1. Voluntary Runway 5 noise abatement turn to 3600 to climb west of I-95. Maintain heading until reaching 1,500 ft. This procedure is currently in effect.	3-11
FAA Action: Approved	
2. Establish a voluntary Runway 23 noise abatement turn to 2550 to climb over commercial area southwest of airport. Maintain heading until reaching 1,500 ft.	3-12
FAA Action: Approved	
3. Continue left hand traffic pattern on Runway 5.	2-11
FAA Action: Approved	
4. Continue right hand traffic pattern on Runway 23.	3-12
FAA Action: Approved	
5. Recommend corporate jet pilots use of NBAA noise abatement procedures, including "close-in" departure procedures.	3-24
FAA Action: Approved	
6. Airport to leave Visual Approach Slope Indicator (VASI's) on at all times to provide pilots with guidance regarding approach slope.	5-14
FAA Action: Approved	
7. Install on-airfield noise abatement signage.	5-21
FAA Action: Approved	
8. Extend the runway 500 feet at the southwest end.	5-16
FAA Action: Disapproved for the purposes of Part 150 in that it does not contribute to noise reduction. The NCP indicates that the runway extension would be for capacity enhancement and may be considered as an airport development action outside the Part 150 process.	
COMPLEMENTARY ACTIONS	
9. Establish a localizer approach to Runway 5.	5-15
FAA Action: Disapproved for the purposes of Part 150. There is no information in the NCP supporting this measure for noise compatibility purposes. This disapproval is limited to part 150 and should not be construed as a disapproval outside of the part 150 process relative to the potential capacity enhancement benefits of this measure.	
10. Establish a circling approach to either runway end (5/23) from the Palm Beach International (PBI) VOR.	5-16
FAA Action: Disapproved for the purposes of Part 150 in that it does not contribute to noise reduction. This disapproval is limited to part 150 and should not be construed as a disapproval outside of the part 150 process relative to the potential capacity enhancement benefits of this measure.	
LAND USE STRATEGIES	
11. Revised Zoning and Land Use Ordinances. Local jurisdictions should use the part 150 criteria as a minimum and apply more stringent land use controls which would restrict the future development of residential units within the 60 DNL contour and above.	9-3
FAA Action: Approved	
12. Revised Building Codes. Revise the building codes to require that adequate materials and techniques be used in achieving proper noise insulation in new construction.	9-4
FAA Action: Approved	
13. Enactment of Environmental Review Process. This program should establish a threshold to trigger an environmental review of existing or proposed development potentially located within the sensitive noise contours.	9-4
FAA Action: Approved	
14. Incorporation of Study Findings in Comprehensive Plans. The comprehensive plans for the City of Boca Raton and Palm Beach County should fully address the issue of aircraft noise on existing and proposed land use.	9-5
FAA Action: Approved	
15. Fee Simple Acquisition of residential zoned land in 65 and 70 DNL contours after implementation of other strategies.	9-5
FAA Action: Disapproved pending submission of additional information. The noise exposure maps do not depict residential uses within the 65 and 70 DNL contours either presently or in 1994. In addition, they do not establish a clear threat to the lands which are zoned but not yet developed as residential.	

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on August 19, 1991. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the Boca Raton Airport Authority.

Issued in Orlando, Florida on September 12, 1991.

James E. Sheppard,

Manager, Orlando Airports, District Office.

[FR Doc. 91-23668 Filed 10-1-91; 8:45 am]

BILLING CODE 4910-13-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 191
Wednesday, October 2, 1991

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).

BARRY GOLDWATER SCHOLARSHIP AND EXCELLENCE IN EDUCATION FOUNDATION

TIME AND DATE: 10:00 am, Wednesday, October 30, 1991.

PLACE: SD–116, Dirksen Senate Office Building, Washington, DC 20510.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

1. Report on financial status of the Foundation fund—
   A. Review of investment policy and current portfolio
   b. Review changes to the 1992/93 scholarship program

CONTACT PERSON FOR MORE INFORMATION: Gerald J. Smith, Executive Secretary, Telephone: (202) 755–2312.

Gerald J. Smith,

Executive Secretary,

[FR Doc. 91–23797 Filed 9–30–91; 12:40 pm]

BILLING CODE 4738–01–M

MERIT SYSTEMS PROTECTION BOARD

TIME AND DATE: 10:00 a.m., Monday, September 30, 1991.

PLACE: Eighth Floor, 1120 Vermont Avenue, NW., Washington, DC. 20419.

STATUS: The meeting will be closed to the public under Exemption 2 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED: Internal personnel rules and practices.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Robert E. Taylor, Clerk of the Board, (202) 653–7200.

Dated: September 27, 1991.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 91–23773 Filed 9–30–91; 9:22 am]

BILLING CODE 7400–01–M

Corrections

Federal Register
Vol. 56, No. 191
Wednesday, October 2, 1991

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.

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

Correction

In notice document 91-23042 appearing on page 48822, in the issue of Thursday, September 26, 1991, make the following correction:

On the same page, in the second column, in the **STATUS** line "closed" should read "open".

BILLING CODE 1505-01-D

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 290 (Sub No.5) (91-2)]

Quarterly Rail Cost Adjustment Factor

Correction

In notice document 91-6859 appearing on page 12259 in the issue of Friday, March 22, 1991, in the first column, in the file line at the end of the document, "FR Doc. 91-6359" should read "FR Doc. 91-6859".

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

10 CFR Part 13

RIN 3150-AD71

Program Fraud Civil Remedies Act

Correction

In rule document 91-22446 beginning on page 47132, in the issue of Wednesday, September 18, 1991, make the following corrections:

§ 13.2 [Corrected]

1. On page 47136, in the second column, in § 13.2(b), in the definition for *Initial decision*, in the last line "reconstruction." should read "reconsideration."

§ 13.6 [Corrected]

2. On page 47137, in the third column, in § 13.6(a)(2), in the ninth line"of" should read "or".

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-25274]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

Correction

In notice document 91-6871 beginning on page 12291 in the issue of Friday, March 22, 1991, make the following correction:

On page 12292, in the third column, in the file line at the end of the document, "FR Doc. 91-6371" should read "FR Doc. 91-6871".

BILLING CODE 1505-01-D

federal register

Wednesday
October 2, 1991

Part II

Department of Agriculture

Forest Service

Department of the Interior

Bureau of Land Management

36 CFR Part 254
43 CFR Parts 2090 and 2200
Land Exchanges; General Procedures; Proposed Rules

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 254

RIN 0596-AA42

Land Exchanges

AGENCY: Forest Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement the Federal Land Exchange Facilitation Act of August 20, 1988 (43 U.S.C. 1716) and would update the Forest Service land exchange regulations to reflect other authorities. On August 18, 1989, the Forest Service and the Bureau of Land Management (BLM) published separate proposed rules in the **Federal Register** (54 FR 34368 and 54 FR 34380, respectively). Public comments received by the two agencies recommended a greater degree of uniformity between the two regulations. To accomplish this goal, the Forest Service and BLM have made substantial changes to their respective proposed regulations and are publishing new proposals to provide an opportunity for the public to review the changes. The new proposed regulations incorporate provisions that are intended to streamline and expedite exchanges involving Federal and non-Federal lands. The principal provisions pertain to exchange agreements, assembled land exchanges, segregation, compensation for costs assumed, appraisal standards, bargaining, arbitration, approximately equal value exchanges, value equalization, cash equalization waiver, and simultaneous transfer of title. Because of the high degree of uniformity that exists between the Forest Service and BLM proposed rules, the public may submit one set of comments to either the Chief of the Forest Service or the Director of the BLM at the specified addresses. All comments received will be shared and jointly analyzed by the Forest Service and BLM.

DATES: Comments must be submitted in writing by December 2, 1991. Comments received or postmarked after this date may not be considered in the decisionmaking process on the issuance of the final rule.

ADDRESSES: Send comments to: Chief (5430), Forest Service, U.S. Department of Agriculture, P.O. Box 96090, Washington, DC 20090-6090, or Director (140), Bureau of Land Management, U.S. Department of the Interior, room 5555, Main Interior Building, 1849 C Street NW., Washington, DC 20240.

All comments sent to the Forest Service or BLM will be available for public review at the above BLM address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: James M. Dear, Lands Specialist, Forest Service, USDA, (202) 205-1361.

SUPPLEMENTARY INFORMATION:

Need for Rules

The purpose of the Federal Land Exchange Facilitation Act of August 20, 1988 (hereafter referred to as the Act) is to facilitate and expedite land exchanges under the authority of the Secretary of Agriculture and the Secretary of the Interior by streamlining and improving the procedures for such exchanges. The Act endorses the long-standing policy that land exchange is an important tool to consolidate landownership for purposes of more efficient management and to secure important objectives of resource management, enhancement, development, and protection; to meet the needs of communities; to promote multiple-use management; and to fulfill other public needs. The Act requires each Secretary to promulgate rules for exchanges of land.

Previous Rulemaking Efforts

A proposed rule to amend the Forest Service land exchange regulations, as contained in part 254 of title 36 of the Code of Federal Regulations (CFR), was published in the **Federal Register** on August 18, 1989 (54 FR 34368). On the same day, the Bureau of Land Management (BLM) published a proposed rule in the **Federal Register** (54 FR 34380) amending its land exchange regulations under parts 2200 and 2090 of title 43 of the CFR. Both rules were intended to reflect the amendments made by the Act to section 206 of the Federal Land Policy and Management Act of 1976 (FLPMA), including the following provisions: Exchange agreements, segregation, arbitration, bargaining, appraisal standards, approximately equal value exchanges, compensation for costs assumed, value equalization, cash equalization waiver, and simultaneous transfer of title.

Those proposed rules provided the public with an initial comment period of 45 days. A 60-day extension was granted on October 23, 1989 (54 FR 43185), and that extended comment period officially ended on December 1, 1989.

On November 14 and 15, 1989, the Forest Service and BLM held separate, informal public meetings in Denver, Colorado, to discuss the proposed rules concerning land exchanges. The objectives of the meetings were to answer questions regarding the intent of the rules in relationship to the Act, clarify any parts of the proposed rules that the public found unclear, and obtain an indication of what sections of the rules might need additional attention. Each meeting was attended by approximately 35 people who represented a cross section of the various groups or individuals interested in the exchange programs of the two agencies.

Need for Uniform Regulations

Those attending the public meetings suggested that the definitions of terms, appraisal standards, procedures for resolving appraisal disputes, assembled land exchange techniques, and procedures for conveying title in the regulations for both agencies should be similar.

By the end of the extended public comment period, the agencies had received a total of 141 comments from the public including Members of Congress, business entities, associations, attorneys, individuals, Indian Tribes, State and county agencies, and offices of Federal agencies. Although the majority of comments pertained to provisions contained in the Act, agency policy, and procedural requirements for conducting land exchanges, several comments recommended a greater degree of uniformity between the regulations developed by the Forest Service and BLM.

After considering the comments received, and in the interest of developing more uniform regulations, the agencies made substantial changes to their respective proposed rules. Because of these changes, the Departments of Agriculture and the Interior have decided that it is necessary to propose new rules, under CFR titles 36 and 43 respectively, in order to provide an opportunity for the public to review the changes. The new proposed rules for both agencies are very similar with differences limited to various statutory and administrative requirements. The differences are explained in this preamble under §§ 254.1 (Scope and applicability), 254.2 (Definitions), 254.3 (Requirements), 254.5 (Assembled land exchanges), 254.7 (Assumption of costs), and 254.12 (Value equalization; cash equalization waiver). These Forest Service sections correspond respectively to BLM sections at 43 CFR 2200.0-7 (Scope), 2200.0-5 (Definitions), 2200.0-6 (Policy), 2201.1-1 (Assembled land exchanges), 2201.1-3

(Assumption of costs), and 2201.6 (Value equalization; cash equalization waiver) of the preamble for the proposed rule.

Features of the Proposed Rule

The principal features of the proposed rule are keyed to the CFR section number and summarized as follows:

Section 254.1—Scope and Applicability

This section addresses the applicability of this proposed rule to exchanges involving Federal and non-Federal lands and associated interests, such as minerals and timber, and the applicability of certain indicated provisions of this proposed rule to other methods of Forest Service land acquisitions. It also provides a cross reference to supplemental guidance set forth in the Forest Service Manual and Handbooks. It establishes the authority of the Forest Service to conduct land-for-timber exchanges, including third party land-for-timber exchanges. The proposed rule would clarify that the status of the lands (lands reserved from the public domain for national forest purposes or acquired lands) as well as the purpose of a proposed exchange determine which National Forest System land exchange authority is appropriate for conducting an exchange. This section further clarifies that the exchange provisions of the Federal Land Policy and Management Act of 1976 are supplemental to the many other exchange authorities applicable to the National Forest System land. Paragraph (c) of this section makes clear that the provisions of this proposed rule apply to Federal lands in Alaska, except where these provisions conflict with the administration of the Alaska Native Claims Settlement Act or the Alaska National Interest Lands Conservation Act. Paragraph (d) of this section contains an exemption clause for those exchanges formally initiated prior to promulgation of this rule. Those exchanges may proceed under the prior regulations as provided for under the Act.

Paragraph (e) of this section would provide that when a land acquisition requires a national forest boundary extension, such extension shall be automatic upon approval by an authorized officer of an acquisition under Weeks Act authority. This provision would eliminate the need for the separate, parallel actions under current procedures, to accomplish a boundary extension and accompanying land acquisition.

Differences in corresponding sections of Forest Service and BLM (43 CFR 2200.0–7) rules are: the Forest Service has exclusive authority to automatically extend national forest boundaries to accommodate Weeks Act acquisitions of up to 3,000 acres of contiguous land; the Forest Service has exclusive authority to conduct tripartite land-for-timber exchanges; and BLM has exclusive authority regarding exchanges of coal held in private ownership (fee coal exchanges).

Section 254.2—Definitions

The Federal Land Exchange Facilitation Act of 1988 introduced new terms which require definition and explanation to ensure uniformity in the application of the provisions of the Act. Accordingly, this section of the proposed rule has been expanded significantly over the current regulations. The definitions in this section correspond to those of BLM in proposed 43 CFR 2200.0–5, with two exceptions: (1) In this rule an "assembled land exchange" involves only one exchange transaction and in BLM's rule it may involve more than one exchange transaction over a period of time; and (2) in this rule "Federal lands" are defined as lands administered by the Forest Service and in BLM's rule, this term is defined as lands administered by BLM.

Section 254.3—Requirements

This section sets forth the minimum requirements that would be applicable to all Forest Service exchanges. All exchanges must be subjected to certain tests of need, meet certain criteria, and be governed by certain limitations. This section would establish that exchanges are strictly voluntary transactions between the Forest Service and the non-Federal party and are discretionary on the part of the Secretary. This section further provides that exchanges shall be in the public interest, meet Federal land management and State and local resident needs, and achieve important public objectives. The intended uses of the lands to be conveyed by the Forest Service must not be in conflict with the management objectives on adjacent Federal lands. Land exchanges must be of equal value, involve lands within the same State, and be consistent with the provisions of approved land and resource management plans, where applicable. This is consistent with the present rule, but this proposed rule adds emphasis to landownership adjustment planning in forest plans. Other provisions provide for the automatic addition of lands when acquired by the Secretary of the Interior, to National systems or certain areas established by Act of Congress; refer to established environmental analysis policies and procedures; and set forth the requirements for the legal description of properties involved in an exchange.

Paragraph (h) of this section requires the Forest Service to reserve or retain such rights or interests as are necessary to protect the public interest on the lands or interests conveyed out of Federal ownership.

Paragraph (i) of this section of the proposed rule addresses hazardous substances. First, the paragraph requires each party to notify the other parties of any known incidence of hazardous substances on the involved lands. Second, the Forest Service is required to take necessary measures to determine if hazardous substances are present on the Federal and non-Federal lands. Additionally, the exchange parties are required to reach agreement regarding the removal or other remedial actions concerning such substances prior to completing the exchange.

With respect to Federal lands to be conveyed where hazardous substances were stored for one year or more, or known to have been released or disposed of during the time of Federal ownership, paragraph (i) of this section incorporates the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) at 42 U.S.C. 9620(h). In such instances the conveyance document shall include a covenant warranting that all necessary remedial action was done before conveyance and that any further remedial action found necessary after the transfer shall be completed by the United States, unless the non-Federal party is a potentially responsible party with respect to such lands. When Federal lands with known or possible exposure to hazardous substances are to be conveyed to a potentially responsible non-Federal party, a "hold harmless" agreement by the non-Federal party may be appropriate. The occurrence of hazardous substances on the involved non-Federal lands also may justify a "hold harmless" agreement executed by the non-Federal party, warranting indemnification for any claims against the United States resulting from such hazardous substances. The validity of "hold harmless" and indemnification agreements is recognized in section 107 of CERCLA at 42 U.S.C. 9607(e). Such agreements, while insuring contribution from the warranting or indemnifying non-Federal party for losses or clean-up costs, do not release any party from any liability for the occurrence of hazardous substances.

Paragraph (k) of this section of the proposed rule would update existing regulations to incorporate the

requirements of the Exchange Facilitation Act that the Forest Service submit Weeks Act land acquisitions valued at $150,000 or more to Congress for oversight review and submit Weeks Act land acquisitions valued at $250,000 or more to the Secretary of Agriculture for approval prior to submission to Congress for oversight review. This paragraph of the proposed rule would also provide exceptions to the requirements for approval by the Secretary of Agriculture and oversight by Congress; insignificant changes that occur after completion of oversight or Secretarial approval would be exempt from any required resubmission for such oversight or approval; acquisitions, including purchases and exchanges, which are specifically required by enacted legislation, generally would be exempt from Secretarial approval. In keeping with the intent of the Exchange Facilitation Act, these exceptions would expedite the processing of land acquisitions by eliminating the delays which would result from repeated oversight and approval, when minor changes have little or no impact on the case already reviewed and approved. Similarly, Secretarial approval of acquisitions specifically mandated by statute would serve no purpose except to delay the processing of the case. The provisions of this paragraph relate only to Forest Service acquisitions made pursuant to the Weeks Act of March 1, 1911, as amended. There is no comparable provision in the BLM proposed rule.

The corresponding section of the BLM proposed rule (43 CFR 2200.0–6) includes provisions regarding the exchange of revested Oregon and California Railroad Company Grant lands or reconveyed Coos Bay Wagon Road Grant lands; fee coal exchanges; a statutory requirement (section 210 of FLPMA) to notify the Governor of the involved State 60 days prior to conveyance and again upon conveyance of Federal lands in an exchange; and a provision for treatment of unsurveyed, unpatented school sections on public domain lands as non-Federal lands in exchanges with the States. Such provisions apply only to BLM and not to the Forest Service.

Section 254.4—Agreement to Initiate an Exchange

This section of the proposed rule would provide procedures for either the Forest Service or an individual, business, governmental, or non-profit entity to propose an exchange. If a proposal appears to be feasible, the authorized officer and the other party involved would execute an "agreement to initiate an exchange". Feasibility may be based on a combination of such factors as land management planning, existing land use authorizations, the presence of environmental values, timeframes and costs to complete the exchange, and the market value of the lands involved. Currently, the Forest Service uses the similar "statement of intent" as an optional documentation of the initial agreement to pursue an exchange. Paragraph (c) of this section of the proposed rule would make the agreement to initiate mandatory in every exchange, to clearly establish the starting point for the appraisal timeframes and meet other objectives. At a minimum, an agreement to initiate would include: The identity of the exchange parties; a description of the properties proposed for exchange; a statement certifying United States citizenship; a description of the appurtenant rights proposed to be exchanged; any known authorized or unauthorized uses and encumbrances; a schedule to complete the exchange; assignment of responsibilities and related costs; any provisions concerning compensation for costs assumed; notice of any hazardous substances on the involved lands and commitments regarding responsibility for removal; permission to enter and examine the lands of each party; the terms of any assembled land exchange arrangement; a statement as to any arrangements for relocation of tenants occupying non-Federal land; a notice to an owner-occupant of the voluntary basis for the acquisition of the non-Federal land; and the procedure for transfer of title. Paragraph (d) of this section would provide that unless the parties agree otherwise, an appraisal shall be arranged no later than 90 days from the date an agreement to initiate is signed. Paragraphs (e), (f), and (g) of this section of the proposed rule would make clear that an agreement to initiate may be amended by consent of the parties or terminated by any party upon written notice, and is nonbinding in that either party may withdraw from the exchange at any time prior to entering into a binding exchange agreement, without incurring any liability whatsoever to the other party.

Section 254.5—Assembled Land Exchanges

Under paragraph (b) of this section of the proposed rule, the Federal and non-Federal parties, as part of an agreement to initiate an exchange, may elect to assemble multiple, individually-owned, non-Federal parcels into single land exchanges, to take advantage of the economy and efficiency of processing large-acreage exchange packages. The Forest Service has successfully used assembled land exchange arrangements in the past. The General Accounting Office (GAO) Report RCED–87–9 of February 5, 1987, recommended that if the Forest Service is going to continue using assembled land exchanges, the agency should develop policies to promote and control its use. The GAO Report found assembled land exchanges to be particularly useful and cost effective in exchanging small tracts of land where more than one ownership is involved, In response to the GAO Report recommendation, a provision for assembled land exchanges is incorporated into paragraph (a) of this section of the proposed rule. Paragraph (c) of this section requires that assembled land exchanges must be agreed upon in the agreement to initiate.

Except for the provisions of paragraph (b) of § 254.9 of this proposed rule, which permits the separate valuation of non-Federal parcels assembled from multiple ownerships and comparable valuation treatment of involved multiple Federal parcels, assembled land exchanges are subject to the same requirements and processes as any other Forest Service land exchange. The corresponding section of the BLM proposed rule (43 CFR 2201.1–1) differs from the Forest Service proposal in that such assembled lands may be exchanged through a series of transactions over a period of time, with periodic balancing of values.

Section 254.6—Segregative Effect

Under paragraph (a) of this section of the proposed rule, if a proposal were made to exchange Federal lands, such lands which were reserved from the public domain for national forest purposes may be segregated from appropriation under the public land laws and the mineral laws for a period not to exceed 5 years. Pursuant to the Exchange Facilitation Act, this is an extension of the current two-year segregation authority of the Secretary of the Interior. As used in this proposed rulemaking, the public land laws include those non-mineral laws that pertain to the disposal of Federal lands. The mineral laws include the mining laws, mineral leasing laws and the Geothermal Steam Act, but do not include the Materials Act. This provision is intended to eliminate, subject to valid existing rights, the possibility of Federal lands being disposed of under some other authority or encumbered by mining claims or mineral leases during the time such lands are involved in an exchange proposal. However, because many land

exchanges take several years to complete, this provision would not preclude the authorized officer from issuing temporary use authorizations to extract small quantities of sand and gravel, collect firewood, conduct recreational activities such as outfitting and guiding, or for any other temporary activity that would have minimal impact on the physical suitability or appraised value of the Federal lands involved in an exchange.

Section 254.7—Assumption of Costs

Although in past exchanges it was common practice to negotiate the assignment of responsibilities, the proposed rule would specifically incorporate a provision, as set forth under the Act, that some responsibilities may be negotiated. It is the general practice that each party in a land exchange pays its own expenses, but the parties may elect to assume, with or without compensation, various costs or other responsibilities or requirements associated with the exchange. Because the requirements and costs for completing an exchange vary with different localities, the authorized officer must determine which requirements and costs are ordinarily borne by each party.

Paragraph (a) of this section of the proposed rule would allow the parties to an exchange to assume, without compensation, all or part of the costs or other responsibilities or requirements, that would ordinarily be borne by the other parties; or make adjustments to the relative values involved in an exchange transaction in order to compensate parties for assuming costs or other responsibilities or requirements that would ordinarily be borne by the other party. Paragraph (a) also lists some items considered eligible for such compensation as specified in the Act as well as other requirements associated with the exchange process such as timber cruises, title curative actions, hazardous substance surveys and controls, and assemblage of non-Federal parcels from multiple ownerships. This listing is not all-inclusive.

Paragraph (b) of this section of the proposed rule specifies that the authorized officer may agree to assume costs ordinarily borne by a non-Federal party without compensation or to compensate a non-Federal party for assuming Federal costs only on an exceptional basis, when it is clearly in the public interest and under certain conditions. The intent of specifying these conditions is to avoid routine Federal assumption of non-Federal costs without compensation and routine adjustments of relative values to compensate the non-Federal party for assuming Federal costs. The corresponding section of the BLM proposed rule (43 CFR 2201.1–3) differs from that of the Forest Service.

Paragraph (c) of this section of the proposed rule would require that the amount of all adjustments agreed to as compensation for costs could not exceed 25 percent of the appraised value of the lands to be exchanged out of Federal ownership. This limitation is consistent with section 206(b) of the Federal Land Policy and Management Act, which establishes a 25 percent limitation on the payment of money in order to equalize the values of the lands involved in an exchange.

Section 254.8—Notice of Exchange Proposal

After an agreement to initiate is signed by the parties, paragraph (a) of this section of the proposed rule would require the authorized officer to publish a notice of the exchange proposal in newspapers of general circulation. As in the existing regulations, this notice would serve to inform the public of an exchange proposal, provide an opportunity for those with liens, encumbrances, or other claims to come forward, and offer a period of time for comments from those who wish to furnish information or express their views about a proposed exchange.

Notices would be sent to authorized users including livestock permittees, right-of-way holders, oil and gas lessees, etc. Paragraph (b) of this section of the proposed rule would provide that the general public and affected users would be allowed 45 days from the date of first publication to submit their comments or to notify the authorized officer of any claims to the lands. The timely submission of comments ensures that the authorized officer has the benefit of information and comments provided by the public in evaluating the suitability of the exchange through an environmental analysis and appropriate documentation.

Paragraph (c) of this section of the proposed rule would continue a provision of the existing rule, that land descriptions published in the notice of exchange proposal need not be republished if any of the described lands are excluded from the final exchange transaction. This paragraph would also add a provision not in the existing rules to make clear that minor corrections and insignificant changes would not require republishing of a notice, as long as the general concept and basis of the exchange proposal remains the same. These provisions will avoid unnecessary delays in the processing of exchanges.

Section 254.9—Appraisals

1. Appraiser Qualifications

Paragraph (a) of this section defines a qualified appraiser and requires that the individual be approved by an authorized officer. Exchanges are generally complex and sensitive transactions, requiring high levels of coordination and responsiveness to immediate needs. Due to the complexity that is typical of most exchanges, an appraiser, in order to be qualified, must have the appropriate level of experience and skills to provide the necessary appraisals and support documentation in an efficient and timely manner. Qualified appraisers would also be required to meet applicable State certification or licensing requirements that are consistent with the provisions of the Financial Institutions Reform Recovery and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 3331), title XI—Real Estate Appraisal Reform Amendments. This law requires all States and Territories to enact laws assuring that after December 31, 1991, all appraisals prepared in connection with Federally related transactions will be done by individuals certified or licensed in accordance with State laws. The Appraisal Subcommittee of the Federal Financial Institutions Examination Council is responsible for monitoring implementation of State certification and licensing laws.

Under this proposed rule, qualified appraisers must be certified or licensed in any State or Territory in order to be eligible for agency appraisal assignments to facilitate land acquisitions. This requirement will eliminate a double standard for non-Federal and Federal appraisers, provide recognition to those agency appraisers who meet State standards, and instill public confidence in the administration of appraisal standards and procedures applicable to land exchanges.

2. Market Value

In estimating market value, an appraiser prepares an analysis supporting an opinion of what a property would likely sell for under current market conditions. Paragraph (b) of this section of the proposed rule supplements the definition of market value in § 254.2 and clarifies market value as it applies to exchanges involving mineral and timber interests, other resource values, and parcels involved in assembled land exchanges. An appraiser's determination of highest and best use is crucial in estimating market value.

Certain individuals and organizations assemble from multiple ownerships,

parcels of non-Federal land for exchange at the request of, or with the cooperation of, the Forest Service. It is in the public interest to utilize assembled land exchanges, due to the efficiency and economy of combining a number of small exchanges into one large exchange. Previous appraisal practices penalized such assemblages by treating the assembled parcels as a single ownership, which typically resulted in reduced valuation for the properties. The proposed rule would provide for parcels assembled from multiple ownerships to be treated as individual tracts in the appraisal. This special treatment would not apply when an individual owning multiple parcels proposes to exchange those parcels in a single exchange. When non-Federal parcels are considered as individual parcels in an assembled land exchange, the same individual-tract treatment would be used in the appraisal of any multiple-parcel Federal lands involved in the exchange.

3. Appraisal Report Standards

Paragraph (c) of this section of the proposed rule sets forth standards for appraisal reports. These standards are consistent with recognized industry and government appraisal standards. In developing the proposed content requirements for appraisal reports, the Forest Service utilized portions of several sources, including: The "Uniform Appraisal Standards for Land Acquisitions" (1987), published by the Appraisal Standards Board of the Appraisal Foundation; the "Uniform Appraisal Standards for Federal Land Acquisitions" (1973), prepared by the Interagency Land Acquisition Conference for the Department of Justice; and the Government-wide appraisal standards contained in 49 CFR part 24, published by the Department of Transportation, implementing appraisal provisions of the Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended. Both Forest Service staff appraisers and appraisers contracted by the agency or non-Federal party would have to comply with these standards.

4. Appraisal Review

Paragraph (d) of this section establishes standards for reporting the results of an independent and impartial appraisal review. These standards are consistent with those issued by the Appraisal Standards Board of the Appraisal Foundation. The Forest Service is responsible for assuring that the appraisal report reasonably estimates market value. Consequently, except for statements of value prepared by agency appraisers, all appraisals shall be reviewed by a qualified review appraiser to determine if the report is technically adequate and meets agency standards. The review appraiser must have qualifications at least equal to those for qualified appraisers contained in paragraph (a) of this section.

Section 254.10—Bargaining; Arbitration.

A major new provision of the Act authorizes bargaining and arbitration as methods to resolve a disagreement concerning the appraised values of the lands involved in an exchange.

As provided in the Act, paragraph (a) of this section establishes that within 180 days after appraisals are submitted to an authorized officer for review and approval, the parties may either accept the findings of the initial appraisal(s) or, if they cannot agree to accept such findings, may bargain or employ some other process to resolve the disagreement over value. Bargaining or any other process shall be based on an objective analysis of the valuation in the appraisal report(s) and shall be a means of reconciling differences in such reports, and may involve another appraiser review, additional appraisals, third party facilitation, or other commonly recognized practices for resolving value disputes. Any agreement based on bargaining shall be documented by the authorized officer.

The Act and this proposed rule further provide that, if the parties cannot agree on values within the 180-day period and desire to continue processing an exchange, the appraisal(s) will be submitted to an arbitrator unless the parties have employed bargaining or some other method to determine values. Arbitration would be conducted in accordance with rules established by the American Arbitration Association. An arbitrator would be appointed by the Secretary of Agriculture from a list provided by the Association. Within 30 days after completion of arbitration, the parties must decide whether to proceed with the exchange, modify the exchange to reflect the findings of arbitration, or withdraw from the exchange. A decision to withdraw from an exchange may be made by either party. The Act and this proposed rule provide that values established by arbitration will be binding for a period not to exceed 2 years from the date of the arbitrator's decision.

Paragraph (b) of this section of the proposed rule would limit arbitration to resolution of the disputed value estimate(s) of the contested appraisal(s), and would prohibit an arbitrator's recommendations which would affect any other aspects of the exchange proposal or affect management decisions regarding Federal lands.

As provided in the Act, the parties may agree to modify or suspend the deadlines associated with this section of the proposed rule. The need for such agreement could result from scheduling problems, processing obstacles, special requirements which may be unique to any particular exchange proposal, or other situations causing delays.

Section 254.11—Exchanges at Approximately Equal Value

In accordance with the Act and in the interest of expediting relatively small exchanges and reducing the administrative costs, paragraph (a) of this section of the proposed rule would permit the authorized officer, without the use of full narrative appraisals, to process exchanges in which the Federal and non-Federal lands are substantially similar, there are no significant elements of value requiring complex analysis, and the value of the Federal lands to be conveyed is not more than $150,000, as based upon a statement of value prepared by a qualified appraiser and approved by an authorized officer.

As defined in § 254.2 of the proposed rule, a statement of value is a simplified valuation report which documents the estimate of value and contains, at a minimum, the conclusions reached in an appraiser's investigation and analysis. Statements of value are commonly used in small, simple, low-value exchanges. For most exchanges at approximately equal value, a statement of value would only be prepared for the Federal lands under consideration. In accordance with paragraph (b) of this section, if a statement of value concludes that the Federal lands are valued at less than $150,000, the authorized officer would inspect the Federal and non-Federal lands and prepare a written determination as to whether the properties are substantially similar in terms of location, acreage, use, and physical attributes and therefore approximately equal in value. This documentation would provide a reasonable record of assurance that use of the authorization of this section is in the public interest.

Section 254.12—Value Equalization; Cash Equalization Waiver

This section of the proposed rule would provide various methods for equalizing the appraised values of Federal and non-Federal lands in order to complete the exchange transaction. A continuation of the methods in the current regulations, paragraph (a) of this section would allow equalization

through adding or excluding Federal or non-Federal lands or making a cash equalization payment. Any combination of these methods may be used, except that a cash equalization payment and/or compensation for various costs assumed cannot exceed 25 percent of the appraised value of the Federal lands to be conveyed, as provided in paragraph (b) of this section. This limitation is consistent with section 206(b) of FLPMA which established a 25 percent limitation on the payment of money in order to equalize the values of lands involved in an exchange.

Pursuant to the Act, paragraph (c) of this section would include a new provision that upon agreement by both parties, a cash equalization payment by the United States may be waived if the amount does not exceed 3 percent of the value of the Federal lands to be exchanged or $15,000, whichever is less. This authority could be exercised after the authorized officer certifies in writing that the waiver will expedite the exchange and serve the public interest. However, the proposed rule further clarifies provisions of the Act, by establishing that the waiver could not be applied to exchanges where the value differential is in excess of $15,000. This requirement would restrict use of the waiver to relatively small differences in value and preclude any use of the authority to reduce larger cash equalization payments. This waiver authority will expedite those exchanges where the non-Federal party wishes to waive receipt of payment for a small excess value of the involved non-Federal lands.

Cash equalization payments due the United States in Forest Service exchanges may not be waived, because the Secretary of Agriculture is prohibited by the Act from waiving a payment of cash due the United States. It should be noted that the BLM proposed rule differs from the Forest Service proposal in this respect, because the Secretary of the Interior is authorized to waive a cash equalization payment to the United States.

Section 254.13—Approval of Exchange; Notice of Decision

Paragraph (a) of this section of the proposed rule would require the authorized officer to notify the public of a decision to approve an exchange proposal. Notice of this decision would be published in newspapers of general circulation and copies of the notice will be distributed to affected State and local governmental entities, the non-Federal exchange parties, authorized users of involved Federal lands, the Congressional delegation, and any individuals who had previously requested notification or filed written objections to the exchange proposal. The notice would contain the date and description of the decision, name and title of the deciding official, directions to obtain a copy of the decision, and the date on which the appeal period would begin. Paragraph (b) of this section would require that an appropriate notice containing the same information be distributed if a decision is made by the authorized officer to disapprove an exchange. Paragraph (c) of this section would provide that in accordance with 36 CFR part 217, the public and affected parties would be allowed 45 days after issuance of a notice of decision in which to appeal the authorized officer's decision to approve or disapprove an exchange proposal.

Section 254.14—Exchange Agreement

Under the current rule, the parties may enter into an exchange agreement (not to be confused with an agreement to initiate) once a decision has been made by the authorized officer to approve an exchange proposal. Paragraph (a) of this section of the proposed rule would continue the optional use of exchange agreements unless hazardous substances are located on the involved non-Federal lands; in which case, the use of exchange agreements would be mandatory. The exchange agreement would be legally binding on all parties, subject to the terms and conditions of the agreement and § 254.14(b) of the proposed rule. Paragraph (c) of this section specifies that the parties would be liable for failure to comply with the terms of an exchange agreement. Paragraph (d) of this section would emphasize the lack of any binding obligations by any party, in the absence of an exchange agreement.

Section 254.15—Title standards (Title Evidence, Conveyance, and Encumbrances)

Paragraph (a) of this section of the proposed rule would modify the current rule to provide that unless otherwise provided by the USDA Office of the General Counsel, evidence of title in land or interests being conveyed to the United States and the conveyance documents must be in conformance with the Department of Justice "Standards for the Preparation of Title Evidence in Land Acquisition by the United States". Under Federal law, the United States is not required to furnish title evidence for the Federal lands being exchanged. All conveyances from the United States are executed by means of a patent or deed pursuant to paragraph (b) of this section of the proposed rule.

Paragraph (c) of this section of the proposed rule would require that all encumbrances pertaining to non-Federal lands including taxes, liens, mortgages, etc. must be eliminated, released, or waived in accordance with the requirements of the USDA Office of the General Counsel or the Department of Justice, as appropriate. Additionally, the United States cannot accept lands encumbered by reserved or outstanding interests that would interfere with the management of Federal lands. All reserved interests found to be acceptable will be subject to the appropriate rules and regulations of the Secretary of Agriculture or other agreed upon covenants in the conveyance documents. These requirements are a continuation of those in the current rule and are necessary to ensure that such conveyances and reservations do not interfere with the use and management of the lands and interests for national forest purposes.

Paragraph (c) of this section would also provide that the non-Federal party may remove any personal property that is not part of the exchange proposal. This may be done prior to acceptance of title by the United States or within a period of time thereafter as agreed upon by the parties. If the personal property is not removed within the specified timeframe, it will become vested in the United States. This would clarify the provision of the current rule, that the non-Federal land be free of encumbrances at the time of conveyance, and provide a reasonable and orderly process for removal or abandonment of personal property not made part of the exchange.

In addition, paragraph (c) of this section would provide that tenants occupying non-Federal lands involved in a land exchange may be eligible for advisory assistance and relocation payments. This may include compensation for moving expenses and costs associated with buying a comparable replacement dwelling. This provision is consistent with the regulations set forth in 49 CFR 24.2, which implement the relocation provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. Relocation benefits are not applicable to owner-occupants in voluntary exchanges, provided the owner-occupants are notified in writing of the voluntary basis for the exchange. Arrangements for relocating tenants and the notification of owner-occupants regarding the voluntary basis for the exchange shall be made part of the agreement to initiate an exchange.

With regard to authorized uses on Federal lands to be conveyed in an exchange, under paragraph (c) of this section, the authorized officer is to notify all third-party use holders early in the exchange process. This notice gives right-of-way grant holders, livestock permittees, oil and gas lessees, and other authorized users on Federal lands the opportunity to comment on the exchange proposal and to participate in the process. If Federal lands proposed for exchange are occupied under grant, permit, easement, or lease, the Forest Service prefers to encourage the third-party use holder and the non-Federal exchange party to reach an independent agreement accommodating the authorized use before a decision is made to approve the exchange. The Forest Service authorized use is then terminated upon conveyance and the continued use after conveyance is authorized under the terms and conditions agreed upon by the use holder and the non-Federal exchange party. If an agreement cannot be reached, the authorized officer may consider other alternatives, including but not limited to retention of the Federal lands occupied by the authorized use or, in some cases, termination of the use. Although the current rules are silent regarding authorized uses, paragraph (c) of this section of the proposed rule would clarify the long-standing Forest Service policy to provide reasonable consideration of the authorized users' privileges under the terms of the authorization. The addition of these provisions to the proposed rule signifies the importance of this consideration.

Section 254.16—Case Closing (Title Approval, Transfer, and Acceptance)

Current rules do not address the issue of simultaneous transfer of lands involved in exchanges. However, the Act requires that the proposed rule allow the Federal and non-Federal lands to be transferred simultaneously. Paragraph (a) of this section would provide for simultaneous transfer and the condition necessary to make such transfers possible. Although the regulation does not specify the method to effect a simultaneous transfer, it may be done through an escrow agreement. The parties may agree to waive the requirement for simultaneous transfer.

Paragraph (b) of this section would provide that, unless otherwise specified, title to the non-Federal lands will be accepted by the United States after the USDA Office of the General Counsel issues a final title opinion approving the title. Upon acceptance of title, the non-Federal lands acquired by the United States automatically will be segregated from appropriation under the public land laws and mineral laws for a period of 90 days and thereafter automatically opened to operation of such laws.

Summary

These proposed regulations are intended to facilitate and expedite Forest Service land exchanges by: (a) Clarifying their scope and application and the exceptions to their application; (b) defining terms used in exchanges; (c) stating the general requirements of land exchanges; (d) delineating procedures for initiating exchanges; (e) endorsing assembled land exchanges under certain circumstances; (f) explaining the terms under which lands may be segregated from appropriation; (g) establishing the responsibility for duties and costs associated with land exchanges and the conditions under which one party may assume costs, responsibilities, and requirements of the other party; (h) stating the minimum requirements for providing public notice of an exchange; (i) providing rules pertaining to land appraisals which reflect nationally recognized appraisal standards; (j) prescribing procedures and guidelines for resolution of appraisal disputes; (k) describing conditions and limitations for approximately equal value exchanges; (l) providing for cash equalization payments and waiver, and defining the limits of each; (m) establishing the rules under which an exchange may be approved and appealed; (n) outlining the requirements for a binding exchange agreement; and (o) referencing the standards and requirements for the conveyance documents, and title evidence and approval. The public is invited to submit written comments concerning the provisions of this proposed rule.

The principal authors of this proposed rule are James Dear, Paul Tittman, and Phil Bayles of the Forest Service Washington Office Lands Staff, with assistance from Kathy Dolge (Washington Office Lands Staff), John Criswell (Idaho Panhandle National Forests, Idaho), John Varro (Huron-Manistee National Forests, Michigan), and Ron Cecchi (Shasta-Trinity National Forests, California). This proposed rule was prepared in cooperation with Roger Taylor, Dave Cavanaugh, and Mike Pool of the BLM Washington Office.

Regulatory Impact

The proposed rule has been reviewed under USDA procedures and Executive Order 12291 on Federal Regulations. It has been determined that this is not a major rule. The rule contains minimum procedures necessary to implement the Exchange Facilitation Act. The rule would not have an effect of $100 million or more on the economy; would not substantially increase prices or costs for consumers, industry, or State or local governments; nor would it adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in foreign markets.

The proposed rule has been considered in light of Executive Order 12630 concerning possible impacts on private property rights. Executive Order 12630 exempts from takings implications assessments activities which are consensual in nature between the United States and non-Federal parties. Exchanges are consensual and, therefore, do not raise takings issues. Accordingly, no further consideration of takings implications was deemed necessary in this proposed rule.

Moreover, this proposed rule has been considered regarding the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it has been determined that this action would not have a significant impact on a substantial number of small entities.

Environmental Impact

Based on experience, this proposed rule would not have a significant effect on the human environment, individually or cumulatively. Therefore, it is categorically excluded for documentation in an Environmental Assessment or an Environmental Impact Statement (40 CFR 1508.4).

Controlling Paperwork Burdens on the Public

The content of an agreement to initiate an exchange and the content of an exchange agreement as would be required by §§ 254.4 and 254.14 of this proposed rule represent new information requirements as defined in 5 CFR part 1320, Controlling Paperwork Burdens on the Public. The agency estimates that each non-Federal party to a land exchange proposal will spend an average of 4 hours preparing and submitting the information required in an agreement to initiate an exchange and an exchange agreement.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 and implementing regulations at 5 CFR part 1320, the Forest Service requested, in conjunction with the publication of the first proposed rule, and, on August 3, 1989, received approval from the Office of Management and Budget (OMB) for the information to be addressed in an agreement to initiate or an exchange agreement. The information collection

was assigned OMB Control No. 0596–0105 and was approved for use through June 30, 1992. Because the information requirements in this proposed rule are identical to those in the previous proposed rule, additional OMB review is not necessary. However, reviewers who wish to comment on this information requirement should submit their views to the Chief of the Forest Service at the address listed earlier in this document as well as to the: Forest Service Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

List of Subjects in 36 CFR Part 254

Land exchanges, National forests.

Therefore, for reasons set forth above, it is proposed to revise part 254, subpart A of title 36 of the Code of Federal Regulations as follows:

PART 254—LANDOWNERSHIP ADJUSTMENTS

Subpart A—Land Exchanges

Sec.

Subpart A—Land Exchanges

Authority: 7 U.S.C. 428a(a) and 1011; 16 U.S.C. 484a, 485. 486, 516, 551, and 555a; 43 U.S.C. 1701, 1715, 1716, and 1723; and other applicable laws.

§ 254.1 Scope and applicability.

(a) These rules set forth the procedures for conducting exchanges of National Forest System lands. The procedures in these rules are supplemented by instructions issued to Forest Service officers in Chapter 5400 of the Forest Service Manual and Forest Service Handbooks 5409.12 and 5409.13.

(b) These rules apply to all National Forest System exchanges of land or interests in land, including but not limited to minerals and timber, except those exchanges made under the authority of the Small Tracts Act of January 12, 1983 (16 U.S.C. 521c–521i), and as otherwise noted. These rules also apply to other methods of acquisition, where indicated.

(c) The application of these rules to exchanges made under the authority of the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1621) or the Alaska National Interest Lands Conservation Act (16 U.S.C. 3192), shall be limited to those provisions which do not conflict with the provisions of these Acts.

(d) Unless the parties to an exchange otherwise agree, land exchanges for which an agreement to initiate an exchange was entered into prior to [*Insert effective date of final rule*], may proceed in accordance with the rules and regulations in effect at the time the agreement was signed.

(e) Where lands are acquired by exchange under the authority of the Weeks Act of March 1, 1911, as amended (16 U.S.C. 516), contiguous to existing national forest boundaries and totaling no more than 3,000 acres in each transaction, the boundary of the national forest shall automatically be extended pursuant to the Weeks Act to encompass the acquired lands.

(f) Exchanges under the Weeks Act of March 1, 1911, or the General Exchange Act of March 20, 1922, may involve land-for-timber (non-Federal land exchanged for the rights to Federal timber), or timber-for-land (the exchange of the rights to non-Federal timber for Federal land), or tripartite land-for-timber (non-Federal land exchanged for the rights to Federal timber cut by a third party in behalf of the exchange parties).

(g) Land exchanges involving National Forest System lands are governed by the exchange statute appropriate to the status (conditions of ownership) of such lands and the purpose for which an exchange is to be made. The status of National Forest System land is determined by the method by which the land became part of the National Forest System. Unless otherwise provided by law, lands acquired by the United States in exchanges generally assume the same status as the Federal lands conveyed.

(h) The provisions of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701), as amended, are supplemental to all other applicable exchange laws, except the Sisk Act of December 4, 1967 (16 U.S.C. 484a).

§ 254.2 Definitions.

For the purposes of this subpart, the following terms shall have the meanings set forth in this section.

Acquisition means the procuring of lands or interests in lands by the Secretary, acting on behalf of the United States, by exchange, purchase, donation, or eminent domain.

Adjustment to relative values means compensation for exchange-related costs, or other responsibilities or requirements assumed by one party, which ordinarily would be borne by the other party. These adjustments do not alter the agreed upon value of the lands involved in an exchange.

Agreement to initiate means a written, nonbinding statement of present intent to initiate and pursue an exchange, which is signed by the parties and which may be amended by consent of the parties or terminated at any time upon written notice by any party.

Appraisal or appraisal report means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion as to the market value of the lands or interests in lands as of a specific date(s), supported by the presentation and analysis of relevant market information

Approximately equal value means the lands involved in an exchange have readily apparent and substantially similar elements of value, such as location, size, use, physical characteristics, and other amenities.

"Arbitration" is a process to resolve a disagreement among the parties as to appraised value, performed by an arbitrator appointed by the Secretary from a list recommended by the American Arbitration Association.

Assembled land exchange means an exchange of Federal land for a package of multiple ownership parcels of non-Federal land consolidated for purposes of one land exchange transaction.

Authorized officer means a Forest Service line or staff officer who has been delegated the authority and responsibility to make decisions and perform the duties described in this subpart.

Bargaining is a process other than arbitration, by which parties attempt to resolve a dispute concerning the appraised value of the lands involved in an exchange.

Federal lands means any lands or interests in lands. such as mineral and timber interests, that are owned by the United States and administered by the Secretary of Agriculture through the Chief of the Forest Service, without regard to how the United States acquired ownership.

Hazardous substances are those substances designated under Environmental Protection Agency regulations at 40 CFR part 302.

Highest and best use means an appraiser's supported opinion of the most probable and legal use of a property, based on market evidence, as of the date of valuation.

Lands means any land and/or interests in land.

Market value means the most probable price in cash, or terms equivalent to cash, which lands or interest in lands should bring in a competitive and open market under all conditions requisite to a fair sale, where the buyer and seller each acts prudently and knowledgeably, and the price is not affected by undue influence.

Mineral laws means the mining laws, the mineral leasing laws, and the Geothermal Steam Act of 1970 (30 U.S.C. 1001 *et seq.*), but not the Materials Act of 1947 (30 U.S.C. 601 *et seq.*).

Outstanding interests are rights or interests in property held by an entity other than a party to an exchange.

Party means the United States or any person, State, or local government who enters into an agreement to initiate an exchange.

Person means any individual, corporation, or other legal entity legally capable to hold title to and convey land. An individual must be a citizen of the United States and a corporation must be subject to the laws of the United States or of the State where the land is located or the corporation is incorporated.

Public land laws means that body of non-mineral land laws dealing with the disposal of National Forest System lands administered by the Secretary of Agriculture.

Reserved interest means an interest in real property retained by a party from a conveyance of the title to that property.

Secretary means the Secretary of Agriculture or the individual to whom responsibility has been delegated.

Segregation means the removal for a limited period. subject to valid existing rights, of a specified area of the Federal lands from appropriation under the public land laws and mineral laws, pursuant to the authority of the Secretary of the Interior to allow for the orderly administration of the Federal lands.

Statement of value means a written report prepared by a qualified appraiser that documents an estimate of value and contains, at the minimum, the conclusions reached in the appraiser's investigation and analysis.

§ 254.3 Requirements.

(a) *Exchanges are discretionary.* The Secretary is not required to exchange any Federal lands. Land exchanges are discretionary, voluntary real estate transactions between the Federal and non-Federal parties. Unless and until the parties enter into a binding exchange agreement, any party may withdraw from and terminate an exchange proposal at any time during the exchange process.

(b) *Determination of public interest.* The authorized officer may complete an exchange only after a determination is made that the public interest will be well served. When considering the public interest, the authorized officer shall give full consideration to the opportunity to achieve better management of Federal lands, to meet the needs of State and local residents, and to secure important objectives including but not limited to: Protection of fish and wildlife habitats, cultural resources, and wilderness and aesthetic values; enhancement of recreation opportunities and public access; consolidation of lands and/or interests in lands, such as mineral and timber interests, for more logical and efficient management and development; consolidation of split estates; expansion of communities; accommodation of land use authorizations; promotion of multiple-use values; and fulfillment of public needs. The authorized officer must find that

(1) The resource values and the public objectives which the Federal lands or interests to be conveyed may serve if retained in Federal ownership are not more than the resource values of the non-Federal lands or interests and the public objectives they could serve if acquired, and

(2) The intended use of the conveyed Federal land will not be in conflict with management objectives on adjacent Federal lands. Such finding and the supporting rationale shall be made part of the administrative record.

(c) *Equal value exchanges.* An exchange of lands or interests shall be based on market value as determined by the Secretary through appraisal(s), or bargaining based on appraisal(s), or arbitration. Lands or interests to be exchanged shall be of equal value or equalized in accordance with the methods set forth in § 254.12 of this subpart.

(d) *Same-State exchanges.* Unless otherwise provided by statute, the Federal and non-Federal lands involved in an exchange shall be located within the same State.

(e) *Congressional designations.* Upon acceptance of title by the United States, lands acquired by the Secretary of the Interior by exchange under the authority granted by the Federal Land Policy and Management Act of 1976, as amended, which are within the boundaries of any unit of the National Forest System, the National Wild and Scenic Rivers System, the National Trails System, the National Wilderness Preservation System, or any other system established by Act of Congress; or the boundaries of any national conservation area or national recreation area established by Act of Congress, shall immediately be reserved for and become a part of the unit or area in which they are located, without further action by the Secretary of the Interior, and shall thereafter be managed in accordance with all laws, rules, regulations, and forest plan applicable to such unit or area.

(f) *Land and resource management planning.* The authorized officer shall consider only those exchange proposals that are consistent with Forest Land and Resource Management Plans, where applicable. Lands acquired by exchange that are located within areas having an administrative designation established through the land management planning process shall automatically become part of the area within which they are located, without further action by the Forest Service, and shall be managed in accordance with the laws, rules, regulations, and forest plan applicable to such area.

(g) *Environmental analysis.* When an agreement to initiate an exchange is signed, an environmental analysis shall be conducted by the authorized officer in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4371), the Council on Environmental Quality regulations (40 CFR parts 1500–1508), and Forest Service environmental policies and procedures. In making this analysis, the authorized officer shall consider timely written comments received in response to the published exchange notice, pursuant to § 254.8 of this subpart.

(h) *Reservations made in the public interest.* In any exchange, the authorized officer shall reserve such rights or retain such interests as are needed to protect the public interest or shall otherwise restrict the use of Federal lands to be exchanged, as appropriate. The use or development of lands conveyed out of Federal ownership shall be subject to any restrictions imposed by the conveyance documents and all laws, regulations, and zoning authorities of State and local governing bodies.

(i) *Hazardous substances.* (1) *Federal lands.* The authorized officer shall provide notice of known storage, release, or disposal of hazardous substances on the Federal lands during the time of Federal ownership to the other parties in accordance with the provisions of 40 CFR part 373. For purposes of this subpart, an agreement to initiate an exchange or an exchange agreement shall qualify as a "contract notice" as required by 40 CFR part 373. Unless the non-Federal party is

potentially responsible and participated in the storage, disposal, or release of hazardous substances, the conveyance document from the United States shall contain a covenant warranting that all remedial action necessary to protect human health and the environment with respect to any such substance remaining on the property has been taken before the date of transfer, and that any additional remedial action found necessary after the transfer shall be completed by the United States, pursuant to 42 U.S.C. 9620(h)(3). Where the non-Federal party is a potentially responsible party with respect to the property, it could be appropriate to enter into an agreement as referenced in 42 U.S.C. 9607(e) whereby that party would indemnify the United States and hold the United States harmless against any loss or cleanup costs after conveyance.

(2) *Non-Federal lands.* The non-Federal party shall notify the authorized officer of any hazardous substances known or suspected to have been released, stored, or disposed of on the non-Federal land, pursuant to § 254.4 of this subpart. Notwithstanding such notice, the authorized officer shall determine whether hazardous substances are present on the non-Federal land involved in an exchange. If hazardous substances are present or believed to be present on the non-Federal land, the authorized officer shall reach an agreement with the non-Federal party regarding the responsibility for appropriate response action concerning the hazardous substances before completing the exchange. The terms of this agreement and any appropriate "hold harmless" agreement shall be included in an exchange agreement, pursuant to § 254.14 of this subpart.

(j) *Legal description of properties.* All lands subject to an exchange shall be properly described on the basis of either a survey executed in accordance with the Public Land Survey System laws and standards of the United States or be properly described and clearly locatable by other means as may be prescribed by law.

(k) *Special review and approval.* A decision to approve an exchange under § 254.13 of this subpart may be made conditionally and must be subject to any required statutory approval by the Secretary or Congressional oversight. Except as provided in paragraphs (k)(1) and (k)(2) of this section, land acquisitions of $150,000 or more in value made under the authority of the Weeks Act of March 1, 1911, as amended (16 U.S.C. 516), must be submitted to Congress for oversight review, pursuant to the Act of October 22, 1976, as amended (16 U.S.C. 521b), and land acquisitions of $250,000 or more in value, made under Weeks Act authority, must also be submitted to the Secretary for approval, prior to submission to Congress for oversight review:

(1) Minor and insignificant changes in land acquisition proposals need not be resubmitted for congressional oversight or approval by the Secretary, provided the general concept of and basis for the acquisition remain the same.

(2) Land acquisitions specifically mandated by legislation shall be exempt from Secretarial approval, unless otherwise specified.

§ 254.4 Agreement to initiate an exchange.

(a) Exchanges may be proposed by the Forest Service or by any person, State, or local government. Initial exchange proposals should be directed to the authorized officer responsible for the management of Federal lands involved in an exchange.

(b) To assess the feasibility of an exchange proposal, the prospective parties may agree to obtain a preliminary estimate of values of the lands involved in the proposal. The preliminary estimate shall be prepared by a qualified appraiser.

(c) If the authorized officer agrees to proceed with an exchange proposal, a nonbinding agreement to initiate an exchange shall be executed by all prospective parties. At a minimum, the agreement shall include:

(1) The identity of the parties involved in the proposed exchange and the status of their ownership or ability to provide title to the land;

(2) A description of the lands or interest in lands being considered for exchange;

(3) A statement by each party, other than the United States, that such party is a citizen of the United States or a corporation or other legal entity subject to the laws of the United States or a State thereof. State and local governments are exempt from this certification requirement;

(4) A description of the appurtenant rights proposed to be exchanged or reserved and any known authorized or unauthorized uses, outstanding interests, exceptions, covenants, restrictions, title defects or encumbrances;

(5) A time schedule for completing the proposed exchange;

(6) An assignment of responsibility for performance of required functions and for costs associated with processing the exchange;

(7) A statement specifying whether compensation for costs assumed will be allowed pursuant to the provisions contained in § 254.7 of this subpart;

(8) Notice of any known release, storage, or disposal of hazardous substances on involved Federal or non-Federal lands and any commitments regarding responsibility for removal or other remedial actions concerning such substances on involved non-Federal lands. All such terms and conditions regarding non-Federal lands shall be included in a land exchange agreement pursuant to § 254.14;

(9) A grant of permission by each party to physically examine the lands offered by the other party;

(10) The terms of any assembled land exchange arrangement, pursuant to § 254.5 of this subpart;

(11) A statement as to the arrangements for relocation of any tenants occupying non-Federal lands pursuant to § 254.15 of this subpart;

(12) A notice to an owner-occupant of the voluntary basis for the acquisition of the non-Federal lands, pursuant to § 254.15 of this subpart; and

(13) A statement as to the manner in which documents of conveyance will be exchanged, should the exchange proposal be successfully completed.

(d) Unless the parties agree to some other schedule, no later than 90 days from the date of the executed agreement to initiate an exchange, the parties shall arrange for appraisals which are to be completed within timeframes and under such terms as are negotiated. In the absence of current market information reliably supporting value, the parties may agree to use other acceptable and commonly recognized methods to estimate value.

(e) An agreement to initiate may be amended by consent of the parties or terminated at any time upon written notice by any party.

(f) Entering into an agreement to initiate an exchange does not legally bind any party to proceed with processing or to consummate a proposed exchange, or to reimburse or pay damages to any party to a proposed exchange that is not consummated or to anyone doing business with any such party.

(g) The withdrawal from an exchange proposal by an authorized officer at any time prior to the notice of decision, pursuant to § 254.13 of this subpart, shall not be appealable under 36 CFR part 217 or 36 CFR part 251, subpart C.

§ 254.5 Assembled land exchanges.

(a) Whenever the authorized officer determines it to be practicable, an assembled land exchange arrangement

may be used to facilitate exchanges and reduce costs.

(b) The parties to an exchange may agree to such an arrangement where multiple ownership parcels of non-Federal lands are consolidated into a package for the purpose of completing one exchange transaction.

(c) An assembled land exchange arrangement shall be documented in the agreement to initiate an exchange, pursuant to § 254.4 of this subpart.

(d) Values of the Federal and non-Federal lands involved in an assembled land exchange arrangement shall be estimated pursuant to § 254.9 of this subpart.

§ 254.6 Segregative effect.

(a) If a proposal is made to exchange Federal lands, the authorized officer may request the appropriate State Office of the Bureau of Land Management to segregate the Federal lands by a notation on the public land records. Subject to valid existing rights, the record notation shall segregate the Federal lands from appropriation under the public land laws and mineral laws for a period not to exceed 5 years from the date of notation.

(b) Any interests of the United States in the non-Federal lands that are covered by the exchange proposal may be noted and segregated from appropriation under the mineral laws for a period not to exceed 5 years from the date of notation.

(c) The segregative effect shall terminate:

(1) Automatically, upon issuance of a patent or other document of conveyance to the affected lands;

(2) On the date and time specified in an opening order, published by the appropriate State Office of the BLM in the **Federal Register**, if a decision is made not to proceed with the exchange or upon deletion of any lands from the exchange proposal; or

(3) Automatically, at the end of the segregation period not to exceed 5 years from the date of notation on the public land records, whichever occurs first.

(d) Non-Federal lands acquired through exchange by the United States automatically shall be segregated from appropriation under the public land laws and mineral laws for 90 days after acceptance of title by the United States, pursuant to § 254.16(b) of this subpart, and the public land records shall be noted accordingly.

§ 254.7 Assumption of costs.

(a) Generally, each party to an exchange will bear their own costs of the exchange. However, if the authorized officer finds it is in the public interest, subject to the conditions and limitations specified in paragraphs (b) and (c) of this section, the agreement to initiate an exchange may provide that:

(1) The parties may assume, without compensation, all or part of the costs or other responsibilities or requirements that the authorized officer determines would ordinarily be borne by the other parties; or

(2) The parties may agree to make adjustments to the relative values involved in an exchange transaction, in order to compensate parties for assuming costs or other responsibilities or requirements that the authorized officer determines would ordinarily be borne by the other parties. These costs or services may include but are not limited to: Land surveys; appraisals; mineral examinations; timber cruises; title searches; title curative actions; cultural resource surveys and mitigation; hazardous substance surveys and controls; removal of encumbrances; arbitration, including all fees; bargaining; curing deficiencies preventing highest and best use of the land; conducting public hearings; assemblage of non-Federal parcels from multiple ownerships; and the expenses of complying with laws, regulations, and policies applicable to exchange transactions, or which are necessary to bring the Federal and non-Federal lands involved in the exchange to their highest and best use for appraisal and exchange purposes.

(b) The authorized officer may agree to assume costs ordinarily borne by the non-Federal party without compensation or to compensate the non-Federal party for assuming Federal costs only on an exceptional basis, when it is clearly in the public interest, and when the authorized officer determines and documents that:

(1) The amount of such cost assumed or compensation is reasonable and accurately reflects the value of the cost or service provided, or any responsibility and requirement assumed;

(2) The proposed exchange is a high priority of the agency;

(3) The land exchange must be expedited to protect important Federal resource values, such as Congressionally designated areas or endangered species habitat;

(4) Cash equalization funds are available for compensation of the non-Federal party; and

(5) There are no other practicable means available to the authorized officer for meeting Federal exchange processing costs, responsibilities, or requirements.

(c) The total amount of an adjustment agreed to as compensation for costs pursuant to this section shall not exceed the limitations set forth in § 254.12 of this subpart.

§ 254.8 Notice of exchange proposal.

(a) Upon entering into an agreement to initiate an exchange, the authorized officer shall publish a notice once a week for four consecutive weeks in newspapers of general circulation in the counties in which the Federal and non-Federal lands or interests proposed for exchange are located. The authorized officer shall notify authorized users and make other distribution of the notice as appropriate. At a minimum, the notice shall include:

(1) The identity of the parties involved in the proposed exchange;

(2) A description of the lands being considered for exchange;

(3) A statement as to the effect of segregation from appropriation under the public land laws and mineral laws, if applicable; and

(4) An invitation to the public to submit any comments or to advise as to any liens, encumbrances, or other claims relating to the lands being considered for exchange.

(b) To be assured of consideration in the environmental analysis of the proposed exchange, all comments shall be made in writing to the authorized officer and postmarked or delivered within 45 days after the initial date of publication.

(c) The authorized officer is not required to republish descriptions of any lands excluded from the final exchange transaction, provided such lands were identified in the notice of exchange proposal. In addition, minor corrections of land descriptions and other insignificant changes do not require republication.

§ 254.9 Appraisals.

The Federal and non-Federal parties to an exchange shall comply with the appraisal standards as set forth in paragraphs (a) through (d) of this section, and, to the extent appropriate, with the Department of Justice "Uniform Appraisal Standards for Federal Land Acquisitions," when appraising the values of the Federal and non-Federal lands involved in an exchange.

(a) *Appraiser qualifications.* (1) A qualified appraiser shall provide to the authorized officer appraisals estimating the market value of Federal and non-Federal properties involved in an exchange. A qualified appraiser may be an employee or a contractor to the Federal or non-Federal exchange parties. At a minimum, a qualified appraiser shall be an individual,

approved by the authorized officer, who is competent, reputable, impartial, and has training and experience in appraising property similar to the property involved in the appraisal assignment.

(2) Qualified appraisers shall comply with State regulatory requirements consistent with title XI, Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 3331). In the event a State or Territory does not have approved policies, practices, and procedures regulating the activities of appraisers, the Forest Service may implement qualification standards commensurate with those generally adopted by other States or Territories meeting the requirements of FIRREA.

(b) *Market value.* (1) In estimating market value, the appraiser shall:

(i) Determine the highest and best use of the property to be appraised;

(ii) Estimate the value of the lands and interests as if in private ownership and available for sale in the open market;

(iii) Include historic, wildlife, recreation, wilderness, scenic, cultural or other resource values or amenities that are reflected in prices paid for similar properties in the competitive market;

(iv) Consider the contributory value of any interest in land such as mineral or timber interests, to the extent they are consistent with the highest and best use of the property;

(v) Estimate separately, if stipulated in the agreement to initiate in accordance with § 254.4 of this subpart, the value of each property assembled from multiple ownerships by the non-Federal party for purposes of exchange, pursuant to § 254.5 of this subpart;

(vi) Estimate the value of multiple-parcel Federal lands involved in an assembled land exchange arrangement in a manner comparable to that used on the involved non-Federal lands;

(vii) Disregard any change in market value prior to the date of valuation caused by the intent of the Forest Service to acquire the non-Federal property, or the intended public use of the property; and

(viii) Refrain from independently adding the separate values of the fractional interests to be conveyed, unless market evidence indicates:

(A) The various interests contribute their full value (pro rata) to the value of the whole; and

(B) The valuation is compatible with the highest and best use of the property.

(2) In the absence of current market information reliably supporting value, the authorized officer may use other acceptable and commonly recognized methods to determine market value.

(c) *Appraisal report standards.* Appraisals prepared for exchange purposes shall contain, at a minimum, the following information:

(1) A summary of facts and conclusions;

(2) The purpose and/or the function of the appraisal, a definition of the estate being appraised, and a statement of the assumptions and limiting conditions affecting the appraisal assignment, if any;

(3) An explanation of the extent of the appraiser's research and actions taken to collect and confirm information relied upon in estimating value;

(4) An adequate description of the physical characteristics of the land being appraised; a statement of all encumbrances; title information; location, zoning, and present use; an analysis of highest and best use; and at least a 5-year sales history of the property;

(5) Disclosure of any knowledge of the presence, or possible presence, of potentially hazardous environmental conditions on the property;

(6) A comparative market analysis. If more than one method of valuation is used, there shall be an analysis and reconciliation of the methods used to support the appraiser's estimate of value;

(7) A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, effect of any favorable financing on sale price, and verification by a party involved in the transaction;

(8) An estimate of market value;

(9) The effective date of valuation, date of appraisal, signature, and certification of the appraiser;

(10) A statement certifying that the appraiser signing the report:

(i) Personally contacted the property owner or designated representative and offered the owner an opportunity to be present during inspection of the property;

(ii) Personally examined the subject property and all comparable sale properties relied upon in the report;

(iii) Has no present or prospective interest in the appraised property; and

(iv) Did not receive compensation that was contingent on the analysis, opinions, or conclusions contained in the appraisal report; and

(11) Copies of relevant written reports, studies, or summary conclusions prepared by others in association with the appraisal assignment which were relied upon by the appraiser to estimate value. This may include but is not limited to current title reports, mineral reports, or timber cruises prepared by qualified specialists.

(d) *Appraisal review.* (1) Appraisal reports, except for statements of value prepared by agency appraisers, shall be reviewed by a qualified review appraiser meeting the qualifications set forth in § 254.9(a) of this subpart.

(2) The review appraiser shall determine whether the appraisal report:

(i) Is complete, logical, consistent, and supported by market analysis;

(ii) Complies with the standards prescribed in paragraph (c) of this section; and

(iii) Reasonably estimates the probable market value of the lands appraised.

(3) The review appraiser shall prepare a written review report, containing at a minimum:

(i) A description of the review process used;

(ii) An explanation of the adequacy, relevance, and reasonableness of the data and methods used by the appraiser to estimate value;

(iii) The review appraiser's conclusions regarding the appraiser's estimate of market value; and

(iv) A statement certifying that the review appraiser:

(A) Has no present or prospective interest in the property which is the subject of the review report; and

(B) Did not receive compensation that was contingent upon approval of the appraisal report.

§ 254.10 Bargaining; arbitration.

(a) Unless the parties to an exchange agree in writing to suspend or modify the deadlines contained in paragraphs (a)(1)(i) (A)–(D) of this section, the parties shall adhere to the following: (1) (i) Within 180 days from the date of receipt of the appraisal(s) for review and approval by the authorized officer, the parties to an exchange may agree on the appraised values or may initiate a process of bargaining or some other process to determine values. Bargaining or any other process shall be based on an objective analysis of the valuation in the appraisal report(s) and shall be a means of reconciling differences in such report(s), and may involve one or more of the following actions:

(A) Submission of the disputed appraisal(s) to another qualified appraiser for review;

(B) Request for additional appraisals;

(C) Involvement of an impartial third party to facilitate resolution of the value disputes, or

(D) Use of some other acceptable and commonly recognized practice for resolving value disputes.

(ii) Any agreement based upon bargaining shall be in writing and made part of the administrative record. Such agreement shall reference all relevant appraisal information and state how the parties reconciled or compromised appraisal information to arrive at an agreement based on market value.

(2) Alternatively, if within 180 days from the date of receipt of the appraisal(s) for review and approval by the authorized officer, the parties to an exchange cannot agree on values but want to continue with the land exchange, the appraisal(s) shall, at the option of either party, be submitted to arbitration, unless, in lieu of arbitration, the parties have employed a process of bargaining or some other process to determine values. If arbitration occurs, it shall be conducted in accordance with the real estate valuation arbitration rules of the American Arbitration Association. The Secretary shall appoint an arbitrator from a list provided by the American Arbitration Association.

(3) Within 30 days after completion of arbitration, the parties involved in the exchange shall determine whether to proceed with the exchange, modify the exchange to reflect the findings of the arbitration or any other factors, or withdraw from the exchange. A decision to withdraw from the exchange may be made upon written notice by either party at this time or at any other time prior to entering into a binding exchange agreement.

(4) If the parties agree to proceed with an exchange after arbitration, the values established by arbitration shall be binding upon all parties for a period not to exceed 2 years from the date of the arbitration decision.

(b) Arbitration shall be limited to the disputed valuation of the lands involved in a proposed exchange and an arbitrator's award decision shall be limited to the value estimate(s) of the contested appraisal(s). An award decision shall not include recommendations regarding the terms of a proposed exchange, nor shall an award decision infringe upon the authority of the Secretary to make all decisions regarding management of Federal lands and to make public interest determinations.

§ 254.11 Exchanges at approximately equal value.

(a) The authorized officer may exchange lands which are of approximately equal value when it is determined that:

(1) It is in the public interest and that the consummation of a particular exchange will be expedited;

(2) The value of the lands to be conveyed out of Federal ownership is not more than $150,000 as based upon a statement of value prepared by a qualified appraiser and approved by an authorized officer;

(3) The Federal and non-Federal lands are substantially similar in location, acreage, use, and physical attributes; and

(4) There are no significant elements of value requiring complex analysis.

(b) The authorized officer shall document how the determination of approximately equal value was made.

§ 254.12 Value equalization; cash equalization waiver.

(a) To equalize the agreed upon values of the Federal and non-Federal lands involved in an exchange, either with or without adjustments of relative values as compensation for various costs, the parties to an exchange may agree to:

(1) Modify the exchange proposal by adding or excluding lands; and/or

(2) Use cash equalization, after making all reasonable efforts to equalize values by adding or deleting lands.

(b) In no event shall the combined amount of any cash equalization payment and/or the amount of adjustments agreed to as compensation for costs under § 254.7 of this subpart exceed 25 percent of the value of the Federal lands to be conveyed.

(c) The parties may agree to waive cash equalization payment due the non-Federal party, but the Secretary of Agriculture shall not agree to waive cash equalization payment due the United States. The amount to be waived shall not exceed 3 percent of the value of the lands being exchanged out of Federal ownership or $15,000, whichever is less. The waiver of cash equalization payment shall not be applied to exchanges where the value differential is in excess of $15,000.

(d) A cash equalization payment may be waived only after the authorized officer certifies, in writing, that the waiver will expedite the exchange and that the public interest will be better served by the waiver.

§ 254.13 Approval of exchanges; notice of decision.

(a) Upon completion of all environmental analyses and appropriate documentation, market value estimates, and all other supporting studies and requirements to determine if a proposed exchange is in the public interest and in compliance with applicable law and regulations, the authorized officer shall decide whether to approve an exchange proposal.

(1) When a decision to approve an exchange is made, the authorized officer shall publish a notice of the availability of the decision in newspapers of general circulation. At a minimum, the notice shall include:

(i) Date of decision;

(ii) Concise description of the decision;

(iii) Name and title of the deciding official;

(iv) Directions for obtaining a copy of the decision; and

(v) Date of the beginning of the appeal period.

(2) The authorized officer shall distribute notices to the State and local governmental subdivisions having authority in the geographical area within which the lands covered by the notice are located, the non-Federal exchange parties, authorized users of involved Federal lands, the Congressional delegation, and individuals who requested notification or filed written objections, and make any other distribution of the notice as appropriate.

(b) If the authorized officer makes a decision to disapprove an exchange, the officer shall distribute an appropriate notice of decision containing the same information required under paragraph (a)(1) of this section.

(c) For a period of 45 days after issuance of a notice of the availability of a decision to approve or disapprove an exchange proposal, such decision shall be subject to appeal as provided under 36 CFR part 217 or, for eligible parties, under 36 CFR part 251, Subpart C.

§ 254.14 Exchange agreement.

(a) The parties to a proposed exchange may enter into an exchange agreement subsequent to a decision by the authorized officer to approve the exchange, pursuant to § 254.13 of this subpart. Such agreement shall be required if hazardous substances are present on the non-Federal lands. An exchange agreement shall:

(1) Identify the parties, describe the lands and interests to be exchanged, identify all reserved and outstanding interests, stipulate any necessary cash equalization, and set forth all other terms and conditions necessary to complete an exchange;

(2) Include the terms regarding responsibility for removal, indemnification ("hold harmless" agreement), or other remedial actions concerning any hazardous substances on the involved non-Federal lands; and

(3) Fix the agreed upon values of the involved lands, until consummation of the land exchange.

(b) An exchange agreement, as provided for in paragraph (a) of this section, shall be legally binding on all parties, subject to the terms and conditions thereof, and provided:

(1) Acceptable title can be conveyed;

(2) No substantial loss or damage occurs to either property from any cause;

(3) No undisclosed hazardous substances are found on the involved Federal or non-Federal lands prior to conveyance;

(4) A decision to approve an exchange proposal pursuant to § 254.13 of this subpart is upheld in the event of an appeal under 36 CFR part 217 or 36 CFR part 251, subpart C; and

(5) The agreement is not terminated by mutual consent or upon such terms as may be provided in the agreement.

(c) In the event of a failure to perform or comply with the terms of an exchange agreement, the noncomplying party will be liable for all costs borne by the other party as a result of the proposed exchange, including, but not limited to: Land surveys, appraisals, mineral examinations, timber cruises, title searches, title curative actions, cultural resource surveys and mitigation, hazardous substance surveys and controls, removal of encumbrances, arbitration, curing deficiencies preventing highest and best use of the land, and any other expenses incurred in processing the proposed land exchange.

(d) Absent an executed exchange agreement, no action taken by the parties shall create any contractual or other binding obligations or rights enforceable against any party prior to issuance of a patent or deed to the Federal lands, or acceptance of title to the non-Federal lands by the United States.

§ 254.15 Title standards.

(a) *Title evidence.* (1) Unless otherwise specified by the USDA Office of the General Counsel, evidence of title for lands or interests being conveyed to the United States shall be in conformance with the Department of Justice "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States" in effect at the time of conveyance.

(2) The United States is not required to furnish title evidence for the Federal lands being exchanged.

(b) *Conveyance documents.* (1) Unless otherwise specified by the USDA Office of the General Counsel, all conveyances to the United States shall be prepared, executed, and acknowledged in accordance with the Department of Justice "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States" in effect at the time of conveyance, and in accordance with the laws of the State in which the lands are located.

(2) Conveyances from the United States shall be by patent, quitclaim deed, or deed without express or implied warranties, except as to hazardous substances pursuant to § 254.3 of this subpart.

(c) *Title encumbrances*—(1) *Non-Federal lands.* (i) Taxes, liens, and other encumbrances such as mortgages, deeds of trust, and judgments shall be eliminated, released, or waived in accordance with requirements of the title opinion of the USDA Office of the General Counsel or the Department of Justice, as appropriate.

(ii) The United States shall not accept lands in which there are reserved or outstanding interests that would interfere with the use and management of the land by the United States or would otherwise be inconsistent with the authority under which, or the purpose for which, the lands are to be acquired. Reserved interests by the non-Federal landowner are subject to the appropriate rules and regulations of the Secretary or other agreed upon covenants or conditions contained in the conveyance documents.

(iii) Any personal property owned by the non-Federal party which is not a part of the exchange proposal, should be removed by the non-Federal party prior to acceptance of title by the United States, unless the authorized officer and the non-Federal party to the exchange previously agree upon a specified period to remove the personal property. If the personal property is not removed prior to acceptance of title or within the otherwise prescribed time, it shall be deemed abandoned and shall become vested in the United States.

(iv) The exchange parties shall reach agreement on the arrangements for the relocation of any tenants. Qualified tenants occupying non-Federal lands affected by a land exchange may be entitled to relocation benefits under 49 CFR 24.2. Unless otherwise provided by law or regulation (49 CFR 24.101(a)(1)), relocation benefits are not applicable to owner-occupants involved in exchanges with the United States provided the owner-occupants are notified in writing that the non-Federal lands are being acquired by the United States on a voluntary basis.

(2) *Federal lands.* If Federal lands proposed for exchange are occupied under grant, permit, easement, or lease by a third party who is not a party to the exchange, the third party holder of such authorization and the non-Federal party to the exchange may reach agreement as to the disposition of the existing use(s) authorized under the terms of the grant, permit, easement, or lease. The non-Federal exchange party shall submit documented proof of such agreement prior to issuance of a decision to approve the land exchange, as instructed by the authorized officer. If an agreement cannot be reached, the authorized officer shall consider other alternatives to accommodate the authorized use or shall determine whether the public interest will be best served by terminating such use pursuant to 36 CFR 251.60.

§ 254.16 Case closing.

(a) *Title Transfers.* Unless otherwise agreed, or required by law, patents or deeds for Federal lands and deeds for non-Federal lands shall be issued (delivered and recorded) simultaneously only after the authorized officer is satisfied that the United States will receive acceptable title and possession to the lands or interests being acquired.

(b) *Title acceptance and approval.* Unless otherwise specified by the USDA Office of the General Counsel, title acceptance of lands or interests being conveyed to the United States shall occur only upon the issuance of a final title opinion, approving the title, by the USDA Office of the General Counsel or the Department of Justice, as appropriate. Subject to valid existing rights, non-Federal lands acquired through exchange by the United States shall be segregated automatically from appropriation under the public land laws and mineral laws for 90 days after acceptance of title by the United States, and the public land records shall be noted accordingly. Unless action is taken to withdraw the lands within the 90-day period, they automatically will be open to operation of the public land laws and the mineral laws, except to the extent otherwise provided by law.

Dated: September 20, 1991.

George M. Leonard,

Associate Chief.

[FR Doc. 91-23179 Filed 10-1-91; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 2090 and 2200

[WO-320-4212-02 24 1A]

RIN 1004-AB28

Exchanges—General Procedures

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement the Federal Land Exchange Facilitation Act of August 20, 1988 (43 U.S.C. 1716) and would update the land exchange regulations of the Bureau of Land Management (BLM) to reflect other authorities. On August 18, 1989, the BLM and the Forest Service published separate proposed rules in the **Federal Register** (54 FR 34380 and 54 FR 34368, respectively). Public comments received by the two agencies recommended a greater degree of uniformity between the two regulations. To accomplish this goal, the BLM and Forest Service have made substantial changes to their respective proposed regulations and are publishing new proposals to provide an opportunity for the public to review the changes. The new proposed regulations incorporate provisions that are intended to streamline and expedite exchanges involving Federal and non-Federal lands. The principal provisions pertain to exchange agreements, assembled land exchanges, segregation, compensation for costs assumed, appraisal standards, bargaining, arbitration, approximately equal value exchanges, value equalization, cash equalization waiver, and simultaneous transfer of title.

Because of the high degree of uniformity that exists between the BLM and Forest Service proposed rules, the public may submit one set of comments to either the Director of the BLM or the Chief of the Forest Service at the specified addresses. All comments received will be shared and jointly analyzed by the BLM and Forest Service.

DATES: Comments must be submitted in writing by December 2, 1991. Comments received or postmarked after this date may not be considered in the decisionmaking process on the issuance of the final rule.

ADDRESSES: Comments should be sent to: Director (140), Bureau of Land Management, U.S. Department of the Interior, room 5555, Main Interior Building, 1849 C Street, NW., Washington, DC 20240 or Chief (5430), Forest Service, U.S. Department of Agriculture, P.O. Box 96090, Washington, DC 20090–6090.

All comments sent to the BLM or Forest Service will be available for public review at the above BLM address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Roger Taylor or Dave Cavanaugh, (202) 208–4200 or 208–5441.

SUPPLEMENTARY INFORMATION:

Need for Rules

The purpose of the Federal Land Exchange Facilitation Act of August 20, 1988 (hereafter referred to as the Act) is to facilitate and expedite land exchanges under the authority of the Secretary of the Interior and the Secretary of Agriculture by streamlining and improving the procedures for such exchanges. The Act endorses the long-standing policy that land exchange is an important tool to consolidate landownership for purposes of more efficient management and to secure important objectives of resource management, enhancement, development, and protection; to meet the needs of communities; to promote multiple-use management; and to fulfill other public needs. The Act requires each Secretary to promulgate rules for exchanges of land.

Previous Rulemaking Efforts

A proposed rule to amend the land exchange regulations of the Bureau of Land Management (BLM), as contained in Parts 2200 and 2090 of Title 43 of the Code of Federal Regulations (CFR), was published in the **Federal Register** on August 18, 1989 (54 FR 34380). On the same day, the Forest Service published a proposed rule in the **Federal Register** (54 FR 34368) amending its land exchange regulations under Part 254 of Title 36 of the CFR. Both rules were intended to reflect the amendments made by the Act to Section 206 of the Federal Land Policy and Management Act of 1976 (FLPMA), including the following provisions: exchange agreements, segregation, arbitration, bargaining, appraisal standards, approximately equal value exchanges, compensation for costs assumed, value equalization, cash equalization waiver, and simultaneous transfer of title.

Those proposed rules provided the public with an initial comment period of 45 days. A 60-day extension was granted on October 23, 1989 (54 FR 43185) and that extended comment period officially ended on December 1, 1989.

On November 14 and 15, 1989, the BLM and Forest Service held separate, informal public meetings in Denver, Colorado, to discuss the proposed rules concerning land exchanges. The objectives of the meetings were to answer questions regarding the intent of the rules in relationship to the Act, clarify any parts of the proposed rules that the public found unclear, and obtain an indication of what sections of the rules might need additional attention. Each meeting was attended by approximately 35 people who represented a cross section of the various groups or individuals interested in the exchange programs of the two agencies.

Need for Uniform Regulations

Those attending the public meetings suggested that the definitions of terms, appraisal standards, procedures for resolving appraisal disputes, techniques for assembled land exchanges, and procedures for conveying title in the regulations for both agencies should be similar.

By the end of the public comment period, the agencies had received a total of 141 comments from the public including Members of Congress, business entities, associations, attorneys, individuals, Indian Tribes, State and county agencies, and offices of Federal agencies. Although the majority of comments pertained to the provisions contained in the Act, agency policy, and procedural requirements for conducting land exchanges, several comments recommended a greater degree of uniformity between the regulations developed by the BLM and Forest Service.

After considering the comments received, and in the interest of developing more uniform regulations, the agencies made substantial changes to their respective proposed rules. Because of these changes, the Departments of the Interior and Agriculture have decided that it is necessary to propose new rules, under CFR titles 43 and 36, respectively, in order to provide an opportunity for the public to review the changes. The new proposed rules for both agencies are very similar with differences limited to various statutory and administrative requirements. The differences are explained in this preamble under §§ 2200.0–5 (Definitions), 2200.0–6 (Policy), 2200.0–7 (Scope), 2201.1–1 (Assembled land exchanges), 2201.1–3 (Assumption of costs), and 2201.6 (Value equalization; cash equalization waiver). These BLM sections correspond respectively to Forest Service §§ 254.2 (Definitions), 254.3 (Requirements), 254.1 (Scope and applicability), 254.5

(Assembled land exchanges), 254.7 (Assumption of costs), and 254.12 (Value equalization; cash equalization waiver) of the preamble for the proposed rule.

Features of the Proposed Rule

The principal features of this proposed rule are keyed to the CFR section number and summarized as follows:

Section 2200.0–7 Scope

This section addresses the applicability of this proposed rule to exchanges involving Federal and non-Federal lands and associated interests, such as minerals and timber. It also provides a cross reference to supplemental guidance set forth in the BLM Manuals and Handbooks. Paragraph (c) makes clear that the provisions of this proposed rule apply to Federal lands in Alaska, except where these provisions conflict with the administration of the Alaska Native Claims Settlement Act or the Alaska National Interest Lands Conservation Act. Paragraph (d) contains an exemption clause for those exchanges formally initiated prior to promulgation of this rule. Those exchanges may proceed under the prior regulations, as provided for under the Act.

Differences in corresponding sections of BLM and Forest Service (36 CFR 254.1) rules are: The BLM has exclusive authority regarding exchanges of coal held in private ownership (fee coal exchanges); the Forest Service has exclusive authority to automatically extend national forest boundaries to accommodate Weeks Act acquisitions of up to 3,000 acres of contiguous land; and the Forest Service has exclusive authority to conduct tripartite land-for-timber exchanges.

Section 2200.0–5 Definitions

The Federal Land Exchange Facilitation Act of 1988 introduced new terms which require definition and explanation to ensure uniformity in the application of the provisions of the Act. Accordingly, this section of the proposed rule has been expanded significantly over the current regulations. The definitions in this section correspond to those of the Forest Service in proposed 36 CFR 254.2 with two exceptions: (1) In this rule "Assembled land exchange" may involve one or more exchange transactions over a period of time, whereas in the Forest Service rule will involve only one exchange transaction, and (2) in this rule "Federal lands" are defined as lands administered by the BLM, and in the Forest Service rule this term is defined as lands administered by the Forest Service.

Section 2200.0–6 Policy

This section sets forth the minimum requirements that would be applicable to all BLM exchanges. All exchanges must be subjected to certain tests of need, meet certain criteria, and be governed by certain limitations. This section would establish that exchanges are strictly voluntary transactions between the BLM and the non-Federal party and are discretionary on the part of the Secretary. This section further provides that exchanges shall be in the public interest, of equal value, involve lands within the same State, and be in conformance with the provisions of applicable land use plans. Other provisions pertain to the treatment of revested Oregon and California Railroad Grant lands and reconveyed Coos Bay Wagon Road Grant lands; the automatic addition of lands, when acquired by the Secretary of the Interior, to National systems or certain areas established by Act of Congress; environmental analysis procedures; legal description of properties involved in an exchange; and unsurveyed school sections.

Paragraph (i) of this section requires the BLM to reserve or retain such rights or interests as are necessary to protect the public interest on the lands or interests to be conveyed out of Federal ownership.

Paragraph (j) of this section of the proposed rule addresses hazardous substances. First, the paragraph requires each party to notify the other parties of any known incidence of hazardous substances on the involved lands. Second, the BLM is required to take necessary measures to determine if hazardous substances are present on the Federal and non-Federal lands. Additionally, the exchange parties are required to reach agreement regarding the removal or other remedial actions concerning such substances prior to completing the exchange.

With respect to Federal lands to be conveyed where hazardous substances were stored for one year or more, or known to have been released or disposed of during the time of Federal ownership, paragraph (j) of this section incorporated the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) at 42 U.S.C. 9620(h). In such instances, the conveyance document shall include a covenant warranting that all necessary remedial action was done before conveyance and that any further remedial action found necessary after the transfer shall be completed by the United States, unless the non-Federal party is a potentially responsible party with respect to such lands. When Federal lands with known or possible exposure to hazardous substances are to be conveyed to a potentially responsible non-Federal party, a "hold harmless" agreement by the non-Federal party may be appropriate. The occurrence of hazardous substances on the involved non-Federal lands may also justify a "hold harmless" agreement executed by the non-Federal party, warranting indemnification for any claims against the United States resulting from such hazardous substances. The validity of "hold harmless" and indemnification agreements is recognized in section 107 of the CERCLA (42 U.S.C. 9607(e)). Such agreements, while insuring contributions from the warranting or indemnifying non-Federal party for losses or clean-up costs, do not release any party from any liability for the occurrence of hazardous substances.

The provisions of this section regarding revested and reconveyed lands, fee coal exchanges, unsurveyed school sections, and the statutory requirement (section 210 of FLPMA) to notify the Governor of the involved State 60 days prior to and again upon conveyance of Federal lands applies to the BLM and not the Forest Service.

Corresponding § 254.3 of the Forest Service proposed rule requires the agency to submit land acquisitions of $150,000 or more in value to Congress for oversight review, and land acquisitions of $250,000 or more in value to the Secretary of Agriculture for approval prior to submission to Congress for oversight review. This statutory requirement is in the Weeks Act of March 1, 1911, and does not apply to the BLM.

Section 2201.1—Agreement to Initiate an Exchange

This section of the proposed rule would provide procedures for either the BLM or an individual, business, governmental, or nonprofit entity to propose an exchange. If a proposal appears to be feasible, the authorized officer and other party involved would execute an "agreement to initiate an exchange." Feasibility may be based on a combination of such factors as land use planning, existing land use authorizations, the presence of environmental values, timeframes and costs to complete the exchange, and the market value of the lands involved. Paragraph (c) of this section of the proposed rule would make the agreement to initiate mandatory in every exchange, to clearly establish the

starting point for the appraisal timeframes, and meet other objectives. At a minimum, an agreement would include: The identity of the exchange parties; a description of the properties proposed for exchange; a statement certifying United States citizenship; a description of the appurtenant rights proposed to be exchanged; any known authorized or unauthorized uses and encumbrances; a schedule to complete the exchange; assignment of responsibilities and related costs; any provisions concerning compensation for costs assumed; notice of any hazardous substances on the involved lands and commitments regarding responsibility for removal; permission to enter and examine the lands of each party; the terms of any assembled land exchange arrangement; a statement as to any arrangements for relocation of tenants occupying non-Federal land; a notice to an owner-occupant of the voluntary basis for the acquisition of non-Federal lands; and the procedure for transfer of title. Paragraph (d) of this section would provide that unless the parties agree otherwise, an appraisal shall be arranged no later than 90 days from the date an agreement is signed. Paragraphs (e), (f), and (g) of this section of the proposed rule would make clear that an agreement to initiate may be amended by consent of the parties or terminated by any party upon written notice, and is nonbinding in that either party may withdraw from the exchange at any time prior to entering into a binding exchange agreement, without incurring any liability whatsoever to the other party.

Section 2201.1–1—Assembled Land Exchanges

The BLM uses assembled land exchanges, also known as "pooling," to combine scattered parcels of land into one exchange package. The agency has used this arrangement with States, large landowners, and third parties who represent two or more owners of non-Federal lands and assemble two or more non-Federal properties for the purpose of conducting an exchange with the United States. This approach is advantageous because it:

(1) Enhances opportunities for achieving large Federal ownership adjustments on a districtwide or statewide basis;

(2) Achieves State land tenure consolidation goals;

(3) Improves the time and economic efficiency of processing exchanges by reducing start-up costs of conducting inventories, studies, and land value estimates on lands that have been assembled, as compared to a piecemeal approach;

(4) Encourages the commitment of both the Federal and non-Federal parties to consolidate and improve manageability of their respective lands; and

(5) Enables a private entity (intermediary) to offer title to two or more parcels of non-Federal lands held by different owners, that the United States desires to acquire.

In February 1987, the General Accounting Office (GAO) issued a report entitled "Federal Land Acquisition: Land Exchange Process Working But Can Be Improved" (GAO/RCED–87–9). This report was the result of GAO's review of procedures used by the Departments of the Interior and Agriculture to process land exchanges. In its findings GAO stated that pooling arrangements involving only one exchange transaction, as used by the BLM and as described in the report, appeared to be advantageous to the Federal Government because of the efficiency of disposing of many scattered tracts in one exchange, rather than one tract at a time through several exchanges. The GAO did not evaluate pooling arrangements involving a series of transactions in which the values are balanced over a period of time. GAO concluded their report by recommending that if the BLM continued to use pooling, that it should formulate policies and procedures to ensure that pooling is used in the best interests of the agency and the general public and to promote pooling practices that are economic and efficient.

In response to the GAO recommendation, the BLM and Forest Service developed regulatory provisions under 43 CFR 2201.1–1 and 36 CFR 254.5, respectively, to process exchanges involving scattered parcels of Federal and/or non-Federal lands. Provisions that are common to both regulations specify that: (1) The authorized officer may use assembled land arrangements to facilitate exchanges and reduce units cost; (2) such arrangements must be documented in the agreement to initiate an exchange; and (3) the values of the Federal and non-Federal lands to be conveyed shall be determined in accordance with the same appraisal procedures which require that the non-Federal parcels assembled from multiple ownerships and the assembled Federal parcels be valuated in a comparable manner.

Forest Service has conducted and will continue to conduct assembled land exchanges so that the conveyance of Federal and non-Federal lands occurs in one exchange transaction. Because the ownership pattern of BLM lands in several Western States is highly fragmented, the agency has used and will continue, where it is expedient and in the public interest, to process assembled exchanges in a series of transactions designed to convey all lands included in the initial exchange package over an established period of time. This approach recognizes that it may take more than one year to acquire scattered, small parcels of non-Federal land over a large area and to inventory scattered Federal tracts prior to disposal.

Assembled land exchanges must be agreed upon in the agreement to initiate. When more than one transaction is involved, the parties will establish a ledger account to keep track of the Federal and non-Federal lands conveyed. In utilizing this account, the authorized officer will assure that the value difference between the Federal and non-Federal lands does not exceed 25 percent of the total value of the Federal lands conveyed, and that the values of the lands conveyed are balanced with additional land and/or money at least every 2 years pursuant to § 2201.6 of the proposed rule. If the ledger account is to be used for exchanges involving the private sector, the authorized officer may employ additional controls such as requiring the non-Federal party to deposit cash, a bond, or other approved surety to cover any outstanding value differential. The proposed rule further provides that the assembled land exchange arrangement may be terminated unilaterally by any party at any time, and that prior to termination all values must be equal.

Section 2201.1–2—Segregative Effect

Under this section of the proposed rule, if a proposal were made to exchange Federal lands, such lands may be segregated from appropriation under the public land laws and the mineral laws for a period not to exceed 5 years. Pursuant to the Federal Land Exchange Facilitation Act, this is an extension of the two-year segregation period contained in the existing regulations. As used in this proposed rulemaking, the public land laws include those non-mineral laws that pertain to the disposal of Federal lands. The mineral laws include the mining laws, mineral leasing laws, and the Geothermal Steam Act, but do not include the Materials Sales Act. This provision is intended to eliminate, subject to valid existing rights, the possibility of Federal lands being disposed of under some other authority or encumbered by mining claims or mineral leases during the time such lands are involved in an exchange proposal. However, because many land

exchanges take several years to complete, this provision would not preclude the authorized officer from issuing temporary use authorizations to extract small quantities of sand and gravel, collect firewood, conduct recreational activities such as outfitting and guiding, or for any other temporary activity that would have minimal impact on the physical suitability or appraised value of the Federal lands involved in an exchange.

Section 2201.1–3 Assumption of Costs

Although in past exchanges it was common practice to negotiate the assignment of responsibilities, the proposed rule would specifically incorporate a provision, as set forth under the Act, that some responsibilities may be negotiated. It is the general practice that each party in a land exchange pays its own expenses, but the parties may elect to assume, with or without compensation, various costs or other responsibilities or requirements associated with the exchange. Because the requirements and costs for completing an exchange vary with different localities, the authorized officer must determine which requirements and costs are ordinarily borne by each party.

Paragraph (a) of this section allows the parties to an exchange to (1) assume, without compensation, all or part of the costs or other responsibilities or requirements that would ordinarily be borne by the other parties; or (2) make adjustments to the relative values involved in an exchange transaction in order to compensate parties for assuming costs or other responsibilities or requirements that would ordinarily be borne by the other party. Paragraph (a)(2) also lists items considered eligible for compensation as specified in the Act as well as other requirements associated with the exchange process such as timber cruises, title curative actions, hazardous substance surveys and controls, and assemblage of non-Federal parcels from multiple ownerships. This listing is not all-inclusive.

Paragraph (b) of this section of the proposed rule specifies that the authorized officer may agree to assume costs ordinarily borne by the non-Federal party without compensation or to compensate the non-Federal party for assuming Federal costs only when it is clearly in the public interest and under certain conditions. The intent of specifying these conditions is to avoid routine Federal assumption of non-Federal costs without compensation and routine adjustments of relative values to compensate the non-Federal party for assuming Federal costs. However, the Bureau administers thousands of acres of small, isolated tracts of public land that are difficult and costly to manage. Many of these tracts have been identified for disposal through the Bureau's planning system. By making these tracts of land available as a means of compensating the non-Federal party for assuming Federal costs could expedite the consolidation of Federal, State, and private lands for better management and protection of multiple use values and for more logical and efficient development.

Paragraph (c) of this section would require that the amount of all adjustments agreed to as compensation for costs could not exceed 25 percent of the appraised value of the lands to be exchanged out of Federal ownership. This limitation is consistent with section 206(b) of the FLPMA, which establishes a 25 percent limitation on the payment of money in order to equalize the values of the lands involved in an exchange.

Section 2201.2 Notice of Exchange Proposal

After an agreement to initiate is signed by the parties, paragraph (a) of this section of the proposed rule would require the authorized officer to publish a notice of the exchange proposal in newspapers of general circulation. This notice would serve to inform the public of an exchange proposal, provide an opportunity for those with liens, encumbrances, or other claims to come forward, and offer a period of time for comments from those who wish to furnish information or express their views about the proposed exchange.

Notices would be sent to authorized users including livestock permittees, right-of-way holders, oil and gas lessees, etc. Paragraph (b) of this section would provide that the general public and affected users would be allowed 45 days from the date of first publication to submit their comments or to notify the authorized officer of any claims to the lands. The timely submission of comments ensures that the authorized officer has the benefit of information and comments provided by the public in evaluating the suitability of an exchange through an environmental analysis and appropriate documentation.

The proposed rule does not require that the notice of exchange proposal and the notice of decision (§ 2201.7–1) be published in the **Federal Register (FR)**. This is a change from the existing regulations which require that a notice of realty action be published in the FR. The BLM has omitted this publication requirement because all decisions regarding the disposal of Federal lands by exchange are required to be made through the BLM's land use planning process, pursuant to the procedures contained in 43 CFR part 1600. Included in these procedures are requirements that the public be provided the opportunity to comment on the preparation of land use plans, amendments or revisions. These procedures require that notices be published in the FR at various stages in the planning process to solicit public comments and participation. The exchange procedures in 43 CFR part 2200 are designed to follow and implement a planning decision to dispose of lands through exchange. Therefore, the additional requirement to publish FR notices during the implementation stage is considered unnecessary. Notices published in local newpapers and sent to affected users and interested parties will be required for all exchange transactions. Even though the proposed rule will no longer require that notices be published in the FR, it does not preclude the authorized officer from issuing FR notices when the exchange proposal involves a large amount of acreage, complex issues, significant environmental concerns, or numerous interests.

Paragraph (c) of this section would provide that land descriptions published in the notice of exchange proposal need not be republished if any of the described lands are excluded from the final exchange transaction. This paragraph would also add a provision not in the existing rules to make clear that minor corrections and insignificant changes would not require republishing of a notice, as long as the general concept and basis of the exchange proposal remains the same. These provisions will avoid unnecessary delays in the processing of exchanges.

Section 2201.3–1 Appraiser Qualifications

Paragraph (a) of this section defines a qualified appraiser and requires that the individual be approved by the authorized officer. Exchanges are generally complex and sensitive transactions, requiring high levels of coordination and responsiveness to immediate needs. Due to the complexity that is typical of most exchanges, an appraiser, in order to be qualified, must have the appropriate level of experience and skills to provide the necessary appraisals and support documentation in an efficient and timely manner. Qualified appraisers would also be required to meet applicable State certification or licensing requirements that are consistent with the provisions of the Financial Institutions Reform

Recovery and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 3331), title XI—Real Estate Appraisal Reform Amendments. This law requires States and Territories to enact laws assuring that after December 31, 1991, all appraisals prepared in connection with Federally related transactions will be done by individuals certified or licensed in accordance with State laws. The Appraisal Subcommittee of the Federal Financial Institutions Examination Council is responsible for monitoring implementation of State certification and licensing laws.

Under this proposed rule, appraisers must be certified or licensed in any State or Territory in order to be eligible for agency appraisal assignments to facilitate land acquisitions. This requirement will eliminate a double standard for non-Federal and Federal appraisers, provide recognition to those agency appraisers who meet State standards, and instill public confidence in the administration of the appraisal standards and procedures applicable to land exchanges.

Section 2201.3–2 Market Value

In estimating market value, the appraiser prepares an analysis supporting an opinion of what a property would likely sell for under current market conditions. Paragraph (a) of this section supplements the definition of market value in § 2200.0–5 of this proposed rule and clarifies market value as it applies to exchanges involving mineral and timber interests, other resource values, and parcels involved in assembled land exchanges. An appraiser's determination of highest and best use is crucial in estimating market value.

Certain individuals and organizations assemble from multiple ownerships parcels of non-Federal land for exchange at the request of, or with the cooperation of, the BLM. It is in the public interest to utilize assembled land exchanges, due to the efficiency and economy of combining a number of small exchanges into one large exchange. Previous appraisal practices penalized such assemblages by treating the assembled parcels as a single ownership, which typically resulted in reduced valuation for the properties. The proposed rule would provide for parcels assembled from multiple ownerships to be treated as individual tracts in the appraisal. This special treatment would not apply when an individual owning multiple parcels proposes to exchange those parcels in a single exchange. When non-Federal parcels are considered as individual parcels in an assembled land exchange, the same individual-tract treatment would be used in the appraisal of any multiple-parcel Federal lands involved in the exchange.

Section 2201.3–3 Appraisal Report Standards

This section of the proposed rule sets forth standards for appraisal reports. These standards are consistent with recognized industry and government appraisal standards. In developing the proposed content requirements for appraisal reports, the BLM utilized portions of several sources, including: The "Uniform Appraisal Standards for Land Acquisitions" (1987), published by the Appraisal Standards Board of the Appraisal Foundation; the "Uniform Appraisal Standards for Federal Land Acquisitions" (1973), prepared by the Interagency Land Acquisition Conference for the Department of Justice; and the Governmentwide appraisal standards contained in 49 CFR part 24, published by the Department of Transportation, implementing appraisal provisions of the Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended. Both BLM staff appraisers and appraisers contracted by the agency or non-Federal party would have to comply with these standards.

Section 2201.3–4 Appraisal Review

This section establishes standards for reporting the results of an independent and impartial appraisal review. These standards are consistent with those issued by the Appraisal Standards Board of the Appraisal Foundation. The BLM is responsible for assuring that the appraisal report reasonably estimates market value. Consequently, all appraisals, except for statements of value prepared by agency appraisers, shall be reviewed by a qualified review appraiser to determine if the report is technically adequate and meets agency standards. The review appraiser must have qualifications at least equal to those for qualified appraisers contained in § 2201.3–1 of this proposed rule.

Section 2201.4 Bargaining; Arbitration

A major new provision of the Act authorizes bargaining and arbitration as methods to resolve a disagreement concerning the appraised values of the lands involved in an exchange.

As provided in the Act, paragraph (a) of this section establishes that within 180 days after appraisals are submitted to an authorized officer for review and approval, the parties may either accept the findings of the initial appraisal(s) or, if they cannot agree to accept such findings, may bargain or employ some other process to resolve the disagreement over value. Bargaining or any other process shall be based on an objective analysis of the valuation in the appraisal report(s) and shall be a means of reconciling differences in such reports, and may involve another appraiser review, additional appraisals, third party facilitation, or other acceptable and commonly recognized practices for resolving value disputes. Any agreement based on bargaining shall be documented by the authorized officer.

The Act and this proposed rule further provide that, if the parties cannot agree on values within the 180–day period and desire to continue processing an exchange, the appraisal(s) will be submitted to an arbitrator unless the parties have employed bargaining or some other method to determine values. Arbitration would be conducted in accordance with rules established by the American Arbitration Association. An arbitrator would be appointed by the Secretary of the Interior from a list provided by the Association. Within 30 days after completion of arbitration, the parties must decide whether to proceed with the exchange, modify the exchange to reflect the findings of arbitration, or withdraw from the exchange. A decision to withdraw from the exchange may be made by either party. The Act and this proposed rule provide that values established by arbitration will be binding for a period not to exceed 2 years from the date of the arbitrator's decision.

Paragraph (b) of this section of the proposed rule would limit arbitration to resolution of the disputed value estimate(s) of the contested appraisal(s), and would prohibit an arbitrator's recommendations which would affect any other aspects of the exchange proposal or affect management decisions regarding Federal lands.

As provided in the Act, the parties may agree to modify or suspend the deadlines associated with this section of the proposed rule. The need for such agreement could result from scheduling problems, processing obstacles, special requirements which may be unique to any particular exchange proposal, or other situations causing delays.

Section 2201.5 Exchanges at Approximately Equal Value

In accordance with the Act and in the interest of expediting relatively small exchanges and reducing the administrative costs, this section of the proposed rule would permit the authorized officer, without the use of full narrative appraisals, to process exchanges in which: (1) The Federal and

non-Federal lands are substantially similar; (2) there are no significant elements of value requiring complex analysis; and (3) the value of the Federal lands to be conveyed is not more than $150,000, as based upon a statement of value prepared by a qualified appraiser and approved by the authorized officer.

As defined in § 2200.0–5 of this proposed rule, a statement of value is a simplified valuation report which documents the estimate of value and contains, at a minimum, the conclusions reached in an appraiser's investigation and analysis. Statements of value are commonly used in small, simple, low-value exchanges. For most exchanges at approximately equal value, the statement of value would only be prepared for the Federal lands under consideration. If a statement of value concludes that the Federal properties are valued at less than $150,000, the authorized officer would inspect the Federal and non-Federal lands and prepare a written determination as to whether the properties are substantially similar in terms of location, acreage, use, and physical attributes and therefore approximately equal in value. This documentation would provide a reasonable record of assurance that use of the authorization of this section is in the public interest.

Section 2201.6 Value Equalization; Cash Equalization Waiver

This section of the proposed rule would provide various methods for equalizing the appraised values of the Federal and non-Federal lands in order to complete the exchange transaction. A continuation of the methods in the current regulations, paragraph (a) of this section would allow equalization through adding or excluding Federal or non-Federal lands or making a cash equalization payment. Any combination of these methods may be used except that a cash equalization payment and/or compensation for various costs assumed cannot exceed 25 percent of the appraised value of the Federal lands to be conveyed, as provided in paragraph (b) of this section. This limitation is consistent with section 206 (b) of FLPMA which establishes a 25 percent limitation on the payment of money in order to equalize the values of lands involved in an exchange.

Pursuant to the Act, paragraph (c) of this section would include a new provision that upon agreement by the parties, a cash equalization payment may be waived by either party if the amount does not exceed 3 percent of the value of the Federal lands to be exchanged or $15,000, whichever is less. However, the waiver could not be applied to exchanges where the value differential is in excess of $15,000. This requirement would restrict use of the waiver to relatively small differences in value and preclude any use of the authority to reduce larger cash equalization payments.

Paragraph (d) of this section would require the authorized officer to document how a cash equalization payment waived by either exchange party will expedite the exchange and serve the public interest. The BLM differs from the Forest Service in this regard in that the Forest Service is prohibited by the Act from waiving a payment of cash due the United States.

Section 2201.7 Approval of Exchanges

Section 2201.7–1 Notice of Decision

Paragraph (a) of this section of the proposed rule would require the authorized officer to notify the public of a decision to approve the exchange proposal. Notice of this decision would be published in newspapers of general circulation and copies of the notice would be distributed to affected State and local governmental entities, the non-Federal exchange parties, authorized users of the involved Federal lands, the Congressional delegation, and any individuals who had previously requested notification or filed written objections to the exchange proposal. The notice would contain the date and description of the decision, name and title of the deciding official, directions to obtain a copy of the decision, and the date on which the protest period would begin. Paragraph (b) of this section would require that an appropriate notice containing the same information be distributed if a decision is made by the authorized officer to disapprove an exchange. Paragraph (c) of this section would provide that in accordance with 43 CFR part 4, the public and the affected parties would be allowed 45 days after issuance of a notice of decision in which to protest and appeal the authorized officer's decision to approve or disapprove an exchange proposal.

Section 2201.7–2 Exchange Agreement

Under the current rule, the parties may enter into an exchange agreement (not to be confused with an agreement to initiate) once a decision has been made by the authorized officer to approve an exchange proposal. The proposed rule would continue the optional use of exchange agreements unless hazardous substances are located on the involved non-Federal lands; in which case, the use of exchange agreements would be mandatory. The exchange agreement would be legally binding on all parties, subject to the terms and conditions of the agreement and § 2201.7–2(b) of the proposed rule. Paragraph (c) of this section specifies that the parties would be liable for failure to comply with the terms of an exchange agreement. Paragraph (d) emphasizes the lack of any binding obligations by any party, in the absence of an exchange agreement.

Section 2201.8 Title Standards (Title Evidence, Conveyance, and Encumbrances)

Paragraphs (a) and (b) of this section of the proposed rule would modify the current rule to provide that unless otherwise specified by the Office of the Solicitor of the Department of the Interior, evidence of title in land or interests being conveyed to the United States and the conveyance documents must be in conformance with the Department of Justice "Standards for the Preparation of Title Evidence in Land Acquisition by the United States." Under Federal law, the United States is not required to furnish title evidence for the Federal lands being exchanged. All conveyances from the United States are executed by means of a patent or deed.

Paragraph (c)(1)(i) of this section would require that all encumbrances pertaining to non-Federal lands including taxes, liens, mortgages, etc. must be eliminated, released, or waived in accordance with the requirements of the Office of the Solicitor, Department of the Interior, or the Department of Justice, as appropriate. Paragraph (c)(1)(ii) clarifies that the United States cannot accept lands encumbered by reserved or outstanding interests that would interfere with the management of Federal lands. All reserved interests found to be acceptable would be subject to agreed upon covenants or conditions in the conveyance documents. These requirements are necessary to ensure that such conveyance and reservations do not interfere with the use and management of the lands and interests for public purposes.

Paragraph (c)(1)(iii) of this section would provide that the non-Federal party may remove any personal property that is not part of the exchange proposal. This may be done prior to acceptance of title by the United States or within a period of time thereafter as agreed upon by the parties. If the personal property is not removed within the specified timeframe, it will become vested in the United States. This would clarify the provision of the current rule, that the non-Federal lands be free of encumbrances by providing a

reasonable and orderly process for removal or abandonment of personal property not made part of the exchange.

Paragraph (c)(1)(iv) would provide that tenants occupying non-Federal lands involved in a land exchange may be eligible for advisory assistance and relocation payments, including compensation for moving expenses and costs associated with buying a comparable dwelling. This provision is consistent with the regulations set forth in 49 CFR 24.2 which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. Relocation benefits are not applicable to owner-occupants provided they are notified in writing of the voluntary basis for the exchange. Any arrangements for relocating tenants and the notification to owner-occupants regarding the voluntary basis for the exchange shall be made part of the agreement to initiate an exchange.

With regard to authorized uses on Federal lands to be conveyed in an exchange, under paragraph (c)(2) of this section, the authorized officer is to notify all third-party use holders early in the exchange process. This notice gives right-of-way grant holders, livestock permittees, oil and gas lessees, and other authorized users on Federal lands the opportunity to comment on the exchange proposal and to participate in the process. If Federal lands proposed to be exchanged are occupied under grant, permit, easement, or lease, the BLM prefers to encourage the third-party use holder and the non-Federal exchange party to reach an independent agreement accommodating the authorized use before a decision is made to approve an exchange. The BLM authorized use is then terminated upon conveyance and the continued use after conveyance is authorized under the terms and conditions agreed upon by the use holder and non-Federal exchange party. If an agreement cannot be reached, the authorized officer may consider other alternatives including but not limited to retention of the Federal lands occupied by the authorized use or, in some cases, termination of the use. Paragraph (c)(2) of the proposed rule is an expansion of the BLM policy to provide reasonable consideration of the authorized users' privileges under the terms of the authorization. The addition of these provisions to the proposed rule signifies the importance of this consideration.

Section 2201.9 Case Closing (Title Transfer, Acceptance, and Approval)

Current rules do not contain provisions pertaining to simultaneous transfer of lands involved in exchanges. However, the Act requires that the proposed rule allow for Federal and non-Federal lands to be transferred simultaneously. Paragraph (a) of this section would provide for simultaneous transfer and the conditions necessary to make such transfers possible. Although the proposed rule does not specify the methods to effect a simultaneous transfer, it may be done through an escrow agreement. The parties to an exchange may agree to waive the requirement for simultaneous transfer.

Paragraph (b) of this section would provide that, unless otherwise specified, title to the non-Federal lands will be accepted by the United States after the Office of the Solicitor of the Department of the Interior issues a final title opinion approving the title. Upon acceptance of title, the non-Federal lands acquired by the United States automatically will be segregated from appropriation under the public land laws and mineral laws for a period of 90 days, and thereafter automatically opened to the operation of such laws.

Summary

These proposed regulations are intended to facilitate and expedite BLM land exchanges by: (a) Clarifying their scope and application and the exceptions to their application; (b) defining terms used in exchanges; (c) stating the general requirements of land exchanges; (d) delineating procedures for initiating exchanges; (e) endorsing assembled land exchanges under certain circumstances; (f) explaining the terms under which lands may be segregated from appropriation; (g) establishing the responsibility for duties and costs associated with land exchanges and the conditions under which one party may assume costs, responsibilities, and requirements of the other party; (h) stating the minimum requirements for providing public notice of an exchange; (i) providing rules pertaining to land appraisals which reflect nationally recognized appraisal standards; (j) prescribing procedures and guidelines for resolution of appraisal disputes; (k) describing conditions and limitations for approximately equal value exchanges; (l) providing for cash equalization payments and waiver, and defining the limits of each; (m) establishing the rules under which an exchange may be approved and protested and appealed; (n) outlining the requirements for a binding exchange agreement; and (o) referencing the standards and requirements for the conveyance documents, and title evidence and approval. The public is invited to submit written comments concerning the provisions of this proposed rule.

The principal authors of this proposed rule are David Cavanaugh, Roger Taylor, and Mike Pool of the BLM Washington Office (WO), with assistance from Herb Olson (WO), Bob Schrott (WO), Paul McNutt (WO), Jim Binando and Ron Appel (BLM Montana State Office), Bob Archibald (BLM Arizona State Office), Yolanda Vega (BLM Albuquerque District Office), Marla Bohl (BLM Nevada State Office), Bill Bleisner (BLM Oregon State Office), and Bill Nickerl (BLM California State Office). This rule was also prepared in cooperation with James Dear, Paul Tittman, and Phil Bayles of the Forest Service.

It has been determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order (E.O.) 12291 and certifies this document 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.*).

The proposed rule has been considered in light of Executive Order 12630 concerning possible impacts on private property rights. Executive Order 12630 exempts from takings implications assessments, activities which are consensual in nature between the United States and non-Federal parties. Exchanges are consensual and, therefore, do not raise taking issues. Accordingly, no further consideration of takings implications was deemed necessary in this proposed rule.

The collection of information contained in part 2200 of Group 2200 has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0056. The information will be used to initiate and complete land exchanges with the Bureau of Land Management. Responses are required to obtain benefits in accordance with the Federal Land Policy and Management Act of 1976, as amended.

Public reporting burden for this information is estimated to average 4 hours 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. Comments regarding this burden estimate or any other aspect of this collection of information, including

suggestions for reducing the burden, should be sent to the Division of Information Resources Management, Bureau of Land Management, 1849 C Street, NW., Premier Building, room 208, Washington, DC 20240; and the Paperwork Reduction Project (1004–0056), Office of Management and Budget, Washington, DC 20503.

List of Subjects

43 CFR Part 2090

Airports, Alaska, Coal, Grazing lands, Indians-lands, Public lands, Public lands—classification, Public lands—mineral resources, Public lands—withdrawals, Seashores.

43 CFR Part 2200

Administrative practices and procedures, National Forests, Public lands—classification.

For the reasons set forth in the preamble and under the authority of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1716 and 1740), parts 2200 and 2090 of Groups 2200 and 2000, subchapter B, chapter II of title 43 of the Code of Federal Regulations are proposed to be amended as follows:

PART 2200—EXCHANGES—GENERAL PROCEDURES [AMENDED]

1–2. The citation authority for Part 2200 is revised to read as follows:

Authority: 43 U.S.C. 1715, 1716 and 1740.

3. Subpart 2200 is revised to read as follows:

Subpart 2200—Exchanges—General

Sec.

Subpart 2200—Exchanges—General

§ 2200.0–2 Objective.

The objective is to encourage and expedite the exchange of Federal lands for non-Federal lands, found to be in the public interest, in accordance with applicable statutory policies, standards and requirements.

§ 2200.0–4 Responsibilities.

The Director of the BLM has the responsibility of carrying out the functions of the Secretary of the Interior under these regulations.

§ 2200.0–5 Definitions.

As used in this part:

(a) *Acquisition* means the procuring of lands or interests in lands by the Secretary, acting on behalf of the United States, by exchange, purchase, donation, or eminent domain.

(b) *Adjustment to relative values* means compensation for exchange-related costs, or other responsibilities or requirements assumed by one party, which ordinarily would be borne by the other party. These adjustments do not alter the agreed upon value of the lands involved in an exchange.

(c) *Agreement to initiate* means a written, nonbinding statement of present intent to initiate and pursue an exchange, which is signed by the parties and which may be amended by consent of the parties or terminated at any time upon written notice by any party.

(d) *Appraisal or Appraisal report* means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion as to the market value of the lands or interests in lands as of a specific date(s), supported by the presentation and analysis of relevant market information.

(e) *Approximately equal value* means the lands involved in an exchange have readily apparent and substantially similar elements of value, such as location, size, use, physical characteristics, and other amenities.

(f) *Arbitration* means a process to resolve a disagreement among the parties as to appraised value, performed by an arbitrator appointed by the Secretary from a list recommended by the American Arbitration Association.

(g) *Assembled land exchange* means the consolidation of multiple parcels of Federal and/or non-Federal lands for purposes of one or more exchange transactions over a period of time.

(h) *Authorized officer* means any employee of the BLM who has been delegated the authority and responsibility to make decisions and perform the duties described in this part.

(i) *Bargaining* means a process, other than arbitration, by which parties attempt to resolve a dispute concerning the appraised value of the lands involved in an exchange.

(j) *Federal lands* means any lands or interests in lands, such as mineral or timber interests, that are owned by the United States and administered by the Secretary of the Interior through the Director of the BLM, without regard to how the United States acquired ownership, except (1) lands located on the Outer Continental Shelf; and (2) lands held for the benefit of Indians, Aleuts and Eskimos.

(k) *Hazardous substances* means those substances designated under Environmental Protection Agency regulations at 40 CFR part 302.

(l) *Highest and best use* means an appraiser's supported opinion of the most probable and legal use of a property, based on market evidence, as of the date of valuation.

(m) *Lands* means any land and/or interests in land.

(n) *Market value* means the most probable price in cash, or terms equivalent to cash, which lands or interests in lands should bring in a competitive and open market under all conditions requisite to a fair sale, where the buyer and seller each acts prudently and knowledgeably, and the price is not affected by undue influence.

(o) *Mineral laws* means the mining laws, mineral leasing laws, and the Geothermal Steam Act, but not the Materials Sales Act.

(p) *Outstanding interests* means rights or interests in property held by an entity other than a party to an exchange.

(q) *Party* means the United States or any person, State or local government who enters into an agreement to initiate an exchange.

(r) *Person* means any individual, corporation, or other legal entity legally capable to hold title to and convey land. An individual must be a citizen of the United States and a corporation must be subject to the laws of the United States or of the State where the land is located or the corporation is incorporated.

(s) *Public land laws* means that body of non-mineral land laws dealing with the disposal of public lands administered by the Secretary of the Interior.

(t) *Reserved interest* means an interest in real property retained by a party from a conveyance of the title to that property.

(u) *Secretary* means the Secretary of the Interior or the individual to whom responsibilities have been delegated.

(v) *Segregation* means the removal for a limited period, subject to valid existing rights, of a specified area of the Federal lands from appropriation under the public land laws and mineral laws, pursuant to the authority of the Secretary of the Interior to allow for the orderly administration of the Federal lands.

(w) *Statement of value* means a written report prepared by a qualified appraiser that documents an estimate of value and contains, at a minimum, the conclusions reached in the appraiser's investigation and analysis.

§ 2200.0–6 Policy.

(a) *Exchanges are discretionary.* The Secretary is not required to exchange any Federal lands. Land exchanges are discretionary, voluntary real estate

transactions between the Federal and non-Federal parties. Unless and until the parties enter into a binding exchange agreement, any party may withdraw from and terminate an exchange proposal at any time during the exchange process.

(b) *Determination of public interest.* The authorized officer may complete an exchange only after a determination is made that the public interest will be well served. When considering the public interest, the authorized officer shall give full consideration to the opportunity to achieve better management of Federal lands, to meet the needs of State and local residents, and to secure important objectives, including but not limited to: Protection of fish and wildlife habitats, cultural resources, wilderness and aesthetic values; enhancement of recreation opportunities and public access; consolidation of lands and/or interests in lands, such as mineral and timber interests, for more logical and efficient management and development; consolidation of split estates; expansion of communities; accommodation of land use authorizations; promotion of multiple-use values; and fulfillment of public needs. The authorized officer must find that

(1) The resource values and the public objectives which the Federal lands or interests to be conveyed may serve if retained in Federal ownership are not more than the resource values of the non-Federal lands or interests and the public objectives they could serve if acquired, and

(2) The intended use of the conveyed Federal lands will not be in conflict with management objectives on adjacent Federal lands and Indian trust lands. Such finding and the supporting rationale shall be made part of the administrative record.

(c) *Equal value exchanges.* An exchange of lands or interests shall be based on market value as determined by the Secretary through appraisal(s), or bargaining based on appraisal(s), or arbitration. Lands or interests to be exchanged shall be of equal value or equalized in accordance with the methods set forth in § 2201.6 of this part.

(d) *Same-State exchanges.* The Federal and non-Federal lands involved in an exchange authorized pursuant to the Federal Land Policy and Management Act of 1976, as amended, shall be located within the same State.

(e) *O and C land exchanges.* Non-Federal lands acquired in exchange for revested Oregon and California Railroad Company Grant lands or reconveyed Coos Bay Wagon Road Grant lands are required to be located within the same counties as the grant lands, and, upon acquisition by the United States, automatically shall assume the same status as the lands for which they were exchanged.

(f) *Congressional designations.* Upon acceptance of title by the United States, lands acquired by an exchange that are within the boundaries of any unit of the National Forest System, National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers System, National Trails System, National Wilderness Preservation System, or any other system established by Act of Congress; the California Desert Conservation Area; or any national conservation or national recreation area established by Act of Congress, shall immediately be reserved for and become part of the unit or area within which they are located, without further action by the Secretary, and shall thereafter be managed in accordance with all laws, rules, regulations, and land use plans applicable to such unit or area.

(g) *Land and resource management planning.* The authorized officer shall consider only those exchange proposals that are in conformance with land use plans, where applicable. Lands acquired by an exchange within a BLM district shall automatically become part of that district. The acquired lands shall be managed in accordance with existing regulations and provisions of applicable land use plans or plan amendments. Lands acquired by an exchange that are located within the boundaries of areas of critical environmental concern or any other area having an administrative designation established through the land use planning process shall automatically become part of the unit or area within which they are located, without further action by the BLM, and shall be managed in accordance with all laws, rules, regulations, and land use plans applicable to such unit or area.

(h) *Environmental analysis.* When an agreement to initiate an exchange is signed, an environmental analysis shall be conducted by the authorized officer in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4371), the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), and the environmental policies and procedures of the Department of the Interior and the BLM. In making this analysis, the authorized officer shall consider timely written comments received in response to the published exchange notice, pursuant to § 2201.2 of this part.

(i) *Reservations made in the public interest.* In any exchange, the authorized officer shall reserve such rights or retain such interests as are needed to protect the public interest or shall otherwise restrict the use of Federal lands to be exchanged, as appropriate. The use or development of lands conveyed out of Federal ownership shall be subject to any restrictions imposed by the conveyance documents and all laws, regulations, and zoning authorities of State and local governing bodies.

(j) *Hazardous substances.*—(1) *Federal lands.* The authorized officer shall provide notice of known storage, release, or disposal of hazardous substances on the Federal lands during time of Federal ownership to the other parties in accordance with the provisions of 40 CFR part 373. For purposes of this part, an agreement to initiate an exchange or an exchange agreement shall qualify as a "contract notice" as required by 40 CFR part 373. Unless the non-Federal party is potentially responsible and participated in the storage, disposal, or release of hazardous substances, the conveyance document from the United States shall contain a covenant warranting that all remedial action necessary to protect human health and the environment with respect to any such substance remaining on the property has been taken before the date of transfer, and that any additional remedial action found necessary after the transfer shall be completed by the United States, pursuant to 42 U.S.C. 9620(h)(3). Where the non-Federal party is a potentially responsible party with respect to the property, it could be appropriate to enter into an agreement, as referenced in 42 U.S.C. 9607(e), whereby that party would indemnify the United States and hold the United States harmless against any loss or cleanup costs after conveyance.

(2) *Non-Federal lands.* The non-Federal party shall notify the authorized officer of any hazardous substances known or suspected to have been released, stored, or disposed of on the non-Federal land pursuant to § 2201.1 of this part. Notwithstanding such notice, the authorized officer shall determine whether hazardous substances are present on the non-Federal land involved in an exchange. If hazardous substances are present or believed to be present on the non-Federal land, the authorized officer shall reach an agreement with the non-Federal party regarding the responsibility for appropriate response action concerning the hazardous substances before completing the exchange. The terms of this agreement and any appropriate "hold harmless" agreement shall be

included in an exchange agreement, pursuant to § 2201.7–2 of this part.

(k) *Legal description of properties.* All lands subject to an exchange shall be properly described on the basis of either a survey executed in accordance with the Public Land Survey System laws and standards of the United States or be properly described and clearly locatable by other means as may be prescribed by law.

(l) *Unsurveyed school sections.* For purposes of exchange only, unsurveyed school sections, which would become State lands upon survey by the Secretary, are considered as "non-Federal" lands and may be used by the State in an exchange with the United States. However, minerals shall not be reserved by the State when unsurveyed sections are used in an exchange. As a condition of the exchange, the State shall have waived, in writing, all rights to unsurveyed sections used in the exchange.

(m) *Coordination with State and local governments.* At least 60 days prior to the conveyance of and upon issuance of the patent for Federal lands, the authorized officer will notify the Governor of the State within which the Federal lands covered by the notice are located and the head of the governing body of any political subdivision having zoning or other land use regulatory authority in the geographical area within which the Federal lands are located.

(n) *Fee coal exchanges.* As part of the consideration of whether public interest would be served by the acquisition of fee coal through exchange, the provisions of subpart 3461 of this title shall be applied and shall be evaluated as a factor and basis for the exchange.

§ 2200.0–7 Scope.

(a) These rules set forth the procedures for conducting exchanges of Federal lands. The procedures in these rules are supplemented by the BLM Manuals and Handbooks 2200 and 9310.

(b) These rules apply to all exchanges involving Federal lands, as defined herein, except to the extent they are inconsistent with the authorities listed in parts 2210, 2240, 2250, and 2270 of this title. These rules also apply to the exchange of interests in either Federal or non-Federal lands, including but not limited to minerals and timber.

(c) The application of these rules to exchanges made under the authority of the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1621) or the Alaska National Interest Lands Conservation Act (16 U.S.C. 3192), shall be limited to those provisions which do not conflict with the provisions of these Acts.

(d) Unless the parties to an exchange otherwise agree, land exchanges for which an agreement to initiate an exchange was entered into prior to [Insert effective date of final rule], may proceed in accordance with applicable laws and regulations in effect at the time the agreement was signed.

(e) Exchanges proposed by persons holding fee title to coal deposits that qualify for exchanges under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1260(b)(5)) and as provided in Subpart 3436 of this title shall be processed in accordance with this part, except as otherwise provided in Subpart 3436 of this title.

Subpart 2201—Exchanges—Specific Requirements [Revised]

4. Subpart 2201 is revised to read as follows:

Subpart 2201—Exchanges—Specific Requirements

Sec.

Subpart 2201—Exchanges—Specific Requirements

§ 2201.1 Agreement to initiate an exchange.

(a) Exchanges may be proposed by the BLM or by any person, State, or local government. Initial exchange proposals should be directed to the authorized officer responsible for the management of Federal lands involved in an exchange.

(b) To assess the feasibility of an exchange proposal, the prospective parties may agree to obtain a preliminary estimate of values of the lands involved in the proposal. The preliminary estimate shall be prepared by a qualified appraiser.

(c) If the authorized officer agrees to proceed with an exchange proposal, a nonbinding agreement to initiate an exchange shall be executed by all prospective parties. At a minimum, the agreement shall include:

(1) The identity of the parties involved in the proposed exchange and the status of their ownership or ability to provide title to the land;

(2) A description of the lands or interest in lands being considered for exchange;

(3) A statement by each party, other than the United States, certifying that such party is a citizen of the United States or a corporation or other legal entity subject to the laws of the United States or a State thereof. State and local governments are exempt from this certification requirement;

(4) A description of the appurtenant rights proposed to be exchanged or reserved and any known authorized or unauthorized uses, outstanding interests, exceptions, covenants, restrictions, title defects or encumbrances;

(5) A time schedule for completing the proposed exchange;

(6) An assignment of responsibility for performance of required functions and for costs associated with processing the exchange;

(7) A statement specifying whether compensation for costs assumed will be allowed pursuant to the provisions contained in § 2201.1–3 of this part;

(8) Notice of any known release, storage, or disposal of hazardous substances on involved Federal or non-Federal lands, and any commitments regarding responsibility for removal or other remedial actions concerning such substances on involved non-Federal lands. All such terms and conditions regarding non-Federal lands shall be included in a land exchange agreement pursuant to § 2201.7–2 of this part;

(9) A grant of permission by each party to physically examine the lands offered by the other party;

(10) The terms of any assembled land exchange arrangement, pursuant to § 2201.1–1 of this part;

(11) A statement as to any arrangements for relocation of any tenants occupying non-Federal land, pursuant to § 2201.8(c)(1)(iv) of this part;

(12) A notice to an owner-occupant of the voluntary basis for the acquisition of the non-Federal lands, pursuant to § 2201.8(c)(1)(iv) of this part; and

(13) A statement as to the manner in which documents of conveyance will be exchanged, should the exchange proposal be successfully completed.

(d) Unless the parties agree to some other schedule, no later than 90 days from the date of the executed agreement to initiate an exchange, the parties shall arrange for appraisals which are to be

completed within timeframes and under such terms as are negotiated. In the absence of current market information reliably supporting value, the parties may agree to use other acceptable and commonly recognized methods to estimate value.

(e) An agreement to initiate an exchange may be amended by consent of the parties or terminated at any time upon written notice by any party.

(f) Entering into an agreement to initiate an exchange does not legally bind any party to proceed with processing or to consummate a proposed exchange, or to reimburse or pay damages to any party to a proposed exchange that is not consummated or to anyone doing business with any such party.

(g) The withdrawal from an exchange proposal by the authorized officer at any time prior to the notice of decision, pursuant to § 2201.7–1 of this part, shall not be protestable or appealable under 43 CFR Part 4.

§ 2201.1–1 Assembled land exchanges.

(a) Whenever the authorized officer determines it to be practicable, an assembled land exchange arrangement may be used to facilitate exchanges and reduce costs.

(b) The parties to an exchange may agree to such an arrangement where multiple parcels of Federal and/or non-Federal lands are consolidated into a package for the purpose of completing one or more exchange transactions over a period of time.

(c) An assembled land exchange arrangement shall be documented in the agreement to initiate an exchange, pursuant to § 2201.1 of this part.

(d) Values of the Federal and non-Federal lands involved in an assembled exchange arrangement shall be estimated pursuant to § 2201.3 of this part.

(e) If more than one transaction is necessary to complete the exchange package, the parties shall establish a ledger account under which the Federal and non-Federal lands can be exchanged. When a ledger account is used, the authorized officer shall:

(1) Assure that the value difference between the Federal and non-Federal lands does not exceed 25 percent of the total value of the Federal lands conveyed;

(2) Assure that the values of the Federal and non-Federal lands conveyed are balanced with land and/or money at least every 2 years pursuant to § 2201.6 of this part; and

(3) If necessary, require from the non-Federal party a deposit of cash, bond or other approved surety in an amount equal to any outstanding value differential.

(f) The assembled exchange arrangement may be terminated unilaterally by any party at any time or upon depletion of the Federal or non-Federal lands assembled. Prior to termination, values shall be equalized pursuant to § 2201.6 of this part.

§ 2201.1–2 Segregative effect.

(a) If a proposal is made to exchange Federal lands, the authorized officer may direct the appropriate State Office of the BLM to segregate the Federal lands by a notation on the public land records. Subject to valid existing rights, the record notation shall segregate the Federal lands from appropriation under the public land laws and mineral laws for a period not to exceed 5 years from the date of notation.

(b) Any interests of the United States in the non-Federal lands that are covered by the exchange proposal may be noted and segregated from appropriation under the mineral laws for a period not to exceed 5 years from the date of notation.

(c) The segregative effect shall terminate:

(1) Automatically, upon issuance of patent or other document of conveyance to the affected lands;

(2) On the date and time specified in an opening order, published by the appropriate State Office of the BLM in the **Federal Register**, if a decision is made not to proceed with the exchange or upon deletion of any lands from the exchange proposal; or

(3) Automatically, at the end of the segregation period not to exceed 5 years from the date of notation on the public land records, whichever occurs first.

(d) Non-Federal lands acquired through exchange by the United States automatically shall be segregated from appropriation under the public land laws and mineral laws for 90 days after acceptance of title by the United States, pursuant to § 2201.9(b) of this part, and the public land records shall be noted accordingly.

§ 2201.1–3 Assumption of costs.

(a) Generally, each party to an exchange will bear their own costs of the exchange. However, if the authorized officer finds it is in the public interest, subject to the conditions and limitations specified in paragraphs (b) and (c) of this section, the agreement to initiate an exchange may provide that:

(1) The parties may assume, without compensation, all or part of the costs or other responsibilities or requirements that the authorized officer determines would ordinarily be borne by the other parties; or

(2) The parties may agree to make adjustments to the relative values involved in an exchange transaction in order to compensate parties for assuming costs or other responsibilities or requirements that the authorized officer determines would ordinarily be borne by the other parties. These costs or services may include but are not limited to: Land surveys, appraisals, mineral examinations, timber cruises, title searches, title curative actions, cultural resource surveys and mitigation, hazardous substance surveys and controls, removal of encumbrances, arbitration including all fees, bargaining, curing deficiencies preventing highest and best use of the land, conducting public hearings, assemblage of non-Federal parcels from multiple ownerships, and the expense of complying with laws, regulations, and policies applicable to exchange transactions, or which are necessary to bring the Federal and non-Federal lands involved in the exchange to their highest and best use for appraisal and exchange purposes.

(b) The authorized officer may agree to assume costs ordinarily borne by the non-Federal party without compensation or to compensate the non-Federal party for assuming Federal costs when it is clearly in the public interest and the authorized officer determines and documents that:

(1) The amount of such cost assumed or compensation is reasonable and accurately reflects the value of the cost or service provided, or any responsibility and requirement assumed;

(2) The proposed exchange is a high priority of the agency;

(3) The land exchange must be expedited to protect important Federal resource values, such as Congressionally designated areas or endangered species habitat;

(4) Cash equalization funds are available for compensating the non-Federal party; and

(5) There are no other practicable means available to the authorized officer of meeting Federal exchange processing costs, responsibilities, or requirements.

(c) The total amount of adjustment agreed to as compensation for costs pursuant to this section shall not exceed the limitations set forth in § 2201.6 of this part.

§ 2201.2 Notice of exchange proposal.

(a) Upon entering into an agreement to initiate an exchange, the authorized officer shall publish a notice once a

week for 4 consecutive weeks in newspapers of general circulation in the counties in which the Federal and non-Federal lands or interests proposed for exchange are located. The authorized officer shall notify authorized users and make other distribution of the notice as appropriate. At a minimum, the notice shall include:

(1) The identity of the parties involved in the proposed exchange;

(2) A description of the lands being considered for exchange;

(3) A statement as to the effect of segregation from appropriation under the public land laws and mineral laws, if applicable; and

(4) An invitation to the public to submit any comments or to advise as to any liens, encumbrances, or other claims relating to the lands being considered for exchange.

(b) To be assured of consideration in the environmental analysis of the proposed exchange, all comments shall be made in writing to the authorized officer and postmarked or delivered within 45 days after the initial date of publication.

(c) The authorized officer is not required to republish descriptions of any lands excluded from the final exchange transaction, provided such lands were identified in the notice of exchange proposal. In addition, minor corrections of land descriptions and other insignificant changes do not require republication.

§ 2201.3 Appraisals.

The Federal and non-Federal parties to an exchange shall comply with the appraisal standards set forth in §§ 2201.3–1 through 2201.3–4 of this part and, to the extent appropriate, with the Department of Justice "Uniform Appraisal Standards for Federal Land Acquisitions" when appraising the values of the Federal and non-Federal lands involved in an exchange.

§ 2201.3–1 Appraiser qualifications.

(a) A qualified appraiser shall provide to the authorized officer appraisals estimating the market value of Federal and non-Federal properties involved in an exchange. A qualified appraiser may be an employee or a contractor to the Federal or non-Federal exchange parties. At a minimum, a qualified appraiser shall be an individual, approved by the authorized officer, who is competent, reputable, impartial, and has training and experience in appraising property similiar to the property involved in the appraisal assignment.

(b) Qualified appraisers shall comply with State regulatory requirements consistent with title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 3331). In the event a State or Territory does not have approved policies, practices and procedures regulating the activities of appraisers, the BLM may implement qualification standards commensurate with those adopted by other States or Territories meeting the requirements of FIRREA.

§ 2201.3–2 Market value.

(a) In estimating market value, the appraiser shall:

(1) Determine the highest and best use of the property to be appraised;

(2) Estimate the value of the lands and interests as if in private ownership and available for sale in the open market;

(3) Include historic, wildlife, recreation, wilderness, scenic, cultural, or other resource values or amenities that are reflected in prices paid for similiar properties in the competitive market;

(4) Consider the contributory value of any interest in land such as mineral or timber interests, to the extent they are consistent with the highest and best use of the property;

(5) Estimate separately, if stipulated in the agreement to initiate in accordance with § 2201.1 of this part, the value of each property assembled from multiple ownerships by the non-Federal party for purposes of exchange, pursuant to § 2201.1–1 of this part;

(6) Estimate the value of multiple-parcel Federal lands involved in an assembled land exchange arrangement in a manner comparable to that used on the involved non-Federal lands;

(7) Disregard any change in market value prior to the date of valuation caused by the intent of the BLM to acquire the non-Federal property, or the intended public use of the property; and

(8) Refrain from independently adding the separate values of the fractional interests to be conveyed, unless market evidence indicates:

(i) The various interests contribute their full value (pro rata) to the value of the whole; and

(ii) The valuation is compatible with the highest and best use of the property.

(b) In the absence of current market information reliably supporting value, the authorized officer may use other acceptable and commonly recognized methods to determine market value.

§ 2201.3–3 Appraisal report standards.

Appraisals prepared for exchange purposes shall contain, at a minimum, the following information:

(a) A summary of facts and conclusions;

(b) The purpose and/or the function of the appraisal, a definition of the estate being appraised, and a statement of the assumptions and limiting conditions affecting the appraisal assignment, if any;

(c) An explanation of the extent of the appraiser's research and actions taken to collect and confirm information relied upon in estimating value;

(d) An adequate description of the physical characteristics of the lands being appraised; a statement of all encumbrances; title information, location, zoning, and present use; an analysis of highest and best use; and at least a 5-year sales history of the property;

(e) Disclosure of any knowledge of the presence, or possible presence, of potentially hazardous environmental conditions on the property;

(f) A comparative market analysis. If more than one method of valuation is used, there shall be an analysis and reconciliation of the methods used to support the appraiser's estimate of value;

(g) A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, effect of any favorable financing on sale price, and verification by a party involved in the transaction;

(h) An estimate of market value;

(i) The effective date of valuation, date of appraisal, signature, and certification of the appraiser;

(j) A statement certifying that the appraiser signing the report:

(1) Personally contacted the property owner or designated representative and offered the owner an opportunity to be present during inspection of the property;

(2) Personally examined the subject property and all comparable sale properties relied upon in the report;

(3) Has no present or prospective interest in the appraised property; and

(4) Did not receive compensation that was contingent on the analysis, opinions, or conclusions contained in the appraisal report; and

(k) Copies of relevant written reports, studies, or summary conclusions prepared by others in association with the appraisal assignment which were relied upon by the appraiser to estimate value. This may include but is not limited to current title reports, mineral reports, or timber cruises prepared by qualified specialists.

§ 2201.3–4 Appraisal review.

(a) Appraisal reports, except for statements of value prepared by agency appraisers, shall be reviewed by a qualified review appraiser meeting the qualifications set forth in § 2201.3–1 of this part.

(b) The review appraiser shall determine whether the appraisal report:

(1) Is complete, logical, consistent, and supported by a market analysis;

(2) Complies with the standards prescribed in § 2201.3–3 of this part; and

(3) Reasonably estimates the probable market value of the lands appraised.

(c) The review appraiser shall prepare a written review report, containing at a minimum:

(1) A description of the review process used;

(2) An explanation of the adequacy, relevance, and reasonableness of the data and methods used by the appraiser to estimate value;

(3) The reviewing appraiser's statement of conclusions regarding the appraiser's estimate of market value; and

(4) A statement certifying that the review appraiser:

(i) Has no present or prospective interest in the property which is the subject of the review report; and

(ii) Did not receive compensation that was contingent on the approval of the appraisal report.

§ 2201.4 Bargaining; arbitration.

(a) Unless the parties to an exchange agree in writing to suspend or modify the deadlines contained in paragraphs (a)(1) through (a)(4) of this section, the parties shall adhere to the following schedule:

(1) Within 180 days from the date of receipt of the appraisal(s) for review and approval by the authorized officer, the parties to an exchange may agree on the appraised values of the lands involved in an exchange. If the parties cannot agree on the appraised values, they may agree to initiate a process of bargaining or some other process to resolve the dispute over values. Bargaining or any other process shall be based on an objective analysis of the valuation in the appraisal report(s) and shall be a means of reconciling differences in such reports, and may involve one or more of the following actions:

(i) Submission of the disputed appraisal(s) to another qualified appraiser for review;

(ii) Request for additional appraisals;

(iii) Involvement of an impartial third party to facilitate resolution of the value disputes; or

(iv) Use of some other acceptable and commonly recognized practice for resolving value disputes.

Any agreement based upon bargaining shall be in writing and made part of the administrative record. Such agreement shall reference all relevant appraisal information and state how the parties reconciled or compromised appraisal information to arrive at an agreement based on market value.

(2) If within 180 days from the date of receipt of the appraisal(s) for review and approval by the authorized officer, the parties to an exchange cannot agree on values but want to continue with the land exchange, the appraisal(s) shall, at the option of either party, be submitted to arbitration unless, in lieu of arbitration, the parties have employed a process of bargaining or some other process to determine values. If arbitration occurs, it shall be conducted in accordance with the real estate valuation arbitration rules of the American Arbitration Association. The Secretary shall appoint an arbitrator from a list provided by the American Arbitration Association.

(3) Within 30 days after completion of arbitration, the parties involved in the exchange shall determine whether to proceed with the exchange, modify the exchange to reflect the findings of the arbitration or any other factors, or withdraw from the exchange. A decision to withdraw from the exchange may be made upon written notice by either party at this time or at any other time prior to entering into a binding exchange agreement.

(4) If the parties agree to proceed with an exchange after arbitration, the values established by arbitration shall be binding upon all parties for a period not to exceed 2 years from the date of the arbitration decision.

(b) Arbitration shall be limited to the disputed valuation of the lands involved in a proposed exchange and an arbitrator's award decision shall be limited to the value estimate(s) of the contested appraisal(s). An award decision shall not include recommendations regarding the terms of a proposed exchange, nor shall an award decision infringe upon the authority of the Secretary to make all decisions regarding management of Federal lands and to make public interest determinations.

§ 2201.5 Exchanges at approximately equal value.

(a) The authorized officer may exchange lands which are of approximately equal value when it is determined that:

(1) It is in the public interest and that the consummation of a particular exchange will be expedited;

(2) The value of the lands to be conveyed out of Federal ownership is not more than $150,000 as based upon a statement of value prepared by a qualified appraiser and approved by the authorized officer;

(3) The Federal and non-Federal lands are substantially similar in location, acreage, use, and physical attributes; and

(4) There are no significant elements of value requiring complex analysis.

(b) The authorized officer shall document how the determination of approximately equal value was made.

§ 2201.6 Value equalization; cash equalization waiver.

(a) To equalize the agreed upon values of the Federal and non-Federal lands involved in an exchange, either with or without adjustments of relative values as compensation for various costs, the parties to an exchange may agree to:

(1) Modify the exchange proposal by adding or excluding lands; and/or

(2) Use cash equalization after making all reasonable efforts to equalize values by adding or excluding lands.

(b) In no event shall the combined amount of any cash equalization payment and/or the amount of adjustments agreed to as compensation for costs under § 2201.1–3 of this part exceed 25 percent of the value of the Federal lands to be conveyed.

(c) The parties may agree to waive a cash equalization payment if the amount to be waived does not exceed 3 percent of the value of the lands being exchanged out of Federal ownership or $15,000, whichever is less. This provision shall not be applied to exchanges where the value differential is in excess of $15,000.

(d) A cash equalization payment may be waived only after the authorized officer determines in writing how the waiver will expedite the exchange and why the public interest will be better served by the waiver.

§ 2201.7 Approval of exchanges.

§ 2201.7–1 Notice of decision.

(a) Upon completion of all environmental analyses and appropriate documentation, market value estimates, and all other supporting studies and requirements to determine if a proposed exchange is in the public interest and in compliance with applicable law and regulations, the authorized officer shall decide whether to approve an exchange proposal.

(1) When a decision to approve an exchange is made, the authorized officer shall publish a notice of the availability of the decision in newspapers of general circulation. At a minimum, the notice shall include:

(i) Date of decision;

(ii) Concise description of the decision;

(iii) Name and title of the deciding official;

(iv) Directions for obtaining a copy of the decision; and

(v) Date of the beginning of the protest period.

(2) The authorized officer shall distribute notices to State and local governmental subdivisions having authority in the geographical area within which the lands covered by the notice are located pursuant to § 2200.0–6(m) of this part, the non-Federal exchange parties, authorized users of involved Federal lands, the Congressional delegation, and individuals who requested notification or filed written objections, and make any other distribution of the notice as appropriate.

(b) If the authorized officer decides to disapprove an exchange, the officer shall distribute an appropriate notice of decision containing the same information required under paragraph (a)(1) of this section.

(c) For a period of 45 days after issuance of a notice of the availability of a decision to approve or disapprove an exchange proposal, such decision shall be subject to protest and appeal as provided for under 43 CFR part 4.

§ 2201.7–2 Exchange agreement.

(a) The parties to a proposed exchange may enter into an exchange agreement subsequent to a decision by the authorized officer to approve the exchange, pursuant to § 2201.7–1 of this part. Such agreement shall be required if hazardous substances are present on the non-Federal lands. An exchange agreement shall:

(1) Identify the parties, describe the lands and interests to be exchanged, identify all reserved and outstanding interests, stipulate any necessary cash equalization, and set forth all other terms and conditions necessary to complete the exchange;

(2) Include the terms regarding responsibility for removal, indemnification ("hold harmless" agreement), or other remedial actions concerning any hazardous substances on the involved non-Federal lands; and

(3) Fix the agreed upon values of the involved lands, until consummation of the land exchange.

(b) An exchange agreement, as provided for in paragraph (a) of this section, shall be legally binding on all parties, subject to the terms and conditions thereof, and provided:

(1) Acceptable title can be conveyed;

(2) No substantial loss or damage occurs to either property from any cause;

(3) No undisclosed hazardous substances are found on the involved Federal or non-Federal lands prior to conveyance;

(4) A decision to approve an exchange pursuant to § 2201.7–1 is upheld in the event of a protest or appeal under 43 CFR part 4; and

(5) The agreement is not terminated by mutual consent or upon such terms as may be provided in the agreement.

(c) In the event of a failure to perform or comply with the terms of an exchange agreement, the noncomplying party will be liable for all costs borne by the other party as a result of the proposed exchange including, but not limited to: Land surveys, appraisals, mineral examinations, timber cruises, title searches, title curative actions, cultural resource surveys and mitigation, hazardous substance surveys and controls, removal of encumbrances, arbitration, curing deficiencies preventing highest and best use of the land, and any other expenses incurred in processing the proposed land exchange.

(d) Absent an executed exchange agreement, no action taken by the parties shall create any contractual or other binding obligations or rights enforceable against any party prior to issuance of a patent or deed to the Federal lands, or acceptance of title to the non-Federal lands by the United States.

§ 2201.8 Title standards.

(a) *Title evidence.* (1) Unless otherwise specified by the Office of the Solicitor of the Department of the Interior, evidence of title for lands or interests being conveyed to the United States shall be in conformance with the Department of Justice "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States" in effect at the time of conveyance.

(2) The United States is not required to furnish title evidence for the Federal lands being exchanged.

(b) *Conveyance documents.* (1) Unless otherwise specified by the Office of the Solicitor of the Department of the Interior, all conveyances to the United States shall be prepared, executed, and acknowledged in accordance with the Department of Justice "Standards for the Preparation of Title Evidence in Land Acquisition by the United States" in effect at the time of conveyance, and in accordance with the laws of the State in which the lands are located.

(2) Conveyances from the United States shall be by patent, quitclaim deed, or deed without express or implied warranties, except as to hazardous substances pursuant to § 2200.0–6(j)(1) of this title.

(c) *Title encumbrances*—(1) *Non-Federal lands.* (i) Taxes, liens, and other encumbrances such as mortgages, deeds of trust, and judgments shall be eliminated, released, or waived in accordance with requirements of the title opinion of the Office of the Solicitor of the Department of the Interior, or the Department of Justice, as appropriate.

(ii) The United States shall not accept lands in which there are reserved or outstanding interests that would interfere with the use and management of land by the United States or would otherwise be inconsistent with the authority under which, or the purpose for which, the lands are to be acquired. Reserved interests by the non-Federal landowner are subject to agreed upon covenants or conditions contained in the conveyance documents.

(iii) Any personal property owned by the non-Federal party which is not a part of the exchange proposal, should be removed by the non-Federal party prior to acceptance of title by the United States, unless the authorized officer and the non-Federal party to the exchange previously agree upon a specified period to remove the personal property. If the personal property is not removed prior to acceptance of title or within the otherwise prescribed time, it shall be deemed abandoned and shall become vested in the United States.

(iv) The exchange parties shall reach agreement on the arrangements for the relocation of any tenants. Qualified tenants occupying non-Federal lands affected by a land exchange may be entitled to benefits under 49 CFR 24.2. Unless otherwise provided by law or regulation (49 CFR 24.101(a)(1)), relocation benefits are not applicable to owner-occupants involved in exchanges with the United States provided the owner-occupants are notified in writing that the non-Federal lands are being acquired by the United States on a voluntary basis.

(2) *Federal lands.* If Federal lands proposed for exchange are occupied under grant, permit, easement, or lease by a third party who is not a party to the exchange, the third party holder of such authorization and the non-Federal party to the exchange may reach agreement as to the disposition of the existing use(s) authorized under the terms of the grant, permit, easement, or lease. The non-

Federal exchange party shall submit documented proof of such agreement prior to issuance of a decision to approve the land exchange, as instructed by the authorized officer. If an agreement cannot be reached, the authorized officer shall consider other alternatives to accommodate the authorized use or shall determine whether the public interest will be best served by terminating such use in accordance with the terms and provisions of the instrument authorizing the use.

§ 2201.9 Case closing.

(a) *Title transfers.* Unless otherwise agreed, or required by law, patents or deeds for Federal lands and deeds for non-Federal lands shall be issued (delivered and recorded) simultaneously only after the authorized officer is satisfied that the United States will receive acceptable title and possession to the lands or interests being acquired. Pursuant to § 2200.0–6(m) of this part, the authorized officer will promptly notify the State and governmental subdivisions having regulatory authority in the geographical area within which the Federal lands are located of the issuance of the patent for Federal lands.

(b) *Title acceptance and approval.* Unless otherwise specified by the Office of the Solicitor, title acceptance of lands or interests being conveyed to the United States shall occur only upon the issuance of a final title opinion, approving the title, by the Office of the Solicitor or the Department of Justice, as appropriate. Subject to valid existing rights, non-Federal lands acquired through exchange by the United States shall be segregated automatically from appropriation under the public land laws and mineral laws for 90 days after acceptance of title by the United States, and the public land records shall be noted accordingly. Unless action is taken to withdraw the lands within the 90-day period, they automatically will be open to operation of the public land laws and mineral laws, except to the extent otherwise provided by law.

Subpart 2202—Exchanges—National Forest Exchange [Amended]

4. Section 2202.1 is amended by revising paragraph (b) and adding paragraphs (c) and (d) to read as follows:

§ 2202.1 Applicable regulations.

* * * * *

(b) If a proposal is made to exchange Federal lands, the authorized officer may request the appropriate State Office of the BLM to segregate the Federal lands by a notation on the public land records. Subject to valid existing rights, the record notation shall segregate the Federal lands from appropriation under the public land laws and the mineral laws as defined under § 2200.0–5 of this title for a period not to exceed 5 years from the date of notation.

(c) Any interests of the United States in the non-Federal lands that are covered by the exchange proposal may be noted and segregated from appropriation under the mineral laws for a period not to exceed 5 years from the date of notation.

(d) The segregative effect shall terminate:

(1) Automatically, upon issuance of patent or other document of conveyance to the affected lands;

(2) On the date and time specified in an opening order, published by the appropriate State Office of the BLM in the **Federal Register**, if a decision is made not to proceed with the exchange or upon deletion of any lands from the exchange proposal; or

(3) Automatically, at the end of the segregation period not to exceed 5 years from the date of notation on the public land records, whichever occurs first.

Subpart 2203—Exchanges Involving Fee Federal Coal Deposits [Amended]

5. Section 2203.1 is revised to read as follows:

§ 2203.1 Opportunity for public comment and public meeting on exchange proposal.

Upon acceptance of a proposal for a fee exchange of Federal coal deposits, the authorized officer shall publish and distribute a notice of exchange proposal as set forth in § 2201.2 of this title.

6. Section 2203.2 is amended by revising paragraphs (a) and (d) to read as follows:

§ 2203.2 Submission of information concerning proposed exchange.

(a) Any person submitting a proposal for a fee exchange of Federal coal deposits shall submit information concerning the coal reserves presently held in each geographic area involved in the exchange along with a description of the reserves that would be added or eliminated by the proposed exchange. In addition, the person filing a proposed exchange under this section shall furnish any additional information requested by the authorized officer in connection with the consideration of the antitrust consequences of the proposed exchange.

* * * * *

(d) Where the entity proposing a fee coal exchange has previously submitted information, a reference to the date of submission and to the serial number of the record in which it is filed, together with a statement of any and all changes in holdings since the date of the previous submission, shall be accepted.

§ 2203.3 [Amended]

7. Section 2203.3 is amended by removing the phrase "notice of realty action" in the third line of the introductory paragraph and replacing it with "notice of decision," and in the same paragraph removing the citation "§ 2201.1(e)" and replacing it with the citation "§ 2201.7–1".

* * * * *

PART 2090—SPECIAL LAWS AND RULES [AMENDED]

8. The authority citation for part 2090 is revised to read as follows:

Authority: 43 U.S.C. 1201; 43 U.S.C. 851, 852; 43 U.S.C. 869 *et seq.*; 43 U.S.C. 641 *et seq*; 43 U.S.C. 321–323; 43 U.S.C. 231, 321, 323, 327–329; 25 U.S.C. 334; 25 U.S.C. 336; 16 U.S.C. 485; 72 Stat. 339–340; 43 U.S.C. 852 note; 16 U.S.C. 818; 43 U.S.C. 315f; 43 U.S.C. 1601 *et seq.*; 16 U.S.C. 3101 *et seq.*; 43 U.S.C. 1701 *et seq.*; 30 U.S.C. 189; 48 U.S.C. 462 note, unless otherwise noted.

Subpart 2091—Segregation and Opening of Lands [Amended]

§ 2091.0–3 [Amended]

9. Section 2091.0–3 is amended by revising the citation "Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*)" to read Federal Land Policy and Management Act of 1976, as amended, (43 U.S.C. 1701 *et seq.*).

§ 2091.2–1 [Amended]

10. Section 2091.2–1 is amended by removing the semicolon and "and" at the end of paragraph (b) and inserting a period, and removing paragraph (c).

11. Section 2091.2–2 is amended by removing paragraph (c) and revising paragraph (b) to read as follows:

§ 2091.2–2 Opening.

* * * * *

(b) Mineral interests reserved by the United States in connection with the conveyance of public lands under the Recreation and Public Purposes Act or section 203 of the Federal Land Policy and Management Act, shall remain segregated from the mining laws pending the issuance of such regulations as the Secretary may prescribe.

12. Section 2091.3 is revised to read as follows:

§ 2091.3 Segregation and opening resulting from a proposal or application.

13. Section 2091.3–1 is amended by removing paragraph (b), redesignating

paragraph (a) as paragraph (b), and adding paragraph (a) to read as follows:

§ 2091.3–1 Segregation.

(a) If a proposal is made to exchange public lands administered by the BLM or National System lands administered by the Forest Service, such lands may be segregated by a notation on the public land records for a period not to exceed 5 years from the date of notation (See § 2201.1–2).

* * * * *

14. Section 2091.3–2 is revised to read as follows:

§ 2091.3–2 Opening.

(a) If a proposal or an application described in § 2091.3–1 of this title is not denied, modified, or otherwise terminated prior to the end of the segregative periods set out in § 2091.3–1 of this part, the segregative effect of the proposal or application automatically terminates either upon:

(1) Issuance of a patent or other document of conveyance to the affected lands; or

(2) The expiration of the applicable segregation period set out in § 2091.3–1 of this part commencing on the date of record notation or on the date the application is filed, whichever occurs first.

(b) If the proposal or application described in § 2091.3–1 of this part is denied, modified, or otherwise terminated prior to the end of the segregation periods, the lands are opened by publication in the **Federal Register** of an opening order specifying the date and time of opening.

(c) Lands conveyed to the United States by exchange shall be segregated automatically for 90 days after acceptance of title by the United States, and the public land records shall be noted accordingly. The segregative effect will automatically terminate at the end of the 90–day period. (See § 2201.1–2)

Dated: September 16, 1991.

Richard Roldan,

Acting Assistant Secretary of the Interior.

[FR Doc. 91–22880 Filed 10–1–91; 8:45 am]

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Wednesday
October 2, 1991

Part III

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, and 174

Elevated Temperature Materials; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, and 174

[Docket No. HM-198A; Amdt. Nos. 171-13, 172-125, 173-227, and 174-69]

RIN 2137-AB31

Elevated Temperature Materials

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: RSPA is amending the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) to regulate materials which pose a hazard due to their being offered for transportation or transported at elevated temperatures. Included are materials in a liquid phase having temperatures at or above 100 °C (212 °F) and materials in a solid phase having temperatures at or above 240 °C (464 °F). RSPA is also regulating, as flammable liquids, materials in a liquid phase with flash points at or above 37.8 °C (100 °F) which are intentionally heated and offered for transportation or transported in bulk quantities at or above their flash points. The intended effects of these regulatory changes are to communicate the hazards of these elevated temperature materials by means of marking, shipping papers and placarding, and to prescribe packaging requirements for these materials. The changes are necessary to alert the public and emergency response personnel to the risks posed by these materials and to specify minimum levels of packaging for them in order to minimize the possibility of their unintentional release.

DATES: These amendments are effective March 30, 1992. However, compliance with the regulations as amended herein is authorized as of October 30, 1991.

FOR FURTHER INFORMATION CONTACT: Beth Romo, Office of Hazardous Materials Standards, (202) 366–4488, or James K. O'Steen, Office of Hazardous Materials Technology, (202) 366–4545, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

In several previous rulemaking actions, RSPA has endeavored to develop appropriate definitions and regulatory controls for flammable solids, including materials offered for transportation or transported at elevated temperatures. In an Advance Notice of Proposed Rulemaking (ANPRM) published under Docket HM-178 on May 7, 1981 (46 FR 25492), RSPA requested comments on making the definition of a flammable solid more specific and proposed methods for testing which would enable shippers to determine if their products were flammable solids for purposes of transportation. The ANPRM addressed solids or molten materials shipped at temperatures exceeding 315 °C (600 °F) because of the potential of these materials to ignite combustible materials. The ANPRM also solicited comments on types of packaging controls for these materials.

In a subsequent rulemaking action, RSPA incorporated criteria for distinguishing between "liquid" and "solid" materials. A final rule published April 20, 1987 (Docket HM-166U; 52 FR 13634), added definitions for "liquid" and "solid" to § 171.8 of the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180). The definitions are based on American Society for Testing and Materials (ASTM) D 4359–84 entitled, "Standard Test Method for Determining whether a Material is a Liquid or Solid."

On January 19, 1985, a tractor with two tank trailers filled with molten sulfur collided with the concrete median barrier on the southbound lanes of Interstate 680 on the Benecia-Martinez Bridge in Benecia, California. The molten sulfur ignited and sprayed onto other vehicles traveling in the northbound lanes. As a result of the fire and smoke from the burning sulfur, two persons died, 26 persons were taken to local hospitals, surrounding areas were evacuated, and the roadway was closed for 15 hours. Because molten sulfur was not subject to the HMR, the hazards of the material were not communicated to emergency responders, thereby hampering emergency response efforts. As a result of its investigation into this accident, the National Transportation Safety Board (NTSB) on August 12, 1985 issued Safety Recommendation I–85–19, which recommended that RSPA (1) regulate molten materials, as appropriate, as hazardous materials; (2) prescribe packaging and handling standards; and (3) incorporate information relating to the hazards of these materials into warning devices and publications available to emergency responders and others involved in the transportation of molten materials. The NTSB expressed concern that unregulated molten materials in the transportation system pose a substantial risk to persons and property, and could cause major disruptions to communities.

In a subsequent comment, the NTSB referenced an October 21, 1986, accident that occurred near Berrien Springs, Michigan, which involved a load of molten aluminum and resulted in two fatalities. The driver of a tractor trailer hauling a crucible of molten aluminum failed to negotiate a right-hand curve. The vehicle crossed the center line and overturned in the oncoming lanes. The tractor collided with an automobile and pushed it off the road and into a gully. Despite the overturn, the molten aluminum crucible remained chained to the trailer, and the lid of the vat remained bolted in place. However, one of the hinges on the top lid broke upon impact, allowing the molten aluminum to leak into the gully. The molten aluminum flowed underneath the automobile, igniting gasoline in the fuel tank. Subsequent autopsies indicated that the two passengers died of smoke inhalation before extensive tissue damage caused by the hot metal and before injuries due to the accident or explosion could cause death. As a result of this accident, the NTSB recommended that DOT consider the hazards posed by molten materials in the various transportation modes.

There appeared to be a need for hazard communication requirements for elevated temperature materials to alert emergency response personnel and the general public to the potential hazards posed by the release of these materials. There also appeared to be a need to impose minimal packaging standards on packagings used in the transportation of elevated temperature materials.

On November 21, 1986, therefore, RSPA published an NPRM in the **Federal Register** (Docket HM–198; Notice No. 86–6; 51 FR 42114), proposing to regulate molten sulfur as a hazardous material and soliciting information concerning other molten materials. A final rulemaking on molten sulfur was published on May 13, 1988 (51 FR 42114), and included the announcement that RSPA would address other molten materials in a future rulemaking action.

Historical Summary of Docket HM–198A

The current HMR do not adequately address elevated temperature materials. Most elevated temperature materials are not currently regulated. Therefore, RSPA has limited information concerning numbers of incidents and accidents involving these materials.

On September 21, 1989, RSPA published notice of proposed rulemaking (54 FR 38930) under Docket HM–198A, concerning elevated temperature materials. The notice proposed to regulate all materials offered for transportation which pose a thermal

hazard: i.e. liquids and solids hot enough to damage human tissue; liquids and solids which would ignite combustible materials; and liquids transported at or above their flash points that are not currently regulated as flammable liquids. RSPA proposed to regulate, in the ORM–C hazard class (see § 173.500), all liquids offered for transportation or transported at temperatures above 212 °F (100 °C), as well as solid materials offered for transportation or transported at temperatures greater than 464 °F (240 °C). RSPA proposed to require that liquid elevated temperature materials and solid materials capable of igniting combustible materials be subject to specific packaging standards, because packaging quality is the only way to prevent a spill or release if an accident occurs. RSPA further proposed that liquids offered for transportation at or above their flash points be classified and packaged as flammable liquids since there is a greater tendency for those materials to burn in the presence of an ignition source.

This notice was consistent with the regulation of molten sulfur. By requiring specific packaging for liquids offered for transportation or transported at temperatures greater than 212 °F (100 °C), the greater hazard of liquid materials was recognized and controlled. The notice addressed the flow characteristics of liquids, the ignitability characteristics of the hotter solid materials, and the regulation of liquid materials transported at or above their flash points.

The NPRM proposed to regulate a number of materials not currently addressed by the HMR, particularly those materials offered for transportation or transported at temperatures at or above their flash points. In addition to compliance with the proposed packaging requirements, shippers of newly-regulated materials would be required to prepare shipping papers, mark packages, and, for materials transported at or above their flash points, affix placards. Shippers of currently-regulated materials meeting the definition of an elevated temperature material or a flammable liquid would be required to indicate the thermal hazard of the material through additional shipping paper and marking requirements. Other requirements proposed for shippers and carriers of previously unregulated materials would include incident reporting (for carriers) and, for flammable liquids, unloading/loading and attendance requirements, coupler vertical restraint systems on tank cars, and train placement of placarded rail cars.

Discussion of Comments

RSPA received over 50 written comments to Docket HM–198A. The City and County of Denver and the Ohio Public Utilities Commission (PUC) expressed complete support for the proposals. The Ohio PUC believed the proposal would provide needed hazard communication and packaging specifications. Denver stated that the new requirements would ensure elevated temperature materials and materials transported at or above their flash points are adequately described and packaged. Denver did not anticipate any need for significant investments for training or equipment.

The majority of comments were provided by trade associations or individual companies involved in the transport of asphalt, molten sulfur, or molten aluminum. Other types of materials identified by commenters as meeting the proposed definitions for elevated temperature materials or flammable liquids included dimethyl terephthalate, phthalic anhydride, steel slabs and coils, molten iron and steel, hot cinders, amorphous polypropylenes, ortho-toluenediamine and meta-toluenediamine.

Proposed hazard communication requirements. Several commenters believed that annotating the word "hot" on shipping papers and packages would be confusing because some shippers use the word "hot" to indicate a shipment that needs to be expedited. Some commenters stated that the imposition of emergency response communication standards would be an unnecessary burden on transporters of a material whose only hazardous characteristic is its temperature. Other commenters, such as the International Association of Fire Chiefs, stated that elevated temperature materials must be placarded and a bill of lading available to prevent death and disabling injuries to firefighters and first responders. The National Tank Truck Carriers (NTTC) supported efforts to better inform emergency response personnel, and believed the proposed addition of the word "HOT" to shipping papers for affected products is appropriate.

Materials offered for transportation or transported at or above their flash points. The NPRM proposed that materials offered for transportation or transported at or above their flash points (flash point materials) be classified (or reclassified) as flammable liquids, and that all HMR requirements for flammable liquids apply to them.

RSPA received nine comments that offered in-depth discussion of this issue; four additional commenters also addressed the other categories of materials proposed for regulation under Docket HM–198A. Commenters listed products that would fall into the category of materials offered for transportation or transported at or above their flash points to include asphalts, oils, beverage concentrates, dimethyl terephthalate (DMT), and phthalic anhydride (PA). Packaging identified by commenters as being used to transport materials at or above their flash points were split about evenly between bulk and non-bulk packagings. DMT is transported in dedicated AAR tank cars, specially designed insulated stainless steel non-specification tanks, or in DOT specification containers. A commenter believed the tank cars would require substantial modification to meet the proposed packaging requirements. Safety vents would need to be replaced with valves, and each would need to be equipped with double shelf-couplers. Commenters maintained that DMT and PA cargo tanks are non-specification tanks similar to MC–307 cargo tanks, but they do not comply with MC–307 venting or outlet valve requirements. There are no known vents or outlet valves which would provide satisfactory service for DMT or PA. These tanks may not comply with accident damage protection or circumferential reinforcement requirements. The Truck Trailer Manufacturers Association (TTMA) stated that requiring DMT and PA to be transported in specification packagings would render a large fleet obsolete and unusable. TTMA asserted that the fleet is in dedicated service for which there is little other use. TTMA further stated that replacement of the DMT and PA fleet would create an enormous financial burden on owners, many of whom are small, independent business operators.

As proposed in the NPRM, RSPA believes that hazard communication and classification requirements for Class 3 (flammable liquid) materials should apply to materials offered for transportation or transported at or above their flash points. However, after further review, RSPA agrees that requiring packaging suitable for flammable liquids may be too stringent for these materials. RSPA believes that a balance is needed between the specification packaging requirements for Class 3 materials and the non-specification requirements authorized for a material offered for transportation or transported above its flash point are similar to those for Class 3 materials, except provisions have been made to account for the unique solidification

properties of these materials and their lower level of hazard.

Another major concern, identified by nine commenters, is the difficulty they foresee in shipping a material having a flash point between 100 °–130 °F under conditions which might cause the temperature of the material to rise to a point that the material would become subject to regulation as a flammable liquid. Factors identified by the commenters that could impact the temperature of the material include: (1) Weather and seasonal conditions; (2) different geographical locations (e.g., transport through the desert); (3) shipping time; (4) driver's route; (5) any mechanical difficulties encountered; (6) ventilation in the trailer; (7) color of the trailer; and (8) traffic conditions. The hazard classification may change several times during transport and could be "contingent upon climatic conditions . . . over which shippers have no control" asserted 3M Corporation. The Conference on Safe Transportation of Hazardous Articles (COSTHA) maintained that the shipper would have "no way of predicting the temperature to which a material may be subjected within a vehicle, rail car or freight container in the course of transportation." The National Soft Drink Association predicted that this could create "considerable confusion" and a "significant potential for non-compliance." Two commenters indicated that computerized classification systems could not be utilized, thus "increasing the risk of human error." Several commenters indicated that a packed and labeled product might be placed in a tank car storage yard, cargo tank staging area, or in a warehouse for months before transport. These commenters maintained that the only way to know the actual temperature of a product is to open the package and place a thermometer in the product, which could raise environmental, health and product quality issues. Commenters also asked who would assume responsibility for monitoring product temperatures in transit. In summary, the commenters were of the opinion that, if this proposal were adopted in a final rule, compliance would be "practically unmanageable," "difficult, if not impossible," and violated "on a regular basis." RSPA agrees with the commenters that it would be very difficult to correctly classify a material which is environmentally heated to a temperature at or above its flash point. Data indicates that environmental heating of bulk packagings very rarely exceeds 105 °F for insulated packagings and 115 °F for uninsulated packagings and the frequency of environmentally-heated shipments in this temperature range is small. It appears that the economic impact of regulating these occurrences may be significant, whereas the benefits are minimal. Therefore, in this final rule, RSPA is excepting from regulation as an elevated temperature material or flammable liquid all materials with flash points at or above 37.8 °C (100 °F) which are offered for transportation or transported at or above their flash points when they are in non-bulk packagings or in bulk packagings when the lading is not intentionally heated prior to or during transportation.

Asphalt. Commenters addressing proposals for regulating asphalt as a flammable liquid or an elevated temperature material included shippers, cargo tank manufacturers, carriers, asphalt pavement and roofing associations, and one state. Asphalt materials consist of various grades of asphalts and asphalt products. Grades include asphalt cement (AC), slow curing, cut back asphalt (SC), medium curing cut back asphalt (MC), and rapid curing cut back asphalt (RC). Many RC asphalts are classed as "flammable" under current regulations. MC and some SC asphalts would be subject to regulation because they are transported at or above their flash points or are transported above the threshold 212 °F. Bitumen (asphalt or coal tar) is used in roofing operations and is normally transported at 300 °–500 °F. Bitumen would never be transported at or above its flash point. One commenter explained that materials are shipped at elevated temperatures so the materials can be unloaded without additional heating; reheating is potentially dangerous and could result in severe burns to employees from steam or products. Another commenter noted that most major oil companies do not maintain private fleets for asphalt service, but depend on the availability of contract or common carriers. Several commenters cited the generally good safety record for the transportation of asphalts, and noted that most incidents occurred during the loading and unloading process.

No non-bulk packagings were identified by the commenters. Commenters reported shipments of AC in insulated tank trucks and tank cars with electric or steam heater coils. RC asphalts, classed as flammable, are transported in MC–306 cargo tanks, with certain exceptions as allowed in current 49 CFR 173.131. MC and SC asphalts are being transported in non-specification atmospheric pressure tanks having open vents, which are protected from product loss while the tank is upright by various baffling arrangements. The vents have no moving parts. Bitumen is transported in kettles ranging in size from 100–1,500 gallons and tankers which hold 2,000–5,000 gallons. The tankers house a heating system to maintain the temperature of the bitumen in transit. To make a kettle or tanker leak-tight would create the potential for an explosion. There are currently no existing venting systems or internal valves available that would comply with the proposed requirements without risking explosions. Commenters alleged that current cargo tanks used for RC asphalts do not meet proposed venting, manhole, or certification requirements, and stated that replacement of many asphalt tanks and all asphalt spray applicators would be required. The State of Texas requested clarification as to whether vehicles such as asphalt distributors would be affected. Commenters believed it would make far more sense to require proposed equipment modifications on newly manufactured vehicles, while allowing existing equipment to be utilized for its normal service life without retrofit. They stated that the proposed requirement for MC–306 venting or alternative venting would necessitate the development of technologies not presently available. Commenters further stated that conventional low pressure vents will not work because exposed vents in tops of tanks are not fully heated by the product; they stick shut and become plugged by the product. The commenters alleged that the only venting system possible would be a large pressure vent (6 inches set at 25–35 psi) constructed of seals of non-sticking material such as teflon. This concept would not meet requirements of HM–183, and the 1994 "Smart Vent" would be impossible. Several commenters noted that use of a pressure tank would introduce a new burn hazard to the operator because asphalt would boil and expand as the manhole is opened. One commenter asserted that if an MC–306/406 or MC–307/407 tank vent plugs due to heavy viscous liquids, the cargo tank could overpressurize, threatening the integrity of the tank. Also, if the vent were plugged, cooling of the product could result in a vacuum being created within the tank. Commenters alleged that replacement of currently authorized cargo tanks would place an enormous financial burden on owners, many of whom are small, independent business operators.

One commenter maintained that the proposals would have a significant cost impact if measured as a percent of total cost for handling asphalts, as well as affecting small governmental jurisdictions. Another commenter reported that over 90 percent of the pavement in the U.S. is hot mix asphalt and nearly all road construction is funded with tax monies by governmental agencies at all levels. The commenter stated that small governmental jurisdictions would pay more because of the increased cost of transporting asphalt cement. The commenter also stated that these small governmental jurisdictions would be further affected as spraying equipment would have to be replaced. According to the commenter, many or most independent road oil applicators are small businesses who would be impacted by the regulation. One commenter believed the financial burden on the not-for-profit government jurisdictions could reduce the overall safe operation of asphalt tanks, but did not elaborate on how overall safety might be reduced.

Numerous commenters maintained that all equipment now in service should be allowed to operate to the end of normal service life, and the effective date should be tied to a period related to development of equipment required to meet the new requirements. After further deliberation, RSPA partially agrees and has provided for the continued use of existing equipment not fully conforming to applicable requirements for 20 years from the date of manufacture provided such equipment meets the performance requirements for closures and, for bitumen and asphalt, also meets the accident damage protection and package marking requirements. In addition, a delayed compliance period has been provided to allow for an orderly transition for manufacturers to conform to the new requirements.

Molten sulfur. Shippers, carriers, The Fertilizer Institute, The Sulphur Institute and the U.S. Department of the Interior (DOI) furnished comments and general statistics on molten sulfur. Molten sulfur is transported at temperatures of 250°–290°F in rail cars, trucks, and barges. Shipment net weight varies from 10 long tons in trucks to 8,000 tons in unit trains; no non-bulk packaging was cited. Transportation equipment is in dedicated service using special rail tank cars, trucks, and barges. Some specialized molten sulfur trailers are equipped with dry material hoppers for dry fertilizer backhaul, in addition to combination tank trailers for molten sulfur/phosphatic fertilizer solutions. Accident statistics reported are company accident statistics, except for the DOI, which stated that in addition to incidents cited in the Notice, two minor accidents occurred involving spills with no injuries or loss of life.

In general, commenters did not believe that equipment now in use would meet proposed packaging requirements. One commenter believed a rule requiring manhole covers to be closed is warranted, although changing tank specifications would not prevent a recurrence of the type of accident which occurred in Benecia, California. The Sulphur Institute was concerned that ASTM D 4359–84, "Standard Test Method for Determining Whether a Material is a Liquid or a Solid", may be inappropriate if used at the maximum temperature of a material. Several commenters were particularly concerned that the proposed rule is not clear whether tank trucks must have pressure and vacuum control equipment and suggested that DOT clarify this section. One commenter stated that vacuum and pressure controls would depend on loading temperature, length of haul, time elapsed between loading and unloading, trailer capacity, quantity of lading, and temperature at unloading. According to commenters, the current manhole cover on a molten sulfur tank truck consists of a ½ inch-thick stainless steel plate with EPDM sheet gasket covering the area where the cover sits on the manhole collar. The cover is fastened with hold-down bolts. Commenters reported that, during transit, sulfur splashes on the cover and the joint between the cover and the collar and then hardens after cooling. This seals the collar to the cover. The Sulphur Institute noted that the duration of a tank truck shipment of molten sulfur is usually less than a few hours; therefore, based on existing experience, it is unlikely that either pressure buildup or a vacuum develops. The Sulphur Institute also stated that the duration of a rail tank car shipment is usually several days. During the shipment, sulfur solidifies and forms a thick crust on the upper surface and interior walls, adding thickness to the tank and eliminates the need for additional pressure or vacuum controls.

Commenters addressing equipment modification or replacement alleged the impracticality or impossibility of using a rupture disk, creating a leak test, or using an MC 307-type manhole cover. One commenter believed RSPA has not provided criteria for evaluating a lading's potential for pressure deviation, and maintained that the standard safety vent is adequate to prevent rupture or collapse of a tank car from heating or cooling and to prevent release of material in the event of an overturn. Several commenters asserted that pressure and vacuum controls should not be required for tanks currently in service. Commenters asserted that replacement or modification costs of existing equipment would be significant. The Fertilizer Institute requested that DOT rewrite the section to allow existing tank trucks with proven performance records to operate for the remainder of their service lives. The Sulphur Institute requested that the continued use of existing rail cars be allowed throughout their useful service lives. RSPA agrees and is revising the packaging requirements to allow the continued use of existing equipment not in conformance with the general requirements for 20 years from the date of manufacture, provided closures meet minimum performance requirements. A one-year transition period is provided after which construction of new equipment must be in conformance with the new packaging requirements.

Molten aluminum. Commenters addressing molten aluminum included two shippers, the Aluminum Association, the Aluminum Recycling Association (ARA) and the U.S. Department of the Interior. They reported that molten aluminum is shipped in custom-designed dedicated crucibles by highway. None of the commenters was aware of any non-bulk or rail shipments. Commenters reported that shipping temperatures range between 1200° and 1600°F. According to commenters, during the past three years there have been one spill involving a fatality and two spills involving only damage to the road and the transport vehicle. In addition, commenters noted seven collisions with no spillage and minimal injuries and vehicle damage. ARA member companies reported 19 accidents with four fatalities over 17 years. These fatalities occurred during four different years; in each incident, only the driver died and the deaths may have been cardiac-related.

Most commenters addressing molten aluminum stressed that incident reporting should not apply to loading, unloading or maintenance on shippers' or customers' plant sites where "small" spills may be unavoidable. They stated that small spills occur on a regular basis and that incident reporting should apply only to significant incidents which: (1) occur outside the property of a shipper or receiver; (2) occur on public thoroughfares; (3) cause injury or damage; and (4) are over a certain

weight (e.g., 50 pounds). These commenters believed it is very important that transporters and customers should not be subjected to any reporting burden involving loading or unloading off public highways. They said that incident reporting of all spills during loading, unloading, or transport would impose an unnecessary burden. RSPA, through prior interpretation, has stated that a small amount of unavoidable spillage of hazardous materials during loading and/or unloading is excepted from the reporting requirements. This interpretation does not encompass major spills, ruptured piping, or catastrophic failures which occur during loading or unloading, but rather the small, inadvertent spills which are not the result of package failure, occur at the facility where there are provisions to contain the release, and pose no significant risk to personnel or the environment.

Several commenters reported that custom-designed crucibles are in dedicated service, have a steel plate shell, are refractory lined and insulated, have a steel plate cover bolted or chained to the frame to create an integral unit, and are sealed with special gasketing material. These commenters said they could not furnish data to indicate whether the current packagings would meet the proposed standards, but claimed that the proposed requirement for closures implies verification by demonstration of leaktightness in any orientation. According to commenters, crucibles used to transport molten aluminum may not be leak-tight and are never turned upside down to verify they are leak-tight. The commenters believed this requirement should be revised to read "substantially leak tight in any orientation by design." RSPA agrees and has rewritten the requirements for closures to require substantial leak-tightness in design, but RSPA will allow, in the event of an incident, dripping or trickling from closures.

Other molten materials. Other molten materials identified by commenters included molten iron, molten steel, and molten glass. Several commenters reported that submarine ladles are used to transport molten metals by rail.

They reported that the ladles are bottle-shaped in design with an opening located at the top center of the ladle. Commenters asserted that maintenance procedures on thermos iron ladles contribute to accident-free transport, and the torpedo-type body is lined with 12" thick refractory brick, which is periodically inspected for thin spots and repaired with gunnite or relined by trained employees. Commenters report that, while the torpedo car is approximately 56' long overall, the cylinder is approx 29' long and mounted in the center of the car, which is equipped with double trucks at each end and two independent brake systems on each car. Gross weight when loaded can be 800,000–850,000 pounds. Molten iron is loaded between 2400°–2700°F; the skin of the car is approximately 550°F. The car attains a maximum speed of 15 mph, which greatly reduces any potential of harm or injury to the public. One company has transported molten iron by rail for over 60 years without incident.

All commenters stated that to completely encapsulate a submarine ladle car would involve designing a lid or cork-like device to be placed in or over the opening. They maintained that there would be three critical flaws to enclose the cars: (1) The procedure necessary to remove and replace the lid each time metal is loaded and poured would require utilization of an overhead crane and an operator positioned above the ladle to remove and replace the lid. This would be dangerous as well as costly and time-consuming; (2) the continual routine of pouring hot metal would cause the car's lip to wear with each pour, making it impossible to enclose the car with an air-tight lid; and (3) no such lid or cork device is currently being manufactured or available. In view of the unique packaging and transportation conditions, at the present time RSPA believes that molten metals and molten glass should be excepted from liquid elevated temperature material packaging requirements if transported by rail at speeds no greater than 15 miles per hour, and has provided a regulatory exception to this effect.

Other liquid elevated temperature materials. Commenters identified Amorphous Polypropylene Copolymer and Amorphous Polypropylene Homopolymer as two materials which would become subject to the HMR. Two other materials, Ortho-Toluenediamine, and Meta-Toluenediamine, are currently regulated in the ORM-A hazard class. Commenters reported that the temperature range of these materials is 240 °–375 °F when offered for transportation, but these materials are not transported at temperatures above their flash points. Commenters stated that specialized, dedicated cargo tanks are used to transport Amorphous Polypropylene, as well as an occasional shipment in DOT 111A100W tank cars. They stated that cargo tanks have been modified to add exterior heating elements, insulation, and jacketing as a means to maintain temperature. According to several commenters, actual transportation experience indicates cargo tanks and tank cars currently transporting this type of material will meet proposed packaging requirements.

Solid elevated temperature materials. RSPA received five in-depth comments addressing solid materials are offered for transportation or transported at temperatures exceeding 464 °F. The five commenters (three steel companies and two rail carriers) furnished comments on the rail transport of solid elevated temperature materials. Materials identified by the commenters included hot steel slabs, not rolled steel coils, hot cinder, ingots, and solid iron and steel shipped in various forms including rolls of rough sheets referred to as "hot bands." Commenters cited different loading temperatures by commenters ranging from 400 °F–2800 °F.

Commenters reported that most of the shipments of these hot solid materials are over short distances, both intrastate and interstate by rail.

The trains are in dedicated or unit train service. One company indicated that it owns the cars, and uses engines and crews provided by various railroads. One rail carrier group asserted that they have been involved in the transport of elevated temperature materials for over 100 years, and none of their carriers transporting elevated temperatures materials has ever been involved in an accident where the public's safety was in any way threatened. The other rail carrier maintained that solid iron and steel transported at elevated temperatures has been transported over portions of their lines for over 30 years without any problems. The steel companies reported no accidents or incidents while in transit.

Commenters identified types of equipment used for these rail shipments as gondola cars, some specially designed with steel floor and V bottom troughs, steel floor gondolas with special pipe racks for loading coils, and specially designed flatcars with steel V bottom troughs. They stated that cinder ladles are used to transport hot cinder. These ladles are pot-shaped, approximately 28 feet long, and have a large open top. Slab racks used to transport hot slabs were described by commenters as large heavy-duty flat cars with end bulkheads and risers.

The major concern of three commenters was the proposed packaging requirements for solid elevated temperature materials. These commenters cited the difficulty of encapsulating or enclosing the rail cars. They maintained that it would be extremely costly and impractical, and

that there is currently no technology available to enclose this type of car. They asserted that encapsulating the cars would be counter-productive because the intent is to dissipate the heat through the use of open cars. The additional weight necessary for encapsulation, according to all three commenters, would reduce the amount of product that could be transported in each car, thus resulting in the need for more equipment and higher costs.

All five commenters contended that materials such as hot ingots, hot slabs, and other forms of hot metals should not be classified as "bulk" and therefore not subject to the regulations. RSPA stated in the NPRM that the hazards posed by solid elevated temperature materials are considerably less than for liquid elevated temperature materials because solid materials do not flow away from a release site. After further review, RSPA agrees with commenters that the level of regulation proposed for these solid elevated temperature materials may be too stringent. However, RSPA believes that a hazard communication marking requirement is necessary to warn of the thermal danger of the product and its packaging. Therefore, RSPA is only requiring the marking of the word "HOT" on each side and each end of a bulk packaging containing a solid elevated temperature material.

II. Summary

Under this final rule, materials offered for transportation or transported at or above their flash points are classified as Class 3 (flammable liquid) materials if they are in bulk packagings and intentionally heated before or during transportation. New entries, "Flammable liquid, elevated temperature material, n.o.s." and "Aluminum, molten" are added to the § 172.101 Table. Liquid elevated temperature materials are regulated in the Class 9 (miscellaneous) hazard class. Hazard communication requirements (shipping papers, marking, labeling, placarding, and emergency response communications) are being imposed. The intent of these changes from those proposed in the NPRM is to ensure adequate communication of the hazards posed by these materials, but with appropriate exceptions for environmentally-heated materials and materials in non-bulk packagings. A new performance-based packaging section is provided for these materials. In addition, this section authorizes existing equipment to be used for significant periods of time, provided closures meet minimum performance standards. Based upon rigid operational controls, an exception from packaging requirements has been provided for molten metals and molten glass transported in rail cars.

The proposed § 172.101 Table entry for "Elevated temperature material, solid, n.o.s." has been revised. Solid elevated temperature materials are not subject to any requirements of the HMR except for marking the word "HOT" on the package.

The following is a section-by-section review of this final rule:

A. Part 171: General Information, Regulations, and Definitions

Section 171.8. Two new definitions, "Elevated temperature material" and "Liquid phase," are added. Both definitions have been clarified from those proposed in the NPRM. Temperatures are indicated in centigrade as the metric standard, in conformance with the December 21, 1990 final rule under HM–181, with Fahrenheit temperatures in parentheses for information purposes only.

B. Part 172: Hazardous Materials Table, Special Provisions and Hazardous Materials Communication Regulations

Section 172.101. In new paragraph (i)(3)(iii), for consistency with the December 21, 1990 final rule under HM–181, the proposed reference to ORM materials is replaced by a reference to a Class 9 material and the proposed packaging reference changed from § 173.990 to § 173.247.

Section 172.101 Hazardous Materials Table. The proposed revision of the entry for "asphalt, at or above its flashpoint," classed as a flammable liquid, was modified under the Docket HM–181 final rule published December 21, 1990. However, the bulk packaging section (§ 173.242) authorized in that final rule is now revised to § 173.247. Entries for molten sulfur, for both domestic and international transportation, have been revised to change the bulk packaging authorization to § 173.247. The proposed entry for "Elevated temperature material, solid, n.o.s., ORM–C, NA9260" has been revised to reference § 173.247, which provides exceptions for these materials. The entry for "Elevated temperature material, liquid, n.o.s." is revised to clarify that this entry applies only to a material that is transported at or above 100 °C and below its flash point. In addition, the proposed hazard class for "Elevated temperature material, liquid, n.o.s." is changed from ORM–C to Class 9, for consistency with the HM–181 final rule. The entry for "Elevated temperature material at or above its flash point" is revised to reference a new entry "Flammable liquid, elevated temperature material, n.o.s." which authorizes § 173.247 as the bulk packaging section. A new entry has been added for "Aluminum, molten" with its own unique identification number.

Section 172.203. Paragraph (g)(3) is added to alert rail carriers to additional operating requirements for elevated temperature materials excepted under § 173.247. Paragraph (n) is added to require the word "HOT" to precede the proper shipping name of an elevated temperature material if the shipping name does not indicate that it is an elevated temperature material. Exceptions for the proper shipping names "Molten aluminum" and "Molten sulfur" are also added.

Section 172.325. This section is added to require the word "HOT" to be marked on each side and each end of a bulk packaging containing an elevated temperature material. The size, style and method of marking is specified, and an exception is included for molten aluminum and molten sulfur.

C. Part 173: Shippers, General Requirements for Shipments and Packagings

Section 173.24. Paragraph (b)(2) is adopted as proposed in the NPRM to require package effectiveness to be maintained for the entire range of temperatures encountered during transportation.

Section 173.29. This section is adopted essentially as proposed in the NPRM. Proposed paragraph (d) is amended as new paragraph (g) and permits a package containing a residue of an elevated temperature material to remain marked as if it contained a greater quantity of the material.

Section 173.120. Proposed paragraph (a) has been revised for consistency with the final rule issued under Docket HM–181. It is further amended by adding a definition for flammable liquid as a liquid with a flash point at or above 37.8 °C (100°F) which is intentionally heated and offered for transportation or transported at or above its flash point in a bulk packaging. This definition has been revised from the definition proposed in the NPRM to except these materials if they are in non-bulk packagings or not intentionally heated. Examples of intentionally-heated materials include: materials retaining heat as a result of a manufacturing process and which still may be hot when loaded into a packaging; materials which are heated prior to transportation for ease of loading; or materials which are heated while in transportation to maintain their desired physical state.

Section 173.140. A new paragraph is added to this section, as adopted under the Docket HM–181 final rule, to clarify that a material which meets the definition of an elevated temperature material in § 171.8 is classed as a Class 9 material only if it does not meet any other hazard class. In addition to meeting the definition of an elevated temperature material, any material which meets the definition of another hazard class would remain in that hazard class, with the addition of "HOT" on the shipping paper and package marking to convey the subsidiary hazard posed by elevated temperature materials. For example, a Class 8 (corrosive) material, which also meets the definition of an elevated temperature material, would continue to be described, classed and packaged as a Class 8 material, with the additional shipping paper and package marking requirements to indicate the material is also an elevated temperature material.

Section 173.247. Paragraph (a) is adopted as proposed in the NPRM. The general requirements in proposed paragraphs (b)(1) through (b)(6) have been clarified, based on comments indicating difficulties which would be encountered in attempting to conform with the requirements as proposed in the NPRM. Concerning proposed paragraph (b)(1), commenters noted that the use of self-closing pressure and vacuum control devices might prove impractical or impossible to safely implement for packagings containing certain hazardous materials. These materials would, because of their unique physical properties, prevent pressure and vacuum control devices currently in use from operating properly and safely. RSPA acknowledges that, although packagings utilizing open pressure and vacuum controls would not meet the proposed requirements, these materials have been safely transported in such packagings for many years. Therefore, proposed paragraph (b)(1) is revised to allow such devices.

Proposed paragraphs (b)(1) (i) and (ii) have been revised in response to several commenters' contention that conformance to these paragraphs would be difficult due to the diverse use and nature of the various ladings and packagings addressed in this rulemaking. According to commenters, in both paragraphs the term "normal operating condition" cannot be interpreted in the same manner for all situations. RSPA agrees, and proposed paragraphs (b)(1)(i) and (b)(1)(ii) have been rewritten to include, as the baseline, the lowest designed operating temperature and highest permitted loading temperature, respectively. Proposed paragraph (b)(1)(ii) is also revised to include the provision that vacuum controls are not required for packagings that have been designed to withstand a vacuum of 14.7 psi.

Commenters addressing leak-tight closures in proposed paragraph (b)(2) indicated that, due to physical properties of the lading, temperature, and method of loading, absolute leakproofness of the closures may prove to be an unnecessary financial burden and might actually be a safety hazard during loading in some instances. Additionally, commenters stated that the testing of leaktightness in any orientation could prove impractical or impossible. Accordingly, RSPA has rewritten proposed paragraph (b)(2) to allow for leaktightness in design and to allow for some leakage from closures, in the event of an incident, in any orientation.

Paragraphs (b)(3) and (b)(4) are adopted as proposed in the NPRM. A requirement to mark the date of manufacture on the package is added to proposed paragraph (b)(5). Because RSPA is permitting equipment currently in service to remain in use for up to 20 years from the date of manufacture, some standard method is needed to distinguish between old and new packagings. Concerning proposed paragraph (b)(6), RSPA acknowledges that the proposed accident damage protection requirements for spray equipment and oil applicators are burdensome and believes the risk associated with such equipment does not justify the additional cost. Therefore, proposed paragraph (b)(6) is revised to provide an exception from accident damage protection requirements for spray equipment and oil applicators.

The provisions in paragraph (c)(1) and (c)(2) are adopted as proposed in the NPRM. Proposed paragraph (c)(3) is revised to reference paragraphs (b)(1)(i) and (b)(1)(ii). Paragraphs (c)(4) and (c)(5) are adopted as proposed in the NPRM. Paragraph (c)(6), as proposed in the NPRM, has been replaced. After extensive review, RSPA believes that conformance with the proposed packaging requirements would require much more extensive modification or replacement of existing equipment than originally perceived. Therefore, RSPA is permitting continued use of all packagings which were manufactured up to 20 years prior to the effective date of this rule.

New paragraph (d) is added to provide a series of conformance dates. With the exception of a three-year transition period for all packagings to conform with closure requirements in paragraph (b)(2), RSPA is permitting continued use of all packagings which were manufactured up to 20 years prior to the effective date of this rule. In paragraph (d)(2), similar provisions for asphalt and bitumen packagings are added, but with the additional requirements in paragraphs (b)(5) and (b)(6) for package marking and accident damage provisions to be met within a one-year period. Paragraph (d)(3) allows a one-year, phase-in period for the manufacture of new packagings conforming to the standards of this rule. RSPA believes that one year is adequate, concurrent with the "grandfathering" of existing equipment. A one-year phase-in period will require all packagings either not in service prior to one year after issuance of the final rule or having their construction completed after the one-year phase-in period, to conform to the new standards beginning one year after the issuance of the final rule.

Exceptions to the new requirements have been added in paragraphs (e)(1) and (e)(2). Paragraph (e)(1) allows molten metals and molten glass to be excepted from all other requirements of the section if the mode of transport is by rail at operating speeds less than 15 miles per hour. Paragraph (e)(2) excepts solid elevated temperature materials from all requirements of the HMR except the requirement to mark the packaging "HOT", as stipulated in § 172.325.

D. Part 174: Carriage by Rail

Section 174.86. This section was removed under the HM–181 final rule. A new § 174.86 is added to restrict the maximum operating speed to 15 mph for packagings containing molten metal or molten glass which do not conform with § 173.247.

III. Regulatory Analyses

A. Executive Order 12291 and DOT Regulatory Policies and Procedures

This final rule has been reviewed under the criteria specified in section 1(b) of Executive Order 12291 and (1) is determined not to be a major rule under Executive Order 12291; (2) does not require a Regulatory Impact Analysis; and (3) is not "significant" under DOT's regulatory policies and procedures [44 FR 11034]. A regulatory evaluation is available for review in the Docket.

B. Executive Order 12612

This final rule has been reviewed in accordance with Executive Order 12612 ("Federalism"). It has no substantial direct effect on the States, on the current

Federal-State relationship, or the current distribution of power and responsibilities among levels of government. Thus, this final rule contains no policies that have Federalism implications, as defined in Executive Order 12612, and no Federalism Assessment is required.

C. Regulatory Flexibility Act

The provisions of this final rule impact shippers and carriers of elevated temperature materials, some of whom may be small entities. Information available to RSPA is insufficient to determine the numbers of entities affected.

As addressed in the regulatory evaluation, which is available for review in the Docket, minor costs would be incurred with respect to new hazard communication requirements (i.e., shipping paper descriptions and package markings), training of personnel, and equipment modification. "Grandfather" provisions for use of existing equipment and a lengthy transition period have been provided to further minimize cost impacts.

Based on available information, I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

Information collection requirements contained in this final rule for §§ 172.201 and 172.203 have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) under OMB control number 2137–0034 (expiration date: June 30, 1992).

E. Regulatory Information Number (RIN)

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

F. National Environmental Policy Act

This final rule has been reviewed under the National Environmental Policy Act (42 U.S.C. 4321 et seq.) and does not require an environmental impact statement.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Railroad safety.

In consideration of the foregoing, 49 CFR parts 171, 172, 173 and 174 are amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority. 49 App. U.S.C. 1802, 1803, 1804, 1805, 1808, 1818; 49 CFR part 1.

2. Section 171.8 is amended by adding the following definitions in appropriate alphabetical sequence:

§ 171.8 Definitions and abbreviations.

* * * * *

Elevated temperature material means a material which, when offered for transportation or transported in a bulk packaging:

(1) Is in a liquid phase and at a temperature at or above 100°C (212°F);

(2) Is in a liquid phase with a flash point at or above 37.8°C (100°F) that is intentionally heated and offered for transportation or transported at or above its flash point; or

(3) Is in a solid phase and at a temperature at or above 240°C (464°F).

* * * * *

Liquid phase means a material that meets the definition of "liquid" when evaluated at the higher of the temperature at which it is offered for transportation or at which it is transported, not at the 37.8°C (100°F) temperature specified in ASTM D 4359–84.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATION REQUIREMENTS AND EMERGENCY RESPONSE INFORMATION REQUIREMENTS

3. The authority citation for part 172 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1808; 49 CFR part 1.

4. Section 172.101 is amended by adding a new paragraph (i)(3)(iii) to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

(i) * * *

(3) * * *

(iii) For a Class 9 material which meets the definition of an elevated temperature material, the column reference is § 173.247.

* * * * *

5. Section 172.101, the Hazardous Materials Table, is amended by adding or revising, as indicated, the following entries in appropriate alphabetical sequence:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

§ 172.101 HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Nonbulk packaging	Bulk packaging	Passenger aircraft or rail car	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	ADD												
D	Aluminum, molten	9	NA9260	III	Class 9		None	None	247	Forbidden	Forbidden	D	
D	Elevated temperature material, liquid, n.o.s (*at or above 100°C (212°F) and below its flash point*).	9	NA9259	III	Class 9		None	None	247	Forbidden	Forbidden	D	M4
D	*Elevated temperature material at or above its flash point, see* Flammable liquid, elevated temperature material, n.o.s. (*see § 173.247(d)(2)*).												
D	*Elevated temperature material, solid, n.o.s* (*see § 173.247(d)(2)*).												
	Flammable liquid, elevated temperature material, n.o.s.	3	NA9275	III	Flammable liquid.		None	None	247	Forbidden	Forbidden	D	M4
	REVISE												
D	Asphalt, *at or above its flashpoint*	3	NA1999	III	Flammable liquid.		150	203	247	Forbidden	Forbidden	D	M4
I	Sulfur, molten	4.1	UN2448	III	Flammable solid.	T9, T38	None	213	247	Forbidden	Forbidden	C	61
D	Sulfur, molten	9	NA2448	III	Class 9	T9, T38	None	213	247	Forbidden	Forbidden	C	61

6. Section 172.203 is amended by adding new paragraphs (g)(3) and (n) to read as follows:

§ 172.203 Additional description requirements.

* * * * *

(g) * * *

(3) When shipments of elevated temperature materials are transported under the exception permitted in § 173.247(d) of this subchapter, the shipping paper must contain an appropriate notation, such as "Maximum Operating Speed 15 mph."

* * * * *

(n) *Elevated temperature materials.* Except for molten sulfur or molten aluminum, if a liquid material in a package meets the definition of an elevated temperature material in § 171.8 of this subchapter, and the fact that it is an elevated temperature material is not disclosed in the shipping name, the word "HOT" must immediately precede the proper shipping name of the material on the shipping paper.

7. Subpart D of part 172 is amended by adding a new § 172.325 to read as follows:

§ 172.325 Elevated temperature materials.

Except for bulk packaging containing molten aluminum or molten sulfur, which must be marked "MOLTEN ALUMINUM" or "MOLTEN SULFUR" respectively, a bulk packaging containing an elevated temperature material must be marked on each side and each end with the word "HOT" in black or white Gothic lettering on a contrasting background. The letters in the marking must be at least 100 mm (3.9 inches) in height for rail cars and at least 50 mm (2 inches) in height for all other bulk packagings. The marking must be displayed on the bulk packaging itself or in black lettering on a white square-on-point configuration having the same outside dimensions as a placard

PART 173—SHPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

8. The authority citation for part 173 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1807, 1808; 49 CFR part 1, unless otherwise noted.

9. Section 173.24 is amended by revising paragraph (b)(2) to read as follows:

§ 173.24 General requirements for packagings and packages.

* * * * *

(b) * * *

(2) The effectiveness of the package will not be substantially reduced; for example, impact resistance, strength, packaging compatibility, etc. must be maintained for the minimum and maximum temperatures encountered during transportation;

* * * * *

10. Section 173.29 is amended by adding a new paragraph (g) to read as follows:

§ 173.29 Empty packagings.

* * * * *

(g) A package which contains a residue of an elevated temperature material may remain marked in the same manner as when it contained a greater quantity of the material even though it no longer meets the definition in § 171.8 of this subchapter for an elevated temperature material.

11. Section 173.120 is amended by revising paragraph (a) to read as follows:

§ 173.120 Class 3—Definitions.

(a) *Flammable liquid.* (1) For the purpose of this subchapter, a "flammable liquid" (Class 3) means a liquid having a flash point of not more than 60.5 °C (141 °F), or any material in a liquid phase with a flash point at or above 37.8 °C (100 °F) that is intentionally heated and offered for transportation or transported at or above its flash point in a bulk packaging, with the following exceptions:

(i) Any liquid meeting one of the definitions specified in § 173.115 of this part;

(ii) Any mixture having one or more components with a flash point of 60.5 °C (141 °F) or higher, that makes up at least 99 percent of the total volume of the mixture, if the mixture is not offered for transportation or transported at or above its flash point.

(2) For the purposes of this subchapter, a distilled spirit of 140 proof or lower is considered to have a flash point of no lower than 23 °C (73 °F).

* * * * *

12. Section 173.140 is amended by adding paragraph (c) to read as follows:

§ 173.140 Class 9—Definitions.

* * * * *

(c) Meets the definition in § 171.8 of this subchapter for an elevated temperature material.

13. In addition, § 173.140 is amended by removing the word "and" at the end of paragraph (a), and removing the period and adding "; and" at the end of paragraph (b).

14. Subpart F of part 173 is amended by adding § 173.247 to read as follows:

§ 173.247 Elevated temperature material.

(a) When § 172.101 of this subchapter specifies that an elevated temperature material (see § 171.8 of this subchapter) must be packaged under this section, only bulk packagings which conform to the requirements of this section are authorized.

(b) *General requirements.* Bulk packagings must conform to the following requirements:

(1) *Pressure and vacuum control equipment.* When required as indicated in this section, pressure and vacuum control equipment must prevent the rupture or collapse of the package from heating, including fire engulfment, or cooling, and prevent any significant release of lading in the event the package is overturned. Pressure relief devices used on packagings transporting ladings that will not cause significant clogging, freezing, or fouling of such a device must be of a self-reclosing design. The pressure relief devices utilized for packages with lading that will render the device inoperable due to severe clogging, freezing, or fouling of the device, may have a permanent opening with a maximum diameter of 38 mm (1.5 inches). The pressure and vacuum controls may be external to the packaging and must be in conformance with paragraph (b)(6) of this section. Pressure and vacuum controls are required as follows:

(i) Provision for pressure control must be provided on packagings where the lading can develop pressure increases of greater than 10 percent as a result of heating from the pressure at the lowest designed operating temperature.

(ii) Provision for vacuum control must be provided on packages where the lading can develop pressure decreases of greater than 10 percent as a result of cooling from the pressure at the highest permitted loading temperature of the lading. Vacuum control is not required on packages designed to withstand a vacuum of 101 kPa (14.7 psig).

(2) *Closures.* All openings must be securely closed during transportation. Packages must be substantially leak tight in design as to allow no more than dripping or trickling of a non-continuous type flow in any orientation. Closures must be designed and constructed to withstand, at all operating temperatures, without substantial deformation twice the static loading produced by the lading in any orientation.

(3) *Strength.* Each package must be designed and constructed to withstand, at all operating temperatures, without substantial deformation twice the static loading produced by the lading in any orientation.

(4) *Compatibility.* The packaging and lading must be compatible over the entire operating temperature range.

(5) *Markings.* In addition to any other markings required by this subchapter, each package must be marked in characters at least 9.5 mm (0.375 inches) with the manufacturer's name, date of manufacture, nominal capacity, design temperature range, and maximum product weight.

(6) *Accident damage protection.* For transportation by highway, external loading and unloading valves, if any, and closures must be protected from impact damage resulting from collision or overturn. Spraying equipment and road oil applicators are excepted from this requirement.

(c) *Authorized packagings.* The following bulk packagings are authorized:

(1) DOT specification cargo tanks, tank cars, and intermodal portable tanks;

(2) AAR Specification 203W, 206A, and 211A tank cars;

(3) Nonspecification cargo tanks, tank cars and portable tanks which are equivalent in structural design and accident damage resistance to the packagings prescribed in paragraph (c)(1) of this section, except for alternative pressure and vacuum control equipment as defined in paragraphs (b)(1) (i) and (ii) of this section;

(4) Nonspecification crucibles designed and constructed such that the stress in the packaging does not exceed one fourth (0.25) of the strength of the packaging at any temperature within the design temperature range. Stress is determined under a load equal to the sum of the static or working pressure in combination with the loads developed from accelerations and decelerations incident to normal transportation. For highway transportation, these forces are assumed to be "1.7g" vertical, "0.75g" longitudinal, and "0.4g" transverse, in reference to the axes of the transport vehicle. Each accelerative or decelerative load may be considered separately; and

(5) All other packagings which were manufactured for the transportation of elevated temperature materials prior to March 30, 1993.

(d) *Dates of Conformance.* (1) All packagings authorized in paragraph (c) of this section must be in conformance with paragraph (b)(2) of this section no later than March 30, 1995.

(2) Packagings used for the transportation of bitumen and asphalt must also be in conformance with paragraphs (b)(5) and (b)(6) of this section no later than March 30, 1993.

(3) All packagings manufactured after March 30, 1993, must comply with the provisions of paragraph (b) of this section.

(4) Packagings authorized in paragraph (c) of this section which were in service prior to March 30, 1993, and not in full compliance with paragraph (b) of this section may continue to be used for up to 20 years from their date of manufacture.

(e) *Exceptions.* (1) This section does not apply to packagings used for molten metals and molten glass by rail when the movement is restricted to operating speeds less than 15 miles per hour. (See § 172.203(g)(3) of this subchapter for shipping paper requirements.)

(2) A material which meets the definition of a solid elevated temperature material is excepted from all requirements of this subchapter except § 172.325.

PART 174—CARRIAGE BY RAIL

15. The authority citation for part 174 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1808; 49 CFR part 1.

16. Section 174.86 is added to subpart D to read as follows:

§ 174.86 Maximum allowable operating speed.

For molten metals and molten glass shipped in packagings other than those prescribed in § 173.247 of this subchapter, the maximum allowable operating speed may not exceed 15 mph for shipments by rail.

Issued in Washington, DC on September 25, 1991, under authority delegated in 49 CFR part 106, appendix A.

Travis P. Dungan,

Administrator, Research and Special Programs Administration.

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Part IV

Environmental Protection Agency

Guidance for the Use of the Terms "Recycled" and "Recyclable" and the Recycling Emblem in Environmental Marketing Claims; Notice of Public Meeting

ENVIRONMENTAL PROTECTION AGENCY

[EPA/OSW-FR-91-032; SWH-FRL-4018-3]

Guidance for the Use of the Terms "Recycled" and "Recyclable" and the Recycling Emblem in Environmental Marketing Claims

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting and request for comments.

SUMMARY: EPA plans to develop recommendations to the Federal Trade Commission on voluntary guidance for environmental claims promoting the use of recycled materials and recyclable materials. The Federal Trade Commission is considering such guidance in response to petitions from States and today's notice solicits comment on a number of options EPA is considering for the guidance. The notice also announces the time and location of a public meeting EPA will hold to hear oral comments from interested parties on the options outlined in this notice.

DATES: Comments on this notice must be received on or before December 31, 1991. The public meeting will be held on Wednesday, November 13, and Thursday, November 14, 1991 from 9:30 am to 4:30 pm at The Rosslyn Westpark Hotel, Arlington, VA. Requests to present oral testimony must be received on or before Monday, October 28, 1991. EPA requests that ten copies of the oral comments be submitted on or before Friday, November 8, 1991.

ADDRESSES: (1) Public Meeting—The Agency will hold a public meeting on Wednesday, November 13, and Thursday, November 14, 1991, to receive comments on the options and issues relating to the options. The meeting will consist of two days of testimony. Because of the limited amount of time available and the desire to hear a range of views, presenters will be grouped in appropriate panels and will be allotted a specified time for statements, which may be followed by questions from the panel. Groups with common perspectives on the questions raised by these options are urged to select a single representative.

Written requests to appear at the meeting should be submitted no later than Monday, October 28, 1991 to: Office of Solid Waste, Public Meeting Request/F-91-GPLP-FFFFF, OS-305, 401 M Street, SW., Washington, DC 20460. The notice of participation should contain the name, affiliation (if applicable), address, and telephone number of the participant and the individual presenter, and a brief statement of the participant's interest in the matter, and the topic of presentation.

If the Agency determines that there will not be adequate time to hear from all those wishing to present comments, the Agency will select among those wishing to testify, in order to ensure that a range of viewpoints and interests is represented. As time allows, individuals may also sign up to present comments during registration time at the hearing.

The public meeting will be held at The Rosslyn Westpark Hotel, 1900 North Fort Myer Drive, Arlington, VA 22209 in the Rosslyn Ballroom.

(2) Written Comments—Written statements and additional information may be submitted at the public hearing for inclusion in the official record. Written comments of any length will be accepted. Commenters must send an original and two copies of their comments to: RCRA Docket Information Center, Office of Solid Waste (OS-305), U.S. Environmental Protection Agency Headquarters, 401 M Street SW., Washington, DC 20460. Comments must include the docket number F-91-GPLP-FFFFF. The public docket is located at EPA Headquarters, room M2427 and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials. Call (202) 260-9327 for appointments. Copies cost $.15/page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline, Office of Solid Waste, U.S. Environmental Protection Agency (800) 424-9346 or (703) 920-9810, local in the Washington, DC metropolitan area.

For information on specific aspects of this notice, contact William MacLeod, Office of Solid Waste (OS-301), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260-4662.

SUPPLEMENTARY INFORMATION: Copies of the following documents are available for viewing only in the RCRA Docket room:

The Green Report: Findings and Preliminary Recommendations for Responsible Environmental Advertising, State Attorneys General Task Force.

The Green Report II: Recommendations for Responsible Environmental Advertising, State Attorneys General Task Force.

Recycling Emblem Regulations, State of Rhode Island and Providence Plantations Regulations.

6 NYCRR Part 368 Recycling Emblems, New York State Regulations.

Regional Labeling Standards and Labeling Resolution, the Northeast Recycling Council.

Petition for Federal Trade Commission Guides from National Food Processing Association and other Petitioners.

Petition for Federal Trade Commission Guides from the Cosmetic, Toiletry, and Fragrance Association and the Nonprescription Drug Manufacturers Association.

Open Remarks of F. Henry Habicht II, Deputy Administrator, U.S. Environmental Protection Agency before the Federal Trade Commission, Hearings on Environmental Labeling, July 17, 1991.

Workplan for the Interagency Task Force on Environmental Marketing Claims, U.S. Environmental Protection Agency, Federal Trade Commission, U.S. Office of Consumer Affairs. Description of Labeling Efforts, Draft EPA Report.

Notice Outline

I. Introduction

A. Overview

The American public is increasingly concerned about environmental issues.

and individuals are looking for ways to do their part to protect our nation's environment and resources. In the past few years, public understanding of the nature of environmental problems has become more sophisticated. Many people recognize that large environmental problems are created not only by the actions of large companies and organizations, but also by the seemingly small actions of millions of individuals, for example, the generation of municipal solid waste, or the generation of "greenhouse" gases that may contribute to global climate change.

Many individuals are responding by trying to lessen the impacts of their own behavior, by car-pooling to work, conserving water at home, and purchasing consumer products which in some way offer an environmental advantage: Energy-saving lighting fixtures and appliances, products which contain fewer hazardous constituents, or products containing recycled materials. Manufacturers and marketers are responding to the consumer demand for "environmentally oriented" products by attempting to make products which do not contribute to upper atmospheric ozone depletion , create less solid waste or fewer adverse impacts on water quality, etc. They are also advertising and otherwise highlighting both the real, and desired, environmental benefits of these products for consumers.

The Environmental Protection Agency (EPA) views the increased desire for "environmentally oriented" products as an opportunity to find effective non-regulatory solutions to difficult environmental problems which may in some cases be solved more efficiently in the marketplace than through government regulations. Environmentally informed consumers making purchasing decisions based upon accurate and reliable information about the environmental attributes of products would encourage manufacturers to produce goods which have fewer adverse environmental impacts.

To affect a shift toward more environmentally benign products three things must occur: First, manufacturers need to produce products which are better for the environment; second, consumers need to be provided accurate, reliable, and meaningful information concerning the environmental attributes of these products; and, third, consumers need to preferentially purchase these products. We are starting to see manufacturers making products with fewer adverse environmental impacts. In many cases, however, consumers are not being provided reliable and meaningful information about the advantages of these products, partially because of the lack of national consensus on the meaning and use of environmental terms in advertising and labeling. Consumers cannot know how to interpret and use the information they receive until consumers, manufacturers, and government speak a common language. Our failure to speak the same language in environmental marketing is creating problems both for manufacturers who are producing and attempting to market environmentally oriented products, and consumers who are seeking to purchase them.

Some manufacturers who have made legitimate attempts to improve their products by reducing their environmental impacts are unsure how to promote the environmental benefits of their products. They are concerned about criticism and liability for false or misleading advertising if they advertise environmental benefits in the absence of clear and uniform standards or, conversely, they face a potential loss of market share if they do not advertise environmental benefits and their competitors do.

Meanwhile, because manufacturers are making claims based upon differing standards, consumers often do not know what the claims mean, and this creates some consumer confusion and suspicion of environmental claims. Environmental claims are a special class of claims because consumers typically lack the scientific expertise to assess the validity of the claims that marketers are making. The increasing numbers of environmental claims bombarding consumers with information on competing environmental impacts, e.g., "source reduced" or "recyclable" versus "biodegradable," compounds these problems. Also, some highly aggressive marketers may make confusing and even misleading environmental claims, further adding to consumer confusion.

Initial attempts to address this situation have come from State governments; for example, several States, including New York, California, and Rhode Island, have passed legislation or issued regulations which provide standard definitions or guidelines for the use of the terms "recycled" and "recyclable" (and other terms). While individual State action has been part of an important first step to help define and shape the issue, as well as begin the initial consensus building process between government, industry, and consumers, the definitions and guidelines developed at the State government level are not necessarily consistent and compatible with each other. As more States adopt regulations or pass laws to address the issue of environmental marketing, national marketers or distributors may find themselves in a situation where they will either have to target advertising for each State, which could be prohibitively expensive, or will stop advertising the environmental benefits of their products altogether.

Recognizing the limitations of an uncoordinated State-by-State response to the issue, some State organizations have begun to address the issue of environmental marketing at national and regional levels. A task force compromised of the Attorneys General from eleven States has formulated guidance for environmental marketing, which are contained in the Green Report II—Guidance for Responsible Environmental Advertising. This report not only contains guidance for environmental marketing, but also calls upon the Federal government to adopt national standards for environmental marketing claims used in the labeling, packaging, and promotion of consumer products. At the regional level, the Northeast Recycling Council, an organization comprised of State environmental officials from ten Northeastern States, has developed consensus guidelines for the use of the terms "reusable," "recycled content" and "recyclable" in product labeling. These consensus guidelines could be adopted by all ten of the member States in an effort to achieve regional coordination.

If national consensus over the use of these terms is not reached in the near future, we face the danger of losing a valuable tool for educating the public and influencing the production and use of more environmentally oriented products. Consumers may come to distrust or ignore all environmental claims, and national manufacturers and marketers may become so hamstrung by conflicting State standards that they avoid making these claims completely.

B. Federal Role

The U.S. EPA, the U.S. Office of Consumer Affairs (USOCA), and the Federal Trade Commission (FTC) recognize the opportunity presented by environmental marketing for improving the environment as well as the need to avoid misleading or deceptive environmental claims. They also understand the need for Federal involvement to address this issue at the national level. These three agencies have joined to form a Federal Task Force to provide a coordinated and

cohesive national response to the issue of environmental labeling and marketing claims. The members of the Task Force will work together to help ensure that consumer, advertising, and environmental issues are addressed through a coordinated national effort.

The Task Force is intended to enhance and coordinate, rather than supersede, environmental marketing activities currently taking place in each individual agency. Environmental marketing claims may potentially be addressed by one of a combination of several approaches: FTC industry guides, FTC case-by-case enforcement, EPA Guidance for specific terms, and more general guidance, issued by EPA or jointly by the Task Force, that applies to a category of claims. The Task Force will coordinate agency efforts so the appropriate mix of approaches is used to address the commonly used or most problematic claims.

As an initial step to address a key subject in this area, EPA is developing guidance for two terms related to recycling of materials from solid waste: "Recycled" and "recyclable," and for the use of the recycling emblem. This is a topic of much consumer and business interest, and these terms are two of the most frequently used environmental claims.

The FTC held hearings on July 17 and 18, 1991, to gather information to assist them in determining whether they should develop industry guides for the use of environmental marketing claims. If FTC should decide to go forward with developing industry guides in the future, EPA will share the information we are gathering with them, which may serve them in the development of the industry guides. EPA stands ready to assist FTC in any way possible to ensure that the environmental policy needs discussed in this notice are addressed in an effective and coordinated way by the guides. If FTC should decide not to develop industry guides, EPA will publish the recommendations as its guidance to industry and consumers.

C. Purpose of Today's Notice

Today's notice solicits comment on options for guidance to be used by marketers in product labeling and advertising promoting the use of recycled materials and recyclable materials. EPA will hold a public meeting to hear oral comment from interested parties on the options outlined in this notice.

D. Goals and Objectives of EPA Voluntary Environmental Claims Guidance

EPA has two overriding goals in addressing "recycled content" and "recyclable" claims: We want to encourage the trends toward (1) the increased use of recycled materials in products and (2) the increased recovery of materials for recycling. These goals will be advanced by facilitating the communication between consumers and marketers as to which products contain recycled materials content and which products are recyclable. By doing this we will help to restore consumer confidence in environmental marketing claims. (We recognize that improved labeling practices need to be supplemented by strong educational programs to help the general public understand and actively participate in recycling.) We also want to insure that all companies making "recycled content" and "recyclable" claims operate on a level playing field: One company should not be able to gain a market advantage over another company by promoting its product as something the product is not. This will help to ensure that companies making legitimate environmental improvements to their products will benefit from the increased consumer demand for environmentally oriented products, fostering the desire on the part of marketers to provide consumers with more environmentally oriented products.

II. Definitions

The following definitions are used in the notice. These definitions are intended to serve as guidance to marketers and to help educate consumers. In formulating these definitions, EPA has reviewed statutory and regulatory definitions from the Resource Conservation and Recovery Act (RCRA). However, the definitions stated here may not parallel those found in RCRA. For example, whereas the RCRA definition for "post-consumer material" is applicable primarily to paper and paper products, EPA has broadened that definition for purposes of this guidance so that it is applicable in more situations. In choosing the definitions to include in the notice, we have recognized that many of the RCRA definitions apply to government procurement of materials with recycled content, and procurement policy issues might differ from the issues we are addressing in this notice.

The term "home scrap" means those scrap materials, virgin content of a material, or by-products generated from, and commonly reused within, an original manufacturing process.

The term "post-consumer materials" means those products or other materials generated by a business or consumer that have served their intended end uses, and that have been recovered from or otherwise diverted from the solid waste stream for the purpose of recycling.

The term "pre-consumer materials" means those materials generated during any step in the production of a product, and that have been recovered from or otherwise diverted from the solid waste stream for the purpose of recycling, but does not include those scrap materials, virgin content of a material, or by-products generated from, and commonly reused within, an original manufacturing process.

The term "product" means goods or commodities that are created by, or are an end result of, a manufacturing process. For the purpose of this guidance, packaging is included in this definition.

The term "recycled materials" means pre-consumer materials and post-consumer materials, and does not include home scrap.

The term "recyclables" means products or materials that can be recovered from or otherwise diverted from the solid waste stream for the purpose of recycling.

The term "recycled content" means the portion of a material's or product's weight that is composed of pre-consumer and post-consumer materials.

The term "recycle" means the series of activities, including collection, separation, and processing, by which products or other materials are recovered from or otherwise diverted from the solid waste stream for use in the form of raw materials in the manufacture of new products other than fuel for producing heat or power by combustion.

The term "recycling rate" means the percentage by weight of a given product or material category that is recycled.

We are soliciting comment on whether the definitions listed in this section are accurate and complete for the purpose of this guidance, and will, if commonly adopted, result in less confusion among manufacturers, marketers, and consumers concerning recycled content and recyclable claims. We are also soliciting comment on whether we should include other terms which would help manufacturers communicate with consumers concerning the use of recycled and recyclable materials.

III. Options for Guidance for Recycled Content Claims

The number of Americans served by recycling collection programs has grown rapidly in the past several years. Over 30 million Americans are now served by curbside recycling collection programs, and this number is expected to continue to grow in the coming years. The success of these recycling programs depends upon their ability to collect materials and market those materials. While starting up collection can be the most difficult part of initiating a recycling program, successfully marketing the collected materials will determine the long-term sustainability of the program. For example, some programs that were previously collecting old newspapers stopped when market supply of old newspapers exceeded demand, and prices for the collected materials fell. Many Americans are realizing that collecting materials for recycling is only one element of successful recycling; products containing recycled materials also need to be purchased in order to ensure healthy market demand for materials collected by municipal and other recycling programs. This understanding, as well as a general desire to take positive action for the environment, has helped increase consumer demand for products made with recycled content.

Manufacturers are responding to consumer demand by making more products that use recycled materials, using increasing amounts of recycled materials in products, and developing new ways of utilizing recycled materials in products. Knowing that many consumers are seeking goods with recycled content, marketers are advertising their use of recycled content in more and more products in many different ways. EPA wants the trend towards using greater amounts of recycled materials to continue, and strongly believes that consumer demand for products with recycled content is essential for this to occur. The messages in product advertising concerning recycled content should supply the consumer with useful, accurate, and understandable information. Guidance to manufacturers, marketers, and consumers on such messages can help prevent consumers from becoming cynical and disillusioned about recycled content claims, and can help consumers identify products that use more recycled materials and create incentives for manufacturers to use more recycled materials. This guidance is intended to make "recycled content" claims more consistent and meaningful.

The two major concerns EPA has about "recycled content" claims are first, the types of materials which marketers are claiming as being "recycled," and second, the failure of some marketers to provide useful, accurate, and understandable information to consumers about the amount and sources of recycled material in products. The first problem is due in part to the lack of commonly accepted definitions for terms such as, "post-consumer materials," "recycled materials," etc. In the absence of commonly accepted definitions, some marketers have made dubious claims, for example, claiming that "home scrap" materials are "recycled," when, in fact, such "home scrap" materials are produced and reused within an original manufacturing process and never enter the waste stream.

In order to address this issue, EPA has included in this notice proposed definitions for the terms "recycled materials," "post-consumer materials", "pre-consumer materials," and others. These definitions can be used by marketers in their claims and to help educate consumers. The definitions we are considering are listed in the previous section.

The second potential problem with "recycled content" claims concerns statements that are vague, potentially misleading, and provide little information to consumers. Concerns have been expressed that broad statements on products such as "Made with recycled materials"; "Recycled Content;" or statements that use the "chasing arrows" recycling loop emblem and the term "Recycled," do not provide consumers with sufficient information for the statements to be meaningful. These statements could apply to products containing anywhere from 1% to 100% recycled content. If some consumers care about the use of recycled materials in a product, then it is a likely assumption that these consumers would also be concerned about the amount of recycled content and would generally prefer as much recycled content as feasible. To address these concerns, EPA is examining the following three options for recycled content claims guidance.

A. Option 1: Disclosure of Recycled Materials Content

In order to make statements concerning the use of recycled materials more meaningful, EPA is considering recommending that marketers who advertise the use of recycled materials in a product prominently and clearly state the percentage by weight of recycled materials in the product. For example, an aluminum can manufacturer that uses 50% recycled materials by weight to produce an aluminum can could advertise the use of recycled materials by making a statement such as "Recycled Aluminum: contains 50% recycled materials." No minimum threshold for recycled content would be set or recommended under this option.

This option meets two needs. First, the consumer will be provided with useful and accurate information. By placing the percentage of recycled materials on the product, the consumer will be informed of the use of recycled materials, and the relative amount of recycled materials in the product. Second, this will provide consumers with the opportunity to choose products containing higher amounts of recycled material, thereby potentially creating competitive pressures to increase the amount of recycled materials content in products in order to meet consumer demand.

One disadvantage to this option is that it relies heavily upon consumer knowledge of and demand for goods produced with recycled materials. If consumers do not understand the meaning of the terms used or the recycled content percentage, then this information could have little effect upon the amount of recycled materials used. EPA requests comment on this issue and any data concerning consumer understanding of these terms.

B. Option 2: Minimum Content Standards

EPA is also considering a recommendation that marketers should promote the recycled content of a product or packaging only if the product or packaging meets a specified minimum percentage of recycled content. With this option, EPA would recommend either (1) a generic minimum content standard for all products (e.g., all products should meet a 25% minimum recycled content standard before being promoted as containing recycled content), or (2) a series of standards specific to materials or product categories (e.g., aluminum beverage containers should meet a 50% standard, newsprint should meet a 30% standard). EPA would then recommend that marketers meet these standards before promoting the use of recycled materials.

This option has several advantages. If the standards were commonly adopted, it would provide consumers with the knowledge and assurance of a minimum threshold of recycled content when they see content claims. This option could increase the amount of recycled

materials used, if the minimum percentages were set sufficiently high that some manufacturers would need to increase the amount of recycled materials they put in products in order to meet the standards. The option would solve the major disadvantage of Option 1, because it does not rely as heavily on consumer knowledge of and demand for increased amounts of recycled materials use to determine recycled content levels, because these levels will be set by the Administrator.

EPA's Guidelines for Federal Procurement issued under section 6002 of RCRA provide recommended standards for government purchases of goods containing recovered materials. EPA could use these standards as a starting point for setting the standards under this option. (See, for example, 40 CFR part 250.) EPA is requesting comment on whether the "Procurement Guidelines" provide suitable minimum content standards for this guidance.

One disadvantage with this option is that it would not distinguish between products whose recycled content is barely above the standard and those products that are greatly exceeding the standard. Because marketers would not necessarily state the amount of recycled materials content, this option also would not provide consumers with information they could use to choose products with larger amounts of recycled materials content. This option would likely entail high standard setting costs to EPA, as well as the need for ongoing evaluation of the use of recycled materials in products, and periodic revision of the guidance in order to encourage greater use of recycled materials. Also, it is not clear that a commonly accepted, sound basis exists for setting content percentages across many products. Finally, industry could view the standard not only as the minimum level of recycled content, but also as the ceiling, resulting perhaps in less than desired recycled material use. This may occur because industries may have little incentive to go beyond the minimum standard.

C. Option 3: Minimum Content Standards and Disclosure

EPA is also considering recommending a combination of options 1 and 2 which would (1) discourage marketers from promoting the use of recycled materials content unless they meet or exceed a specified minimum content standard, and (2) state the percentage by weight of recycled materials in the product.

The advantage of this option is that consumers would be provided information concerning the percentage of recycled materials used in a product, which would allow them to choose products with higher percentages of recycled material content, and they would be ensured a minimum threshold of recycled content. However, this option would have disadvantages similar to the previous option in regard to costs, the burden of ongoing evaluation, and the difficulty in establishing optimum minimum recycled content standards.

D. EPA's Preferred Option

EPA's preferred option for the use of "recycled content" claims is Option 1: Disclosure of Recycled Materials Content, whereby a marketer would prominently disclose the percentage recycled materials content as part of any "recycled content" claim.

Unlike the other two options which require EPA to establish standards, this option would offer low costs to government, would avoid the need for EPA to oversee development and implementation of minimum content standards, and would not set standards that could be viewed as a ceiling by industry or be considered as arbitrary by observers.

Marketers following this guidance would provide consumers with information on the percentage of recycled content in their products. Consumers can use this information as part of their purchasing decision, potentially creating competition among manufacturers to meet consumer demand for recycled content. EPA believes that many marketers could respond quickly to consumer demand, rapidly increasing their use of recycled materials.

E. General Issues Relating to "Recycled Content" Claims

In this section we will present two important issues which cut across all three of the options for guidance that EPA is considering. EPA is seeking comment on both of these critical issues. The first issue relates to the definitions of "recycled materials" and "recycled content." In the proposed definitions we have defined "recycled materials" as including both pre- and post-consumer materials. This approach was taken for three reasons. First, it is not clear whether consumers understand the difference between pre- and post-consumer materials. The broader, more inclusive definition may be simpler and thus more effective. Second, some pre-consumer wastes which are currently being disposed can be recovered. Efforts to recycle such materials through consumer marketing can help alleviate local disposal problems. Third, it is not clear whether the distinction between pre- and post-consumer waste can be tracked efficiently by producers and brokers handling a variety of waste streams.

Other parties, however, have made the case that encouraging use of post-consumer materials is desirable, because post-consumer materials are relatively more difficult to collect, separate, and process than pre-consumer materials have been traditionally recycled more commonly. For these reasons, they argue that the recycling of post-consumer materials should be encouraged more aggressively than the recycling of pre-consumer materials, or, at the very least, the percentage of post-consumer material content should be specifically stated when communicating the use of recycled materials. Some examples of this position are the State of California's law which requires the use of 10% post-consumer material content before a claim of recycled content can be made, the recommendation of the ad-hoc Committee on Environmental Advertising of the National Association of Attorneys General that marketers not call pre-consumer materials "recycled," and the Northeast Recycling Council's recommendation that marketers separately label the percentages of pre- and post-consumer materials along with any recycled content claim.

EPA would like to receive comment on whether defining "recycled content" to include both pre-consumer and post-consumer materials, or to include only post-consumer materials, will best promote increased consumer understanding regarding this issue. EPA would like to receive comment on whether a recommendation to state pre- and/or post-consumer materials content will lead to increased amounts of materials diverted from incinerators and landfills. Does information exist that demonstrates the effects on solid waste disposal of substituting post-consumer materials for pre-consumer materials? Will a preference for post-consumer materials result in the substitution of post-consumer materials for pre-consumer materials and not lead to a reduction in the total amount of materials destined for disposal? EPA also solicits comments on the feasibility and costs of differentiating and monitoring post-consumer materials content in various manufacturing processes.

The other issue for which EPA is seeking comment concerns the calculation of recycled content, another important issue which cuts across all three options. Several approaches to

calculating recycled content could be used, the difference between the approaches largely having to do with the amount of time over which the recycled materials use is counted. EPA's Procurement Guidelines for paper and paper products are very prescriptive in this regard, requiring that manufacturers meet the standards on a batch-by-batch basis, while EPA's Procurement Guideline for insulation products bases the calculation upon a monthly mass balance of recycled to virgin materials used. The State of New York calculates the percentage of recycled materials as being "that proportion of a package or product weight that is composed of recycled materials as demonstrated by an annual mass balance of all feedstocks and outputs of the manufacturing process." EPA is seeking comment as to what type of accounting system is most appropriate for consumer products claiming the use of recycled materials. Should we be recommending a batch-by-batch, monthly, or annual accounting? Are there other accounting issues that we should be considering?

IV. Options and Guidance for Recyclable Marketing Claims

As more and more Americans participate in recycling programs, the recyclability of products which they purchase is increasingly important. Many Americans want to participate in recycling programs and do their part to help reduce the amount of waste sent to landfills and waste combusters. In order to participate they need to know which materials are collected locally and how these materials need to be prepared for collection.

The most reliable source of information on what materials are collected locally is the local public or private organization sponsoring the program. These organizations, however, often do not have funds sufficient to allow them to mount a comprehensive public education campaign. As a result, consumers often look for information wherever they can find it, and some are looking to product labeling and advertising to learn whether a product can be recycled.

Unfortunately for consumers, recyclability claims are seldom of much assistance in helping them recycle in their own communities, because these claims are not typically based on community availability of recycling programs. Observers have noted that for many consumers, recyclability is determined by the availability of collection programs for the product in their community; however, marketers commonly make "recyclable" claims in order to inform the consumer that the product, if collected, can technically be processed and used, without regard to whether an individual has reasonable access to programs that actually collect the product for use. Because of the mismatch between many consumers' understanding of "recyclable" claims and some marketers' use of "recyclable" claims, we face a situation where some consumers are losing confidence in the validity of "recyclable" claims and in environmental marketing claims in general.

Guidance can help marketers better communicate the recyclability of products to consumers, and can help avoid a loss of consumer confidence in the validity of "recyclable" claims. We believe that communication will be most facilitated by guidance that helps to qualify "recyclable" claims, so that such claims reflect the availability of collection and use programs for the product, and provide information that the consumer can use to recycle the product.

Guidance can also address the problem created by marketers making "recyclable" claims for products which are recycled at very low rates, creating a situation where companies that make commonly "recyclable" products compete with companies that do not do so. EPA supports the efforts of companies which have taken concrete and productive steps to improve the recyclability of their products by using materials that are commonly collected for recycling, eliminating materials incompatible with recycling processes, and supporting the development of recycling infrastructure. We would like to see companies who have made changes or who have supported recycling reap the benefits of their efforts through increased sales and profits in the marketplace. Ideally, guidance would facilitate fair competition between marketers that would increase the use of readily "recyclable" products.

The following sections outline the approaches EPA is considering in formulating guidance for the use of "recyclable" claims.

A. Option 1: Minimum Recycling Rate and Recycling Rate Disclosure

This option has two elements. EPA would recommend that marketers promote the recyclability of a product only when (1) the product is recycled at a minimum percentage nationally, and (2) the product prominently discloses the national recovery rate for the material or product.

The minimum recycling percentage rate would be set by the Administrator. The minimum recycling percentage rate could be set either at a high level to aggressively promote recycling or at a lower level to provide a minimum threshold to prevent trivial recyclable claims by marketers of products that are not widely recycled. The minimum recycling percentage rate could either be set on a material-by-material basis (e.g., aluminum should meet a 30% standard) or a product-by-product basis (aluminum cans should meet a 50% standard). EPA is requesting comment on the most appropriate method for setting minimum recycling percentage rates. We are also requesting comment on criteria appropriate for setting a minimum recycling percentage rate.

For products that meet the minimum percentage, the recycling rate would be disclosed in product labeling and advertising in a statement along with the recyclable claim. For example, the statement could read: "Recyclable. Glass containers are recycled at a 20% rate nationally." EPA would like commenters to provide information concerning the availability of reliable, current national recycling rates for recycled materials and the feasibility of using this information on product labeling and advertising in a timely manner. Also, what role should EPA or others play in overseeing the determination and use of such rates?

This option would help to meet EPA's objectives of improving communications concerning environmental marketing claims. The option helps to ensure that marketers do not make misleading "recyclable" claims, by establishing a minimum threshold before such a claim could be made. It would also provide consumers with comparative information on national recycling rates which could be used as a basis for choosing products, and help foster competition between marketers to increase the use of highly recycled materials in products.

EPA acknowledges that unless the recycling rate threshold was set at a very high level, this option would not discourage marketers from labeling or advertising their products as recyclable in some communities where the product or material is not collected. Another drawback to this option, similar to that described in the "recycled" options, would be the difficulty in establishing a commonly accepted, sound basis for determining the appropriate recycling rate standard for any given material, and the high cost to the Agency of setting the standard.

B. Option 2: Qualified Claims

"Recyclable" claims are often made based upon differing definitions of

recycling. "Recycle" as EPA would define it in section II of this notice, means the series of activities, including collection, separation, and processing, by which products or other materials are recovered from or otherwise diverted from the solid waste stream for use in the form of raw materials in the manufacture of new products other than fuel for producing heat or power by combustion. Therefore, in order for a material to be considered fully "recyclable," it must be collected, separated, processed and used. If marketers were to link "recyclable" claims with information on access to collection and use programs, the linkage could eliminate much of the confusion relating to recyclability claims.

With this option, EPA would recommend that marketers make "recyclability" claims: (1) That do not lead consumers to assume that the product is recyclable everywhere; and (2) that provide consumers with information that helps them recycle the material. "Recyclable" claims meeting these criteria are claims that EPA considers to be "qualified."

An example of a qualified claim could be: "This bottle can be recycled in communities where collection facilities for colored HDPE bottles exist. For more information contact your local recycling coordinator." Examples of qualified claims currently exist in the marketplace. For example, a label on a plastic bottle claims: "This bottle is made with PETE. It is the same plastic used to make soft drink bottles and is the most commonly recycled plastic. If your community has a recycling program that collects all products with a [SPI code 1] symbol, please recycle this container. To get more information on how to encourage plastic recycling, write us at the following address:[Address]." Qualified claims help marketers communicate with consumers in a manner that would lead consumers interested in recycling products to take constructive steps to do so. The qualified claims could also avoid the current situation where "recyclable" claims often seem to have little meaning to many consumers because the claims appear to be nothing more than hollow advertising.

Use of qualified claims under this option would not, however, limit the claims to those marketers whose products are recycled at high rates. These claims, therefore, could be used by marketers of products that are recycled at very low rates and in a limited number of locations in the country. We see this as the major drawback to this option.

EPA is seeking comment on a number of issues related to this option. First of all, are the criteria we have set for a "qualified" claim appropriate and sufficient to provide useful information to consumers? What additional criteria, if any, should EPA include? Second, would use of these criteria reduce the number of misleading claims? Would they encourage recovery of recyclable materials?

C. Option 3: Qualified Claims and Disclosure of National Recycling Rate

This option would consist of two recommendations: marketers would make "qualified" claims, as described in Option 2, and also prominently disclose the national recycling rate of the product or material for which the claim of recyclability is being made. For example, a glass bottle could make the claim: "The bottle recycled in communities where collection facilities for colored glass bottles exist. For more information contact your local recycling coordinator. Glass bottles are recycled at a 20% rate nationally."

This option has all of the advantages of the previous option. The additional disclosure of the national recycling rate is designed to address the major concern we have with the previous option: Differentiating the claims of products commonly recycled from the claims of products that are not commonly recycled. While any marketer could make a qualified claim of recyclability under this option, it will encourage marketers who are considering making claims for a product that is minimally recycled to think twice about whether they want to make a claim that reveals how little of their product is actually recycled.

Aside from the issues related to the "qualified" claims and the disclosure of national recycling rate that we discussed in the previous options, EPA is seeking comment on whether a combination of these two options is appropriate and would accomplish EPA's objectives of helping marketers communicate the recyclability of products to consumers, avoiding a loss of consumer confidence in the validity of "recyclable" claims, and assisting companies who have made changes or who have supported recycling reap the benefits of their efforts through increased sales and profits in the marketplace.

D. Option 4: Minimum Recycling Rate, Qualified Claims, and Disclosure of National Recycling Rate

This option is a combination of major elements of Options 1 and 3: First, EPA would establish a minimum recycling rate as described in Option 1. This minimum would be a relatively low level. Marketers would be encouraged not to make claims of recyclability for any products that did not meet this minimal level of recycling. Second, marketers whose products meet this recycling rate would be encouraged to meet the conditions outlined in Option 3.

This option would have the advantages of the previous option plus it would set a minimum threshold that would prevent the most trivial claims of recyclability from being made.

One disadvantage to this option is the difficulty that EPA could have in defining meaningful criteria to set a minimum recycling rate. We are requesting comment on the appropriate criteria for determining a minimum recycling rate in the context of this option. We are also requesting comment on this option in general, and in particular whether the use of several elements in the claim could be confusing to consumers or difficult for marketers to apply.

E. EPA's Preferred Option

EPA's preferred option is Option 3: Qualified Claims and Disclosure of National Recycling Rate. We believe this option offers the best match between ease of implementation and meeting our objectives of improving communications of "recyclability," avoiding a loss of consumer confidence in the validity of "recyclable" claims, and assisting companies who have made changes or who have supported recycling reap the benefits of their efforts through increased sales and profits in the marketplace.

V. General Guidance

A. Use of Recycling Emblem

The familiar recycling emblem (See Figure 1) was developed in 1970 in a national contest conducted by a paper products manufacturer. After the contest the recycling emblem was placed in the public domain and is now commonly used by marketers to represent both recyclability and recycled content use. It is recognized by much of the public as relating generally to recycling. An immediately recognizable symbol like the recycling emblem can be a useful tool in drawing the attention of consumers to a product that contains recycled content or that is recyclable; however, more guidance on its proper use is needed in order to increase the effectiveness of its use and to ensure that consumers understand its meaning.

Figure 1: Recycling Emblem

The issue of when and how the recycling emblem should be used is being addressed by some Stat recommending that the emblem be used with recycled content and recyclable claims but the emblem be clearly identified to reflect whether it represents recycled content or recyclability. It is likely that more States will attempt to address this issue in the future. In order to provide a consistent national approach to the use of the recycling emblem, EPA is offering the following options for developing guidance. These options are offered as adjuncts to the guidance that EPA will develop for "recycled content" and "recyclable" claims. That is, EPA believes that the approach ultimately recommended for use of the recycling emblem should be used in conjunction with approaches ultimately recommended for the terms "recycled" and "recyclable," so that the emblem and surrounding message are viewed as a consistent claim providing necessary information.

1. Option 1: Limit Use of Recycling Emblem to Certain Recycling Claims

The use of the recycling emblem has expanded to environmental claims unrelated to the use of recycled content or recyclable materials. For example, some marketers have placed the recycling emblem on a package claiming "Environmentally friendly product and packaging," giving one the impression that the recycling emblem also signifies an overall "environmental goodness." While this practice is not yet widespread, we would not like to see it spread as it would dilute the meaning of the emblem. EPA is seeking comment on this position. Do commenters think that this emblem should be used for other uses than signifying the use of recycled materials or recyclability?

Under this option, EPA would recommend that the use of the recycling emblem in product claims and advertising be restricted to claims involving the use of recycled content and recyclability. This option would limit the number of different messages that the recycling emblem would communicate to consumers, avoiding a situation where the emblem could be used for so many different environmental messages as to become virtually meaningless.

The recycling emblem is not used exclusively for environmental claims. For example, community recycling programs will often use the recycling emblem in brochures and advertising notifying the public of the time and location of recycling collection programs. Recycling collection companies use the recycling emblem on the sides of collection trucks. These uses of the recycling emblem are entirely appropriate, and we do not intend for the guidance to cover them.

Another use of the recycling emblem, albeit in a slightly modified form, is the Society of the Plastic Industry's rigid container plastic resin coding system. This coding system is meant to help differentiate between different resin types and encourage the recycling of plastic containers. Some form of the resin coding system is required by law ion over 30 States. EPA does not intend that its guidance cover the use of the resin coding system, as long as the use of the coding is consistent with that of identification of resin and not an environmental claim. For example, a plastic bottle labeled with the code on the bottom of the bottle would not be covered under the guidance, but a plastic cup with the emblem displayed prominently on the side would be considered to be making an environmental claim, and the use of the emblem in that circumstance should be in accordance with EPA guidance.

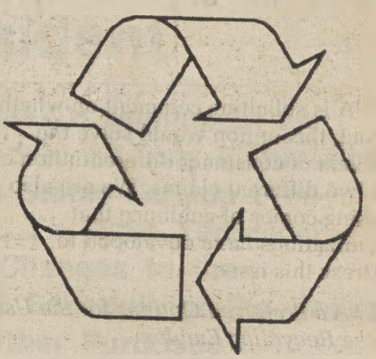
EPA is seeking comment on whether other legitimate uses besides communicating "recycled content" and "recyclability" and those discussed above exist for the recycling emblem, what those uses are, and whether this option should be expanded to include those uses.

2. Option 2: Use American Paper Institute Guidance

The American Paper Institute (API) distributes camera ready copy of the recycling emblem with the recommendation that manufacturers use a version of the symbol consisting of solid arrows within a black circle to represent the use of recycled content (See Figure 2) and another version with the symbol appearing in outline form to signify recyclability. (See Figure 3.) With this option, EPA would recommend that marketers follow the API guidance and continue to use the two different versions of the recycling emblem.

Figure 2: API Recycled Content Emblem

Figure 3: API Recyclable Emblem



An advantage to adopting this option is that the guidance has been developed and used for a number of years, and we would be promoting consistency by not changing guidance and adding to the confusion. We must note, however, because the API guidance promotes the use of two nearly identical emblems that the guidance might not offer a solution to increasing consumer understanding of the recycling emblem. Consumers might not be readily able to recognize that one version of the emblem represents the use of recycled materials while the other represents recyclability.

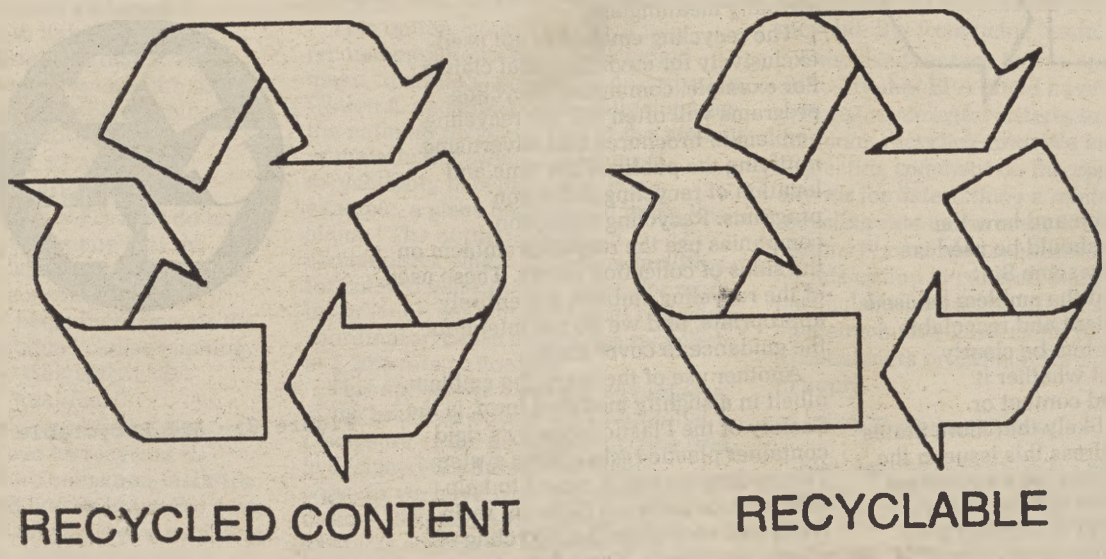
EPA is soliciting comment on whether adopting the API guidance would

resolve the problems of consumer understanding of the meaning of the recycling emblem. EPA is also soliciting information that marketers might have concerning consumer understanding of the recycling emblem as currently used.

3. Option 3: Clearly Label the Recycling Emblem

Under this option, EPA would recommend that marketers clearly label the emblem with "recycled content" or "recyclable," depending on the claim they are making. An example of this can be seen in Figure 4. This option is an attempt to address the concerns we discussed in the previous section concerning the ability of consumers to differentiate between the two different API emblems.

Figure 4: Clearly Labeled Recycling Emblems



EPA is soliciting comment on whether, in fact, this option would solve the problem of consumer differentiation of the two different claims. We are also seeking copies of guidance that organizations have developed to address this issue.

4. EPA's Preferred Options for the Use of the Recycling Emblem

EPA's currently preferred options for the use of the recycling emblem are a combination of Options 1 and 3. Our preference would be that marketers use the recycling emblem only for "recycled content" or "recyclable" claims, and that they clearly label the emblem as pertaining to "recycled content" or "recyclable" claims.

This option will help to promote consumer understanding of the meaning of the recycling emblem by encouraging that the use of the recycling emblem be limited to recycling claims, and by helping to eliminate the confusion that consumers are facing in determining the difference between the "recycled content" and "recyclable" emblems.

B. Separating Claims of Packaging and Product

The labeling and advertising practices of some marketers do not always differentiate between claims made about the packaging and the product contained within the package. Because of this, consumers are not able to tell when recycled content claims refer to the packaging and when they refer to the product. EPA is considering recommending that marketers clearly differentiate between recycled content and the recyclability claims made about the product and the packaging in order to help reduce consumer confusion. We request comment on this issue as well.

Dated: September 22, 1991.

Don R. Clay,

Assistant Administrator, Office of Solid Waste and Emergency Response.

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Wednesday
October 2, 1991

Part V

The President

Proclamation 6343—To Implement an Accelerated Schedule of Duty Elimination Under the United States-Canada Free-Trade Agreement, To Make Technical and Conforming Changes to the Harmonized Tariff Schedule of the United States, and for Other Purposes

Presidential Proclamations

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Vol. 56. No. 191
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Presidential Documents

Title 3—

The President

TO IMPLEMENT AN ACCELERATED SCHEDULE OF DUTY ELIMINATION UNDER THE UNITED STATES-CANADA FREE-TRADE AGREEMENT, TO MAKE TECHNICAL AND CONFORMING CHANGES TO THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES, AND FOR OTHER PURPOSES

6343

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

1. On January 2, 1988, the President entered into the United States-Canada Free-Trade Agreement (the Agreement). The Agreement and certain letters exchanged between the Governments of Canada and the United States were approved by the Congress in section 101(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988 (the Implementation Act) (Public Law 100-449). The Agreement entered into force on January 1, 1989.

2. Section 201(b) of the Implementation Act grants the President, subject to the consultation and lay-over requirements of section 103(a) of the Implementation Act, the authority to proclaim such modifications as the United States and Canada may agree to regarding the staging of any duty treatment set forth in Annexes 401.2 and 401.7 to the Agreement as the President determines to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Canada provided for by the Agreement.

3. Consistent with Article 401(5) of the Agreement, the President, through his duly empowered representative, on August 16, 1991, entered into an agreement with the Government of Canada providing an accelerated schedule of duty elimination for specific goods of Annex 401.2 to the Agreement. The consultation and lay-over requirements of section 103(a) of the Implementation Act with respect to such schedule have been complied with.

4. Also consistent with Article 401(5) of the Agreement, the President, through his duly empowered representative, on May 18, 1990, entered into an agreement with the Government of Canada providing an accelerated schedule of duty elimination fo

specific goods of Annexes 401.2 and 401.7. Pursuant to the authority granted in section 201(b) of the Implementation Act, the President, in Proclamation No. 6142 of May 25, 1990, implemented an accelerated schedule of duty elimination under the Agreement for those goods originating in the territory of Canada. However, certain goods could not be included in that agreement and accelerated schedule because of incomplete information regarding their tariff classification. Agreement as to acceleration of duty elimination for these goods was reached in an exchange of letters between the Governments of the United States and Canada. The consultation and lay-over requirements of section 103(a) of the Implementation Act with respect to such goods have been complied with.

5. Pursuant to section 201(b) of the Implementation Act, I have determined that the modifications hereinafter proclaimed to existing duties on goods originating in the territory of Canada are necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Canada provided for by the Agreement and to carry out the agreements with Canada providing an accelerated schedule of duty elimination for specific goods of Annex 401.2 to the Agreement.

6. Section 202(d)(1) of the Implementation Act authorizes the President to proclaim, as a part of the Harmonized System, implemented by the United States in the Harmonized Tariff Schedule of the United States (HTS), the rules of origin set forth in Annex 301.2 to the Agreement. Section 202(d)(2) of the Implementation Act authorizes the President to proclaim, subject to the consultation and lay-over requirements of section 103 of the Implementation Act, such modifications to the rules as may from time to time be agreed to by the United States and Canada. I have decided, pursuant to an agreement entered into on August 16, 1991, between the United States and Canada, that certain

modifications in the rules of origin for particular goods of chapter 15 of the HTS should be proclaimed as a part of the HTS. The consultation and lay-over requirements of section 103 of the Implementation Act with respect to such modifications have been complied with.

7. Section 201(a) of the Implementation Act authorizes the President to proclaim such modifications to or continuance of existing duties, such continuance of existing duty-free or excise treatment, or such additional duties as the President determines to be necessary or appropriate to carry out Article 401 of the Agreement and the schedule of duty reductions with respect to goods originating in the territory of Canada set forth in Annexes 401.2 and 401.7 to the Agreement.

8. Certain provisions of the Customs and Trade Act of 1990 (the 1990 Act) (Public Law 101-382) and the Omnibus Budget Reconciliation Act of 1990 (the Budget Act) (Public Law 101-508), changed the tariff treatment of brooms and brushes of broom corn, woven fabrics and gauze of wool or of fine animal hair, ethyl alcohol, and ethyl tertiary-butyl ether. As a result of these changes, such goods originating in the territory of Canada became subject to rates of duty that are higher than the applicable duty rates previously proclaimed by the President pursuant to section 201 of the Implementation Act. In addition, previously enacted temporary duty suspensions for certain articles expired at the close of December 31, 1990. Consequently, such goods, if originating in the territory of Canada, became dutiable as of January 1, 1991, contrary to the terms of Article 401(8) of, and Annex 401.2 to, the Agreement. Accordingly, pursuant to section 201(a) of the Implementation Act, I have determined that it is necessary or appropriate to modify the HTS to ensure that the affected goods originating in the territory of Canada are afforded the tariff treatment contained in Annex 401.2 to the Agreement.

9. Title III of the 1990 Act amended the HTS to modify the tariff treatment afforded to various goods imported into the customs territory of the United States. Title II of the 1990 Act amended the Caribbean Basin Economic Recovery Act (CBERA) (19 U.S.C. 2701 et seq.) to repeal the termination on duty-free treatment under CBERA and to provide duty-free treatment for certain articles grown, produced, or manufactured in Puerto Rico. Technical corrections and conforming amendments to the HTS were set forth in sections 10011 and 11502(g) of the Budget Act.

10. In order to implement the tariff treatment provided for in CBERA, the 1990 Act, and the Budget Act, it is necessary to embody in the HTS the substance of the provisions of these acts. In addition, in order to clarify the preferential tariff treatment accorded under the CBERA, it is necessary to modify provisions of the general notes to the HTS to conform them to CBERA as amended by the 1990 Act.

11. Section 242 of the Compact of Free Association (the Compact) entered into by the Government of the United States and the Governments of the Marshall Islands and of the Federated States of Micronesia (the freely associated states), as given effect by section 401 of the Compact of Free Association Act of 1985 (the Association Act) (Public Law 99-239), requires the President to proclaim that articles imported from the freely associated states shall, under specified conditions, receive duty-free treatment subject to the limitations imposed under sections 503(b) and 504(c) of the Trade Act of 1974 (the 1974 Act) (19 U.S.C. 2463(b), 2464(c)).

12. Section 243 of the Compact, as given effect by section 401(b) of the Association Act, provides that certain articles imported from the freely associated states are to be excluded from the duty-free treatment proclaimed by the President and are to receive most-favored-nation (MFN) tariff treatment. Section 401(a) of the Association Act provides that only canned

tuna provided for in item 112.30 of the Tariff Schedules of the United States (TSUS) that is imported from the freely associated states during any calendar year in an aggregate quantity not to exceed 10 percent of the U.S. consumption of canned tuna during the immediately preceding calendar year, as reported by the National Marine Fisheries Service, may be entered free of duty. In addition, section 401(a) of the Association Act further provides that canned tuna imports from the freely associated states entering free of duty shall be counted against the aggregate quantity of canned tuna that is dutiable under rate column numbered 1 for TSUS item 112.30 for that calendar year. The effect of this provision is that the tariff-rate quota of TSUS item 112.30 would have been available to imported canned tuna during any calendar year only to the extent that the quantity of canned tuna from the freely associated states that entered free of duty during the calendar year pursuant to section 401(a) of the Association Act was less than the aggregate quantity of canned tuna, if any, dutiable under TSUS item 112.30 for that calendar year.

13. The foregoing exclusions and restrictions are set forth in terms of the TSUS. The United States converted from the TSUS to the HTS effective January 1, 1989. Proclamation No. 6030 of September 28, 1989, incorporated into the HTS the exclusions and restrictions set out in section 401 of the Association Act, but did not clarify the manner in which canned tuna from the freely associated states shall be accorded limited duty-free treatment as set forth in section 401 of the Association Act. Therefore, modifications to general note 3(c)(viii) to the HTS and to chapter 16 of the HTS are appropriate in order to clarify the manner in which the provisions of section 401 of the Association Act relating to canned tuna shall be administered.

14. Pursuant to section 4 of the United States-Israel Free Trade Area Implementation Act of 1985 (the Israel Act) (19 U.S.C. 2112 note), the President proclaimed, in Proclamation No. 5365 of August 30, 1985, changes in tariff treatment which the President determined were required or appropriate to carry out the schedule of duty reductions for products of Israel set forth in Annex 1 to the Agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel (the Israel FTA), entered into on April 22, 1985. Subsequently, in Proclamation No. 5646 of May 4, 1987, the President modified the tariff schedules to eliminate duty-free treatment for articles eligible for entry under certain provisions covering articles exported from the United States and returned after having been advanced or improved abroad. I have determined, pursuant to section 4 of the Israel Act, that further modifications are required or appropriate to carry out the schedule of duty reductions with respect to products of Israel set forth in Annex 1 to the Israel FTA.

15. On October 3, 1990, pursuant to actions taken by their parliaments, the Federal Republic of Germany and the German Democratic Republic became a single country, following the signing of a treaty with the Governments of the United States, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and France. Accordingly, in order to ensure that MFN tariff treatment is afforded to all goods the product of the Federal Republic of Germany, I have determined that it is appropriate to modify general note 3(b) to the HTS, enumerating those countries whose products are dutied at the rates set forth in the Rates of Duty Column 2 of the HTS.

16. Section 604 of the 1974 Act, as amended (19 U.S.C. 2483), requires the President, from time to time, as appropriate, to embody in the HTS the substance of the provisions of that Act,

of other acts affecting import treatment, and actions thereunder, including removal, modification, continuance, or imposition of any import restriction.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and laws of the United States, including but not limited to section 604 of the 1974 Act, section 213 of CBERA, section 4 of the Israel Act, section 401 of the Association Act, sections 201 and 202 of the Implementation Act, and titles II and III of the 1990 Act, do proclaim that:

(1) In order to provide for an accelerated schedule of duty elimination for specific goods of Annex 401.2 to the United States-Canada Free-Trade Agreement and to modify the rules of origin, the tariff treatment provided for in the HTS for certain goods originating in the territory of Canada and general note 3 to the HTS are modified as provided in Annex I(a), (b), (c), (d), (e), and (f) to this proclamation.

(2) In order to modify certain rates of duty and to provide for staged reductions for specified goods originating in the territory of Canada to conform such duty rates to the schedule of duty reductions set forth in Annex 401.2 to the Agreement, the HTS is further modified as set forth in Annex I(g), (h), (i), and (j) to this proclamation.

(3) In order to make technical and conforming changes in various provisions of the HTS, and to implement the tariff treatment provided for in CBERA and the 1990 Act, including the tariff treatment of certain articles grown, produced, or manufactured in Puerto Rico, the HTS is modified as set forth in Annex II to this proclamation.

(4) In order to make conforming changes in the tariff treatment of products of the freely associated states following changes in section 503(b) of the 1974 Act and to clarify the tariff treatment of articles imported from the freely associated

states, general note 3(c)(viii) to the HTS and chapter 16 of the HTS are modified as set forth in Annex III.

(5) In order to carry out the schedule of duty reductions for products of Israel, as provided in Annex I to the Israel FTA, HTS subheadings 9802.00.60 and 9802.00.80 are each modified by inserting in the Rates of Duty 1-Special subcolumn after the symbol "CA" in parentheses the symbol ",IL".

(6) In order to afford MFN tariff treatment to all goods the product of the Federal Republic of Germany, general note 3(b) to the HTS is modified by striking out "German Democratic Republic".

(7) Any provisions of previous proclamations and Executive orders inconsistent with the provisions of this proclamation are hereby superseded to the extent of such inconsistency.

(8) (a) The modifications made by paragraphs (1) and (2) of this proclamation shall be effective with respect to goods originating in the territory of Canada entered, or withdrawn from warehouse for consumption, on or after the dates set forth in Annex I to this proclamation.

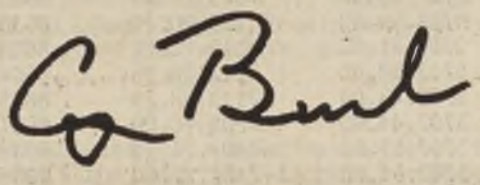
(b) The modifications made by paragraph (3) of this proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the dates set forth in Annex II to this proclamation.

(c) The modifications made by paragraph (4) of this proclamation shall be effective with respect to products of the freely associated states entered, or withdrawn from warehouse for consumption, on or after the dates set forth in Annex III to this proclamation.

(d) The modifications made by paragraph (5) of this proclamation shall be effective with respect to products of Israel entered, or withdrawn from warehouse for consumption, on or after January 1, 1989.

(e) The modification made by paragraph (6) of this proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after October 3, 1990.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of September, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and sixteenth.



ANNEX I

MODIFICATIONS TO THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES (HTS) WITH RESPECT TO THE TARIFF TREATMENT OF CERTAIN GOODS ORIGINATING IN THE TERRITORY OF CANADA

(a) Effective with respect to goods originating in the territory of Canada which are entered, or withdrawn from warehouse for consumption, on or after July 1, 1991, the HTS is modified as follows:

(1) For the following HTS subheadings, in the Rates of Duty 1-Special subcolumn, by striking the symbol "(CA)" and the duty rate preceding it, and inserting in lieu thereof in the parentheses following the "Free" rate of duty the symbol "CA," in alphabetical order:

0201.20.20	0713.39.20	2941.10.50	7108.13.10	8516.40.40
0201.20.40	0713.39.40	3301.24.00	7108.13.50	8517.30.30
0201.20.60	0713.40.10	3404.20.00	7113.11.10	8521.10.00
0201.30.20	0713.40.20	3407.00.40	7113.19.10	8521.90.00
0201.30.40	0713.50.10	3701.30.00	7113.19.21	8522.90.60
0201.30.60	0713.50.20	3701.91.00	7113.19.25	8530.10.00
0202.10.00	0713.90.10	3701.99.30	7113.19.29	8530.80.00
0202.20.20	0713.90.60	3701.99.60	7113.20.10	8530.90.00
0202.20.40	0713.90.80	3702.31.00	7113.20.21	8603.10.00
0202.20.60	1106.10.00	3702.39.00	7113.20.25	8604.00.00
0204.22.20	1521.90.20	3702.43.00	7113.20.29	8605.00.00
0204.22.40	1602.20.20	3702.44.00	7205.10.00	8607.19.10
0204.23.20	1602.20.40	3702.53.00	7407.21.10	9002.11.80
0204.23.40	1703.10.30	3702.54.00	7407.21.50	9006.20.00
0204.30.00	1703.10.50	3702.91.00	7407.21.70	9006.53.00
0204.41.00	2306.20.00	3702.93.00	7407.21.90	9006.62.00
0204.42.20	2306.40.00	3702.95.00	7407.22.10	9008.10.00
0204.42.40	2525.20.00	3703.90.30	7407.22.50	9008.90.40
0204.43.20	2819.10.00	3703.90.60	7408.29.10	9008.90.80
0204.43.40	2825.30.00	3823.90.36	7408.29.50	9015.30.40
0708.90.05	2827.39.10	3917.10.10	7409.40.00	9015.30.80
0708.90.15	2833.29.30	3917.10.50	7409.90.10	9018.19.40
0708.90.30	2836.91.00	5306.10.00	7410.21.30	9018.19.80
0708.90.40	2841.90.10	5306.20.00	7410.21.60	9018.49.40
0712.20.20	2902.11.00	5307.10.00	7410.22.00	9026.90.40
0712.20.40	2902.50.00	5307.20.00	7616.10.30	9026.90.60
0712.90.40	2903.13.00	5607.10.00	8412.29.40	9027.10.20
0713.10.10	2912.21.00	5607.29.00	8412.29.80	9027.20.42
0713.10.40	2916.31.10	5607.30.20	8412.90.10	9027.20.44
0713.20.10	2916.31.20	5607.41.10	8423.10.00	9027.30.40
0713.20.20	2916.31.30	6805.10.00	8423.81.00	9027.30.80
0713.31.10	2916.31.50	6805.20.00	8468.10.00	9027.50.40
0713.31.40	2917.11.00	6805.30.10	8477.10.60	9027.90.20
0713.32.10	2917.35.00	6911.10.10	8480.71.90	9027.90.42
0713.32.20	2923.10.00	7002.31.00	8482.20.00	9027.90.44
0713.33.10	2933.21.00	7006.00.10	8482.99.30	9306.10.00
0713.33.20	2941.10.10	7006.00.20	8516.31.00	9608.60.00
0713.33.40	2941.10.20	7006.00.40	8516.32.00	9608.99.30
0713.39.10	2941.10.30	7108.12.50	8516.40.20	

(2) For HTS subheadings 5505.10.00 and 5607.41.30, in the Rates of Duty 1-Special subcolumn, by striking the symbol "(CA)" and the duty rate preceding it, and inserting in lieu thereof "Free (CA)".

(3) By striking from U.S. notes 2, 4, and 5 to subchapter V of chapter 99 "'Special' subcolumn of rate of duty column 1" and from U.S. note 3 to subchapter V of chapter 99 "'Special' subcolumn of the rates of duty 1 column" and inserting in lieu thereof "Rates of Duty 1-Special subcolumn".

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(a) (con.):

(4) By deleting U.S. note 3 to subchapter V of chapter 99 and inserting in lieu thereof new U.S. note 3 to subchapter V of chapter 99, in numerical sequence, as follows:

"3. On or after January 1, 1992, the then-existing percentage set forth in the Rates of Duty 1-Special subcolumn for HTS subheading 9905.00.30 which is applicable to goods originating in the territory of Canada shall be deleted and "20 percent" inserted in lieu thereof.".

(5) By inserting new U.S. note 8 to subchapter V of chapter 99, in numerical sequence, as follows:

"8. The expression "unworked" in HTS subheading 9905.74.10 refers to copper plates, sheets, and strip which have not been processed beyond the condition as from the rolling mill (for example, not machined, cut to shape, perforated or coated). The term "worked" in HTS subheadings 9905.74.20 and 9905.74.30 refers to copper plates, sheets, and strip, or foil which have been processed beyond the condition as from the rolling mill.".

(6) By inserting the following HTS subheadings in numerical sequence in subchapter V of chapter 99 in the HTS with the material, which is set forth in columnar format, inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", and "Rates of Duty 1-Special", respectively:

Bracketed matter is included to assist in the understanding of proclaimed modifications.

	[Goods originating...:]	
"9905.07.10	Parsnips, fresh or chilled (provided for in subheading 0706.90.40).....	Free (CA)
9905.08.10	Lingonberries (partridgeberries), frozen (provided for in subheading 0811.90.80)..... ..	Free (CA)
9905.11.10	Groats and meal of buckwheat (provided for in subheading 1103.19.00)....	Free (CA)
9905.15.10	Other vegetable fats and oils and their fractions (other than soybean oil and its fractions) (provided for in subheading 1516.20.90).....	[See section (b) of this Annex] (CA)
9905.16.10	Prepared or preserved bovine meat, other than prepared meals (provided for in subheading 1602.50.90).....	Free (CA)
9905.16.12	Other prepared or preserved meat, meat offal or blood (other than prepared meals) (provided for in subheading 1602.90).....	Free (CA)
9905.20.08	Cranberry puree (provided for in subheading 2007.99.65).....	Free (CA)
9905.20.09	Cranberries, prepared or preserved (provided for in subheading 2008.99.20).....	Free (CA)
9905.25.10	Talc (provided for in subheading 2526.10.00).....	Free (CA)
9905.28.01	Sulfur dichloride, disulfur dichloride (sulfur monochloride), sulfur dichloride dioxide (sulfuryl chloride or sulphonyl chloride), and sulfur dichloride oxide (thionyl chloride) (provided for in subheading 2812.10.50).....	Free (CA)
9905.28.02	Potassium hexafluorophosphate (provided for in subheading 2826.90.00)...	Free (CA)
9905.28.03	Vanadium oxytrichloride (vanadium trichloride oxide) (provided for in subheading 2827.49.10).....	Free (CA)
9905.28.04	Hypochlorites (other than sodium hypochlorite), chlorites, and hypobromites (provided for in subheading 2828.90.00).....	Free (CA)
9905.28.05	Cobalt nitrate and nickel nitrate (provided for in subheading 2834.29.50).....	Free (CA)
9905.28.06	Tetrapotassium pyrophosphate (provided for in subheading 2835.39.10)....	Free (CA)

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(a)(6) (con.):

	[Goods originating...:]	
9905.28.15	Cyanamide (provided for in heading 2851.00.00).....	Free (CA)
9905.29.06	2-Bromoethylbenzene (provided for in subheading 2903.69.60).....	Free (CA)
9905.29.07	o-Nitrotoluene (provided for in subheading 2904.20.35).....	Free (CA)
9905.29.08	1-Chloro-2,2,2-trifluoroethyl difluoromethyl ether and 2-chloro-1,1,2-trifluoroethyl difluoromethyl ether (provided for in subheading 2909.19.10).....	Free (CA)
9905.29.11	Salicylaldehyde (provided for in subheading 2912.49.20).....	Free (CA)
9905.29.12	Vanadyl formate (provided for in subheading 2915.12.00).....	Free (CA)
9905.29.13	Magnesium distearate (provided for in subheading 2915.70.00).....	Free (CA)
9905.29.14	Benzyl chloroformate (provided for in subheading 2915.90.20).....	Free (CA)
9905.29.17	Ethoxynaphthoyl chloride (provided for in subheading 2918.90.45).....	Free (CA)
9905.29.18	Methylamine, whether or not in solution (provided for in subheading 2921.11.00).....	Free (CA)
9905.29.19	Diethylaminoethyl chloride hydrochloride (provided for in subheading 2921.19.50).....	Free (CA)
9905.29.21	Hexamethylenediamine (provided for in subheading 2921.22.10 or 2921.22.50).....	Free (CA)
9905.29.22	Dicyclohexylamine (provided for in subheading 2921 30.50).....	Free (CA)
9905.29.23	p-Toluidine (provided for in subheading 2921.43.60).....	Free (CA)
9905.29.24	Sertraline (provided for in subheading 2921.45.30).....	Free (CA)
9905.29.26	Levodopa (provided for in subheading 2922.50.25).....	Free (CA)
9905.29.27	3-(2-Hydroxyethoxy)-4-(2-hydroxyethylamino)nitrobenzene (provided for in subheading 2922.50.30).....	Free (CA)
9905.29.28	N,N-Dimethylformamide and N,N-dimethylacetamide (provided for in subheading 2924.10.10).....	Free (CA)
9905.29.31	2-Aminothiophenol (provided for in subheading 2930.90.20).....	Free (CA)
9905.29.33	Potassium dichloroisocyanurate, potassium-s-triazinetrione, sodium dichloro-s-triazinetrione, sodium dichloroisocyanurate, and trichloroisocyanuric acid (provided for in subheading 2933.69.00).....	Free (CA)
9905.29.40	Diltiazem hydrochloride and doxazosin (provided for in subheading 2934.90.25).....	Free (CA)
9905.29.60	Hydrochlorothiazide (provided for in subheading 2935.00.43).....	Free (CA)
9905.29.70	Vanadium acetonates (provided for in subheading 2942.00.50).....	Free (CA)
9905.30.01	Amoxicillin in oral dosage form (provided for in subheading 3004.10.50).....	Free (CA)
9905.30.02	Erythromycin lactobionate, injectable; imipenem-cilastatin sodium; and vancomycin hydrochloride, injectable (provided for in subheading 3004.20.00).....	Free (CA)
9905.30.03	Hydrocortisone sodium succinate, injectable (provided for in subheading 3004.32.00).....	Free (CA)
9905.30.05	Oxytocin, injectable; and recombinant human erythropoietin (provided for in subheading 3004.39.00).....	Free (CA)
9905.30.06	Vitamin B_{12} for veterinary use (provided for in subheading 3004.50.20)..	Free (CA)
9905.30.20	Nonmedicated adhesive plasters containing a felt support (provided for in subheading 3005.10.50).....	Free (CA)
9905.32.10	Pigment orange 13 and 46; pigment red 3, 48:1, 48:2, 49:1, 49:2, 52:1, 52:2, 53:1, and 57:1; salt type red of C.I. No. 53:1 (Red Lake C); and pigment yellow 1, 12, 13, 14, and 73 (provided for in subheading 3204.17.30 or 3204.17.50).....	Free (CA)
9905.32.20	Surfacing preparations for indoor walls and ceilings (provided for in subheading 3209.10.00).....	Free (CA)

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(a)(6) (con.):

	[Goods originating...:]	
9905.32.30	Preparations for setting wall and floor tiles (provided for in subheading 3214.90.50)	Free (CA)
9905.35.10	Scrap gelatin (provided for in heading 3503.00)	Free (CA)
9905.35.20	Soy protein isolates (provided for in subheading 3504.00.10)	Free (CA)
9905.38.06	Fumigator fogger bombs; insecticides in bulk or in packages of a gross weight exceeding 1.36 kg each (provided for in subheading 3808.10)	Free (CA)
9905.38.07	Chromated copper arsenate, 50 percent solution (provided for in subheading 3808.20.30)	Free (CA)
9905.38.08	Disinfectants in bulk or in packages of a gross weight exceeding 1.36 kg each (provided for in subheading 3808.40)	Free (CA)
9905.38.09	Fabric softeners deposited on disposable sheets for household use (provided for in subheading 3809.91.00 or 3809.99)	Free (CA)
9905.38.11	Sizing preparations based on rosins and sizing preparations based on alkyl ketene dimer (provided for in subheading 3809.92)	Free (CA)
9905.38.12	Naphthenic acids (provided for in subheading 3823.20.00)	Free (CA)
9905.39.01	Liquid amorphous polypropylene having a solubility greater than 95 percent in boiling n-heptane and less than 5 percent crystallinity (provided for in subheading 3902.10.00)	Free (CA)
9905.39.03	Dibutyltin oxide and hydrated monobutyltin oxide (provided for in subheading 3911.90.30)	Free (CA)
9905.39.04	Lignin (provided for in subheading 3913.90.50)	Free (CA)
9905.39.06	Ion-exchangers other than of polymers of styrene (provided for in heading 3914.00.00)	Free (CA)
9905.39.07	Tape certified by the importer as intended for use in the manufacture of disposable diapers (provided for in subheading 3919.10.20)	[See section (b) of this Annex] (CA)
9905.39.08	Polyvinyl chloride edgebanding, of a width of over 1 cm, and of a thickness of over 0.03 cm but not over 1 cm (provided for in subheading 3919.10.20)	Free (CA)
9905.39.09	Polypropylene or polyethylene film certified by the importer as intended for use in the manufacture of disposable diapers (provided for in subheading 3920.10.00 or 3920.20.00)	[See section (b) of this Annex] (CA)
9905.39.12	Polyvinyl chloride edgebanding, of a width of over 1 cm but not over 65 cm, and of a thickness of over 0.03 cm but not over 1 cm, with a primer on the back, whether or not topcoated (provided for in subheading 3920.41 or 3920.42)	Free (CA)
9905.39.13	Handles and knobs for furniture (provided for in subheading 3926.30.10)	[See section (b) of this Annex] (CA)
9905.39.14	Holders for drawer dividers, grommets, and glides for furniture (provided for in subheading 3926.30.50)	[See section (b) of this Annex] (CA)
9905.40.02	Flexible closed-cell rubber tubing designed for insulating liquid-cooling or liquid-heating tubes or pipes (provided for in subheading 4009.10.00)	Free (CA)
9905.40.20	Gaskets and seals for locomotives and rail cars; oil seals (provided for in subheading 4016.93.00)	Free (CA)
9905.42.10	Bowling bags (provided for in subheading 4202.91.00 or 4202.92.45)	Free (CA)
9905.42.20	Cases for flutes (provided for in subheading 4202.92.50)	Free (CA)
9905.48.20	Color sample charts, sausage casings, and weighted paper markers for crop spraying or dusting (provided for in subheading 4823.90.65 or 4823.90.85)	Free (CA)
9905.54.12	Monofilaments of nylon or other polyamides; monofilaments (other than nylon or other polyamides) cut to length and bundled for brooms or brushes (provided for in subheading 5404.10)	Free (CA)
9905.54.14	Strip and the like, of nylon (provided for in subheading 5404.90.00)	Free (CA)

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(a)(6) (con.):

	[Goods originating...:]	
9905.56.10	Spunbonded nonwovens of filaments of polyethylene or polypropylene, whether or not coated or covered, being air infiltration barriers for use as building wrap and marked at regular intervals on the surface of the material as housewrap; nonwovens of m-phenyleneisophthalamide, in rolls or sheets, of a kind used in electrical insulation (provided for in heading 5603.00).....	Free (CA)
9905.56.20	Nonwovens certified by the importer as intended for use as liners or transfer layers in the manufacture of disposable diapers (provided for in heading 5603.00).....	[See section (b) of this Annex] (CA)
9905.56.30	Sewing thread sample charts (provided for in heading 5609.00).....	Free (CA)
9905.58.10	Braid sample charts (provided for in subheading 5808.10).....	Free (CA)
9905.63.10	Decorative trimming (braids) sample charts (provided for in subheading 6307.90.94).....	Free (CA)
9905.64.10	Footwear, consisting of an outer sole and an unfinished or incomplete upper, designed for use with boot liners (provided for in subheading 6401.99.60)..... . . .	Free (CA)
9905.64.20	Tennis shoes, basketball shoes, training shoes, gym shoes, and the like, not covering the ankle, having outer soles of rubber or plastics and uppers of leather (provided for in subheading 6403.99).....	Free (CA)
9905.68.10	Tiles of stone other than calcareous stone or granite, except tiles of subheading 6802.10 (provided for in subheading 6802.99.00).....	Free (CA)
9905.68.20	Articles of asphalt, in rolls, consisting of a substrate of paper covered with asphalt and mineral granules (provided for in subheading 6807.10.00).....	Free (CA)
9905.68.30	Brick panels (provided for in subheading 6810.91.00).....	Free (CA)
9905.68.40	Carbon or graphite yarns (provided for in subheading 6815.10.00).....	Free (CA)
9905.68.50	Gasket material of compressed mineral substances (provided for in subheading 6815.99.40).....	Free (CA)
9905.70.05	Float glass (provided for in subheading 7005.10, 7005.21, or 7005.29)...	Free (CA)
9905.70.07	Lighted mirrors (provided for in subheading 7009.92.10).....	Free (CA)
9905.70.09	Pressed and toughened (specially tempered) glass ovenware (provided for in subheading 7013.39.10).....	Free (CA)
9905.73.01	Die-cut nails, 3 to 6 cm in length, collated (provided for in heading 7317.00).....	Free (CA)
9905.73.03	Gas counter-top and built-in ovens and parts thereof (provided for in subheading 7321.11.60 or 7321.90.60).....	Free (CA)
9905.73.30	Upholstery tack strips (provided for in subheading 7326.90).....	[See section (b) of this Annex] (CA)
9905.74.10	Copper plates, sheets and strip, other than unworked plates, sheets and strip of a thickness not exceeding 4.75 mm and a width not exceeding 508 mm (provided for in subheading 7409.11, 7409.19, 7409.21, or 7409.29).....	Free (CA)
9905.74.20	Worked copper plates, sheets, and strip, of a thickness of less than 5 mm (provided for in subheading 7409.90.50 or 7409.90.90).....	Free (CA)
9905.74.30	Worked foil of refined copper (provided for in subheading 7410.11.00)...	Free (CA)
9905.76.10	Rods of aluminum alloys 2014, 2024, 6151, or 7075 (provided for in subheading 7604.29)..... ...	Free (CA)
9905.78.10	Braided leadline, and wall anchors for bolts and screws (provided for in heading 7806.00.00).....	Free (CA)
9905.79.10	Zinc anodes for electroplating (provided for in subheading 7907.90.60)..	Free (CA)
9905.82.20	Manual nailing machines (provided for in subheading 8205.59).....	Free (CA)
9905.83.15	Concealed adjustable hinges for casement windows (provided for in subheading 8302.10).....	Free (CA)
9905.83.20	Castors, plated with zinc or brass, suitable for furniture (provided for in subheading 8302.20.00).....	Free (CA)

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(a)(6) (con.):

	[Goods originating...:]	
9905.83.25	Decorative brass-plated rods; steel rings and sockets, brass plated; steel kickplates, zinc plated; steel catches; brass scuff plates; and closure glides for the end of tubing on chairs, brass or nickel plated; the foregoing suitable for furniture (provided for in subheading 8302.42).....	Free (CA)
9905.83.30	Steel table slides; zinc pulls and knobs, whether or not brass plated (provided for in subheading 8302.42.30).....	[See section (b) of this Annex] (CA)
9905.83.40	Aluminum fittings used solely or principally as lateral arms for awnings (provided for in subheading 8302.49.60).....	Free (CA)
9905.84.06	Reciprocating positive displacement pumps other than centrifugal (provided for in subheading 8413.50.00).....	Free (CA)
9905.84.07	Parts of reciprocating positive displacement pumps other than centrifugal of subheading 8413.50.00; sucker rods, pony rods or polished rods designed for oil field related pumps, and parts thereof (provided for in subheading 8413.91.90).....	Free (CA)
9905.84.08	Oscillating table fans (provided for in subheading 8414.51.00).....	Free (CA)
9905.84.09	Cooling fan assemblies for locomotives (provided for in subheading 8414.59.80).....	Free (CA)
9905.84.11	Air compressors for locomotives (provided for in subheading 8414.80.10).....	Free (CA)
9905.84.12	Parts of oscillating table fans, and of cooling fan assemblies and blower wheel assemblies for locomotives (provided for in subheading 8414.90.10).....	Free (CA)
9905.84.13	Parts of air compressors for locomotives (provided for in subheading 8414.90.20).....	Free (CA)
9905.84.14	Air conditioners for locomotives (provided for in subheading 8415.82.00).....	Free (CA)
9905.84.16	Parts of air conditioners of subheading 8415.82.00 for locomotives (provided for in subheading 8415.90.00).....	Free (CA)
9905.84.17	Hot-air and dehumidified dryers for plastic resin processing (provided for in subheading 8419.39.00).....	Free (CA)
9905.84.18	Parts of hot-air and dehumidified dryers for plastic resin processing; hubs, wheels and spindles for grain dryers; molecular sieves for refrigeration dryers (provided for in subheading 8419.90.90).....	Free (CA)
9905.84.19	Lubrication oil filter assemblies for internal combustion engines for locomotives (provided for in subheading 8421.23.00).....	Free (CA)
9905.84.23	Parts of weighing machinery of subheadings 8423.10.00 and 8423.81.00 (provided for in subheading 8423.90.00).....	Free (CA)
9905.84.24	Trigger operated sprayers for non-aerosol cans (provided for in subheading 8424.89.00).....	Free (CA)
9905.84.26	Parts of agricultural or horticultural appliances of subheading 8424.81.90; parts of trigger operated sprayers for non-aerosol cans (provided for in subheading 8424.90).....	Free (CA)
9905.84.27	Agricultural or horticultural type continuous-action elevators and conveyors; veneer conveyors specially designed for use with automatic veneer reelers or unreelers (provided for in subheading 8428.39.00).....	Free (CA)
9905.84.28	Elevator guide rails; and hubs, wheels and spindles for grain handling equipment of heading 8428 (provided for in subheading 8431.31.00 or 8431.39.00).....	Free (CA)
9905.84.29	Hubs, wheels and spindles for land levelers or earth scrapers (provided for in subheading 8431.49.90).....	Free (CA)
9905.84.42	Parts of hand-held blow torches (provided for in subheading 8468.90.10).	Free (CA)
9905.84.56	Rail lubricators (provided for in subheading 8479.81.00).....	Free (CA)
9905.84.57	Wind-up mouse traps (provided for in subheading 8479.89.90).....	Free (CA)
9905.84.58	Parts of rail lubricators and of wind-up mouse traps; and hubs, wheels and spindles for sweepers other than carpet sweepers (provided for in subheading 8479.90.80).....	Free (CA)
9905.84.66	Tapered rollers (provided for in subheading 8482.91.00).....	Free (CA)

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(a)(6) (con.):

	[Goods originating...:]	
9905.84.67	70 tooth gears and gearing suitable for use solely or principally in locomotives and worm gears suitable for use solely or principally in railway vehicles (provided for in subheading 8483.40.90).....	Free (CA)
9905.84.71	Parts of 70 tooth gears and gearing suitable for use solely or principally in locomotives and worm gears suitable for use solely or principally in railway vehicles (provided for in subheading 8483.90.50).....	Free (CA)
9905.85.06	AC generators exceeding 15,000 kVA and of a RPM of 600 or less (provided for in subheading 8501.64.00).....	Free (CA)
9905.85.21	9 volt batteries and 1.5 volt AAA batteries (provided for in subheading 8506.11.00).....	Free (CA)
9905.85.22	Batteries having a lithium chemical system (provided for in subheading 8506.19.00).....	Free (CA)
9905.85.37	Electromechanical knife sharpeners, knives, toothbrushes, food slicers and ice cream freezers (provided for in subheading 8509.80.00).....	Free (CA)
9905.85.38	Parts of electromechanical coffee mills, food choppers, food grinders and processers, ice crushers, knife sharpeners, knives, toothbrushes, food slicers and ice cream freezers (provided for in subheading 8509.90.40).....	Free (CA)
9905.85.39	Alternator assemblies for diesel locomotives (provided for in subheading 8511.50.00).....	Free (CA)
9905.85.41	Parts of alternator assemblies for diesel locomotives (provided for in subheading 8511.90.60).....	Free (CA)
9905.85.42	Resistance heated furnaces and ovens suitable for use in the manufacture of semiconductors (provided for in subheading 8514.10.00)...	Free (CA)
9905.85.43	Parts of resistance heated furnaces and ovens suitable for use in the manufacture of semiconductors (provided for in subheading 8514.90.00)...	Free (CA)
9905.85.46	Cab heaters for diesel electric locomotives (provided for in subheading 8516.29.00).....	Free (CA)
9905.85.47	Automatic drip coffee makers; and coffee percolators, of stainless steel (provided for in subheading 8516.71.00).....	Free (CA)
9905.85.49	Parts of cab heaters for diesel electric locomotives (provided for in subheading 8516.90.40).....	Free (CA)
9905.85.51	Parts of electrothermic hairdressing or hand-drying apparatus; parts of electric flatirons; parts of automatic drip coffee makers; parts of coffee percolators, of stainless steel; and parts of toasters (provided for in subheading 8516.90.60).....	Free (CA)
9905.85.52	Multiplexers (provided for in subheading 8517.30.50).....	Free (CA)
9905.85.53	Tape transport mechanisms and parts thereof; tone-arms; parts of turntables (record-decks) or record-players; parts of dictating or transcribing machines, excluding machines using magnetic tape; parts of compact disc players; magnetic tape recorders incorporating sound reproducing apparatus for commercial sound recordings; sound recording apparatus of subheading 8520.90 for commercial reproduction or duplication of audio-cassette tapes; parts of video recording or reproducing apparatus (provided for in subheading 8522.90).....	Free (CA)
9905.85.66	Pantographs (provided for in subheading 8535.90.00).....	Free (CA)
9905.85.67	Shunt contactors for direct current controls (provided for in subheading 8536.49.00).....	Free (CA)
9905.85.68	Connector adapters for goods of subheading 9030.39.00; contactors and terminals for automatic motor protectors (provided for in subheading 8536.90.00).....	Free (CA)
9905.85.69	Programmable controllers for drive systems for industrial and marine applications; high voltage cabinets for diesel electric locomotives; control panels for railway equipment (provided for in subheading 8537.10.00).....	Free (CA)
9905.85.71	Direct current magnetic coils for switchgear of heading 8536 (provided for in subheading 8538.90.00).....	Free (CA)
9905.85.72	Electronic fly traps (provided for in subheading 8543.80.90).....	Free (CA)

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(a)(6) (con.):

	[Goods originating...:]	
9905.86.05	Railway or tramway freight cars, not self-propelled, produced before July 1, 1991, or if entered after July 1, 1994, produced not less than three years before the date of importation (provided for in heading 8606)	Free (CA)
9905.86.15	Non-driving truck assemblies for railway or tramway passenger cars (provided for in subheading 8607.12.00)	Free (CA)
9905.86.20	Parts of railway or tramway passenger cars (provided for in subheading 8607.19.30 or 8607.19.90)	Free (CA)
9905.86.30	Parts of rail car housing and support units and parts of railway or tramway passenger cars (provided for in subheading 8607.99)	Free (CA)
9905.87.20	Hubs, wheels and spindles for agricultural trailers (provided for in subheading 8716.90.50)	Free (CA)
9905.90.01	Frames and mountings of plastics for safety goggles or safety spectacles designed for use by workers employed in hazardous work and frames and mountings of plastics for prismatic eyeglasses for reading (provided for in subheading 9003.11.00)	Free (CA)
9905.90.02	Parts of frames and mountings of subheading 9003.11.00 for safety goggles or safety spectacles designed for use by workers employed in hazardous work and parts of frames and mountings of subheading 9003.11.00 for prismatic eyeglasses for reading (provided for in subheading 9003.90.00)	Free (CA)
9905.90.03	Parts and accessories of photographic cameras of subheadings 9006.20.00 and 9006.53.00 (provided for in subheading 9006.91.00)	Free (CA)
9905.90.04	Parts and accessories of flashbulbs, flashcubes and the like (provided for in subheading 9006.99.00)	Free (CA)
9905.90.07	Rulers, of plastics; measuring instruments for determining the proportional reduction or enlargement of a picture or photograph (provided for in subheading 9017.80.00)	Free (CA)
9905.90.08	Parts and accessories of measuring instruments for determining the proportional reduction or enlargement of a picture or photograph (provided for in subheading 9017.90.00)	Free (CA)
9905.90.09	Orthopedic or fracture appliances other than plaster bandage splints, surgical trusses and suspensory bandages or orthopedic abdominal supports (provided for in subheading 9021.19)	Free (CA)
9905.90.11	Parts and accessories of goods of subheading 9027.30.80 (provided for in subheading 9027.90.60 or 9027.90.80)	Free (CA)
9905.91.10	Security guard mechanical time clocks (provided for in subheading 9106.90.80)	Free (CA)
9905.92.10	Flutes (provided for in subheading 9205.90.40)	Free (CA)
9905.92.20	Parts of flutes (provided for in subheading 9209.99.40)	Free (CA)
9905.94.02	Swivel seats suitable for use solely or principally in locomotive cabs (provided for in subheading 9401.30.80)	Free (CA)
9905.94.04	Folding seats, of plastics, suitable for use solely or principally in boats (provided for in subheading 9401.80.20 or 9401.80.40)	Free (CA)
9905.94.06	Parts of swivel seats suitable for use solely or principally in locomotive cabs; parts of folding seats of subheadings 9401.80.20 and 9401.80.40 suitable for use solely or principally in boats (provided for in subheading 9401.90)	Free (CA)
9905.94.08	Operating tables and oscillating beds, and parts thereof (provided for in subheading 9402.90.00)	Free (CA)
9905.94.15	Lamp bases, of glass (provided for in subheading 9405.91.60)	Free (CA)
9905.95.02	Mylar balloons (provided for in subheading 9503.90.50)	Free (CA)
9905.95.03	Golf club shafts of fiberglass (provided for in subheading 9506.39.00)	Free (CA)
9905.95.04	Motorized stair climbing exercise apparatus equipped with electronic monitors (provided for in subheading 9506.91.00)	Free (CA)
9905.95.06	Bats of aluminum (provided for in subheading 9506.99.15)	Free (CA)
9905.96.20	Parts of ball point pens (provided for in subheading 9608.99.40)	Free (CA)
9905.96.30	Pancake ink film ribbons of a width not exceeding 3 cm (provided for in subheading 9612.10)	Free (CA)".

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(a) (con.):

(7) By striking HTS subheadings 9905.00.30, 9905.20.15, 9905.29.16, 9905.29.29, 9905.29.32, 9905.29.35, 9905.29.50, 9905.30.04, 9905.30.10, 9905.38.10, 9905.59.10, 9905.73.05, 9905.73.10, 9905.73.15, 9905.84.05, 9905.84.15, 9905.84.55, 9905.85.10, 9905.85.25, 9905.85.35, 9905.85.40, and 9905.85.70 and inserting in lieu thereof the following HTS subheadings in numerical sequence in subchapter V of chapter 99 in the HTS with the material, which is set forth in columnar format, inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", and "Rates of Duty 1-Special", respectively:

Bracketed matter is included to assist in the understanding of proclaimed modifications.

	[Goods originating...:]	
*9905.00.30	Upholstery fabrics certified by the importer as intended for use as outer covering in the manufacture of upholstered furniture, provided for in the following provisions: 5208.39 5211.51 5513.21 5516.22 5208.42 5211.52 5513.23 5516.23 5208.49 5211.59 5513.39 5516.24 5208.52 5407.10 5513.41 5516.43 5208.53 5407.42 5514.21 5516.44 5208.59 5407.43.20 5514.22 5516.93 5209.31 5407.44 5514.23 5801.10 5209.32 5407.52.20 5514.29 5801.22 5209.39 5407.53.20 5514.31 5801.23 5209.41 5407.54 5514.32 5801.25 5209.43 5407.60.20 5514.33 5801.26 5209.49 5407.72 5514.39 5801.31 5209.51 5407.73.20 5514.41 5801.32 5209.52 5407.74 5514.42 5801.33 5209.59 5407.82 5514.43 5801.35 5210.39 5407.83 5514.49 5801.36 5210.49 5407.84 5515.11 5801.90 5210.51 5407.92 5515.12 5802.30 5210.59 5407.93 5515.19 5903.10 5211.31 5407.94 5515.21 5903.20 5211.32 5408.23.20 5515.29 5903.90 5211.39 5408.24 5515.91 5906.99 5211.41 5512.19 5515.99 5907.00.....	40 percent of the column 1-general rate of duty applicable under the respective listed heading or subheading (CA)
	5211.43 5512.29 5516.13	
	5211.49 5512.99 5516.14	
9905.20.15	Frozen cranberry concentrate, 50° brix; and juice of any single fruit, except fruits provided for elsewhere in heading 2009, not concentrated (provided for in subheading 2009.80.60).....	Free (CA)
9905.29.16	m-Toluic acid and o-toluic acid (provided for in subheading 2916.39.60).....	Free (CA)
9905.29.29	Di-o-tolylguanidine, diphenylguanidine, guanidine, and pentamidine isethionate (provided for in subheading 2925.20).....	Free (CA)
9905.29.32	Amlodipine besylate, flecainide acetate, and nifedipine (provided for in subheading 2933.39.35).....	Free (CA)
9905.29.35	Benzotriazolyloxytris(dimethylamino)phosphonium hexafluorophosphate; 2-(Benzotriazol-2-yl)-4,6-bis(methylethyl-1-phenylethyl)phenol; 2-(1H-Benzotriazol-1-yl)-1,1,3,3-tetramethyluronium hexafluorophosphate; 2-(1H-Benzotriazol-1-yl)-1,1,3,3-tetramethyluronium tetrafluoroborate; Enalapril maleate; Fluconazole; 2-(2'-Hydroxy-3',5'-di-tert-amylphenyl)benzotriazole; 2-(2'-Hydroxy-5'-methylphenyl)benzotriazole; L-Proline and its methyl ester; Temazepam; and Tolmetin sodium (provided for in subheading 2933.90).....	Free (CA)
9905.29.50	Acetylsulfaguanidine and azosulfamide (provided for in subheading 2935.00.39).....	Free (CA)

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(a)(7) (con.):

	[Goods originating...:]	
9905.30.10	Acetazolamide in sustained-release dosage form for human use; Aminocaproic acid; Antibacterial creams containing sulfanilamide as the single active ingredient; Antihistaminic agents in tablet form containing terfenadine as the single active ingredient; Anthelmintic based on pyrantel pamoate or morantel tartarate for treating internal parasites in horses and in dairy and feed cattle; Antimicrobial ointments other than sulfonamides for the treatment of vaginal yeast infections in animals; Iron-dextran complex; Laxatives for animals; Lyophilized ribavirin in vials; and Tubocurarine chloride, injectable (provided for in subheading 3004.90.60).....	Free (CA)
9905.38.10	Blended flammable chemical waste suitable for use as a fuel; Gaseous mixtures of hydrogen sulfide and nitrogen; Gaseous mixtures of nitric oxide and nitrogen; Glycerol triacetate; Molecular sieves; Phosphonium salts; Sodium methoxide 25 percent in methanol (sodium methylate 25 percent); and Synthetic gum base (provided for in subheading 3823.90).....	Free (CA)
9905.59.10	Packing yarns with cores of glass fibers, whether or not incorporating a metal wire, covered with a textile wrapper; and pure or prelubricated polytetrafluoroethylene yarns (provided for in subheading 5911.90.00).....	Free (CA)
9905.73.05	Pellet-fired heating appliances and parts thereof, and railway track switch heaters and parts thereof (provided for in subheading 7322.90.00).....	Free (CA)
9905.73.10	Treeball baskets, underwires for brassieres, and wire mesh minnow traps (provided for in subheading 7326.20.00).....	Free (CA)
9905.73.15	Flush floor and duct systems, and racks and containers for the automotive industry (provided for in subheading 7326.90).....	Free (CA)
9905.84.05	Parts of hydraulic power engines and motors of subheading 8412.29.80, and parts of pneumatic power engines and motors (provided for in subheading 8412.90).....	Free (CA)
9905.84.55	Parts of barrels and cylinders for plastic processing machines, parts of blow-molding machines of subheading 8477.30, and parts of injection-molding machines for rubber or plastics (provided for in subheading 8477.90.00).....	Free (CA)
9905.85.10	Armature coil assemblies, brush holder assemblies, interpole coils, and main coils suitable for use solely or principally in locomotives; parts of AC generators exceeding 15,000 kVA and of a RPM of 600 or less; parts of electric gear motors of subheadings 8501.33.30, 8501.33.40, 8501.34.30, 8501.51, 8501.53.60, or 8501.53.80; and parts of electric motors and generators of subheadings 8501.20, 8501.31, 8501.32.20, 8501.32.60, 8501.61, or 8501.62 (provided for in heading 8503.00).....	Free (CA)
9905.84.15	Parts of filtering or purifying machinery and apparatus for gases of subheading 8421.39 and parts of lubrication oil filter assemblies for internal combustion engines for locomotives (provided for in subheading 8421.99.00).....	Free (CA)
9905.85.25	Parts of batteries having a lithium chemical system, parts of primary cells and primary batteries of subheadings 8506.12 and 8506.13, and parts of 9 volt batteries and 1.5 volt AAA batteries of subheading 8506.11.00 (provided for in subheading 8506.90.00).....	Free (CA)
9905.85.35	Electromechanical coffee mills, food choppers, food grinders, food processors, and ice crushers (provided for in subheading 8509.40.00).....	Free (CA)
9905.85.40	Hi-ignitors for railway equipment, and parts of electric soldering irons and guns of subheading 8515.11.00 (provided for in subheading 8515.90).....	Free (CA)
9905.85.70	Parts of electronic fly traps, and parts of signal generators (provided for in subheading 8543.90).....	Free (CA)".

(8) By deleting from the article description of HTS subheading 9905.00.00 "7006.00" and "8482.20" and by deleting "7616.10" and inserting "7616.10.10", "7616.10.50", "7616.10.70", and "7616.10.90", in numerical sequence, in lieu thereof.

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(b) Effective with respect to goods originating in the territory of Canada which are entered, or withdrawn from warehouse for consumption, on or after July 1, 1991, and January 1 of each of the following years: For each of the following HTS subheadings, the rate of duty in the Rates of Duty 1-Special subcolumn in the HTS that is followed by the symbol "CA" in parentheses is deleted and the following rates of duty are inserted in lieu thereof.

HTS Subheading	1991	1992	1993
1204.00.00	0.3¢/kg	Free	Free
1205.00.00	0.3¢/kg	Free	Free
1507.10.00	7.8%	Free	Free
1508.10.00	1.7¢/kg	Free	Free
1508.90.00	3¢/kg	Free	Free
1509.10.40	0.6¢/kg	Free	Free
1509.90.40	0.6¢/kg	Free	Free
1510.00.60	0.6¢/kg	Free	Free
1512.11.00	0.4¢/kg + 0.8%	Free	Free
1512.19.00	0.7¢/kg + 1.4%	Free	Free
1512.21.00	2.3¢/kg	Free	Free
1512.29.00	2.3¢/kg	Free	Free
1514.10.90	2.6%	Free	Free
1514.90.50	0.5¢/kg	Free	Free
1514.90.90	2.6%	Free	Free
1515.90.40	1%	Free	Free
1516.20.10	3.1%	Free	Free
2304.00.00	0.1¢/kg	Free	Free
5601.10.10	2.8%	1.4%	Free
5601.10.20	5%	2.5%	Free
9905.15.10	3.8¢/kg	Free	Free
9905.39.07	2.6%	1.3%	Free
9905.39.09	1.9%	0.9%	Free
9905.39.13	3%	1.5%	Free
9905.39.14	2.4%	1.2%	Free
9905.56.20	5.8%	2.9%	Free
9905.73.30	2.6%	1.3%	Free
9905.83.30	2.6%	1.3%	Free

(c) Effective with respect to goods originating in the territory of Canada which are entered, or withdrawn from warehouse for consumption, on or after July 1, 1994, and January 1, 1995: For each of the following HTS subheadings, the rate of duty in the Rates of Duty 1-Special subcolumn in the HTS that is followed by the symbol "CA" in parentheses is deleted and the following rates of duty are inserted in lieu thereof.

HTS Subheading	1994	1995
1507.90.20	0.3%	Free
1507.90.40	4.5%	Free
1516.20.90	2.2¢/kg	Free

(d) Effective with respect to goods originating in the territory of Canada which are entered, or withdrawn from warehouse for consumption, on or after January 1, 1996:

(1) For HTS subheading 8422.11.00, in the Rates of Duty 1-Special subcolumn in the HTS, the symbol "(CA)" and the duty rate preceding it are deleted, and in lieu thereof in the parentheses following the "Free" rate of duty the symbol "CA," is inserted in alphabetical order.

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(d) (con.):

(2) The following HTS subheading is inserted in numerical sequence in subchapter V of chapter 99 in the HTS with the material, which is set forth in columnar format, inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", and "Rates of Duty 1-Special", respectively:

Bracketed matter is included to assist in the understanding of proclaimed modifications.

	[Goods originating...:]	
"9905.84.22	Parts of dishwashing machines of the household type (provided for in subheading 8422.90.05).....	Free (CA)".

(e) Effective with respect to goods originating in the territory of Canada which are entered, or withdrawn from warehouse for consumption, on or after April 1, 1990:

(1) The following HTS subheading is inserted in numerical sequence in subchapter V of chapter 99 in the HTS with the material, which is set forth in columnar format, inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", and "Rates of Duty 1-Special", respectively:

Bracketed matter is included to assist in the understanding of proclaimed modifications.

	[Goods originating...:]	
"9905.54.11	Monofilament yarn, solely of polyurethane, not on beams (provided for in subheading 3916.90.30 or 5404.10.20).....	Free (CA)".

(2) HTS subheading 9905.61.05 is modified to read as follows:

Bracketed matter is included to assist in the understanding of proclaimed modifications.

	[Goods originating...:]	
"9905.61.05	Pants and shells for pants for use in ice hockey (provided for in heading 6113.00.00 or subheading 6114.30.30, 6210.40.10, 6210.40.20, 6210.50.10, 6210.50.20, 6211.33.00 or 6211.43.00).....	Free (CA)".

(f) Effective with respect to goods originating in the territory of Canada which are entered, or withdrawn from warehouse for consumption, on or after January 1, 1992: The HTS is modified by striking out from general note 3(c)(vii)(R)(3) to the HTS the subdivisions designated (bb) through (dd), inclusive, and by redesignating the subdivisions designated as (ee) through (hh), inclusive, as (bb) through (ee), respectively.

(g) Effective with respect to goods originating in the territory of Canada which are entered, or withdrawn from warehouse for consumption:

(1) On or after September 4, 1990:

(i) HTS subheading 9901.00.52 is modified by striking out "5.29¢/liter" from the Rates of Duty 1-Special subcolumn and by inserting in lieu thereof "Free".

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(g)(1) (con.):

(ii) The following HTS subheading is inserted in numerical sequence in subchapter V of chapter 99 in the HTS with the material, which is set forth in columnar format, inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", and "Rates of Duty 1-Special", respectively:

Bracketed matter is included to assist in the understanding of proclaimed modifications.

	[Goods originating...:]	
"9905.96.03	Whisk brooms and other brooms, in part of broom corn (provided for in subheading 9603.10.25, 9603.10.30, 9603.10.50, or 9603.10.60).....	8% (CA)".

(2) On or after January 1 of each of the years specified below, for HTS subheading 9905.96.03, the rate of duty in the Rates of Duty 1-Special subcolumn in the HTS that is followed by the symbol "CA" in parentheses is deleted and the following rates of duty inserted in lieu thereof.

HTS Subheading	1991	1992	1993	1994	1995	1996	1997	1998
9905.96.03	7%	6%	5%	4%	3%	2%	1%	Free

(h) Effective with respect to goods originating in the territory of Canada which are entered, or withdrawn from warehouse for consumption:

(1) On or after October 1, 1990:

(i) HTS subheading 9905.61.10 is deleted.

(ii) The following HTS subheading is inserted in numerical sequence in subchapter V of chapter 99 in the HTS with the material, which is set forth in columnar format, inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", and "Rates of Duty 1-Special", respectively:

Bracketed matter is included to assist in the understanding of proclaimed modifications.

	[Goods originating...:]	
"9905.51.12	Tapestry fabrics and upholstery fabrics, woven, containing 85 percent or more by weight of combed wool or of combed fine animal hair, of a weight exceeding 200g/m^2 but not exceeding 300g/m^2 (provided for in subheading 5112.19.90).....	5.6% (CA)".

(2) On or after January 1 of each of the years specified below, for HTS subheading 9905.51.12, the rate of duty in the Rates of Duty 1-Special subcolumn in the HTS that is followed by the symbol "CA" in parentheses is deleted and the following rates of duty inserted in lieu thereof.

HTS Subheading	1991	1992	1993	1994	1995	1996	1997	1998
9905.51.12	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free

(i) Effective with respect to goods originating in the territory of Canada which are entered, or withdrawn from warehouse for consumption, on or after January 1 of each of the years specified below: For HTS subheading 9901.00.50, the rate of duty in the Rates of Duty 1-Special subcolumn in the HTS that is followed by the symbol "CA" in parentheses is deleted and the following rates of duty inserted in lieu thereof.

HTS Subheading	1991	1992	1993	1994	1995	1996	1997	1998
9901.00.50	11¢/liter	9.5¢/liter	7.9¢/liter	6.3¢/liter	4.7¢/liter	3.1¢/liter	1.5¢/liter	Free

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(j) Effective with respect to goods originating in the territory of Canada which are entered, or withdrawn from warehouse for consumption, on or after January 1, 1991: The following HTS subheadings are inserted in numerical sequence in subchapter V of chapter 99 in the HTS with the material, which is set forth in columnar format, inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", and "Rates of Duty 1-Special", respectively:

Bracketed matter is included to assist in the understanding of proclaimed modifications.

	[Goods originating...:]	
"9905.29.04	8-Naphthol (provided for in subheading 2907.15.50).....	Free (CA)
9905.29.09	6-Amino-1-naphthol-3-sulfonic acid (provided for in subheading 2922.21.10).....	Free (CA)
9905.29.16	m-Toluic acid (provided for in subheading 2916.39.60).....	Free (CA)
9905.29.29	Diphenylguanidine and di-o-tolylguanidine (provided for in subheading 2925.20.30).....	Free (CA)
9905.29.32	Flecainide acetate (provided for in subheading 2933.39.35).....	Free (CA)
9905.29.34	2-(4-Aminophenyl)-6-methylbenzothiazole-7-sulfonic acid (provided for in subheading 2934.20.60).....	Free (CA)
9905.29.36	Sulfaquinoxaline and sulfanilamide (provided for in subheading 2935.00.31).....	Free (CA)
9905.29.37	Sulfathiazole (provided for in subheading 2935.00.33 or 3004.90.60).....	Free (CA)
9905.29.38	Sulfaguanidine (provided for in subheading 2935.00.35).....	Free (CA)
9905.29.50	Acetylsulfaguanidine (provided for in subheading 2935.00.39).....	Free (CA)
9905.30.04	Iron-dextran complex (provided for in subheading 3004.90.60).....	Free (CA)
9905.40.08	Plates, sheets and strip of natural rubber, reinforced with textile fabrics of man-made fibers, for use in the manufacture of hovercraft skirts (provided for in subheading 4008.21.00).....	Free (CA)".

Conforming changes: U.S. note 8 to subchapter II of chapter 99 of the HTS is modified by striking out from such note the following HTS subheadings: "9902.29.08", "9902.29.20", "9902.29.34", "9902.29.56", "9902.29.70", "9902.29.78", "9902.29.81", "9902.29.82", "9902.29.83", "9902.29.85", "9902.30.05", and "9902.40.08".

ANNEX II

MODIFICATIONS TO THE HARMONIZED TARIFF SCHEDULE
OF THE UNITED STATES (HTS) TO IMPLEMENT TARIFF TREATMENT
PROVIDED FOR IN THE CBERA, AND FOR OTHER PURPOSES

(a) Effective with respect to articles which are entered, or withdrawn from warehouse for consumption, on or after January 1, 1989: HTS subheading 9902.29.66 is modified by deleting "2933.19.40" from the article description and inserting "2933.19.42" in lieu thereof.

(b) Effective with respect to articles which are entered, or withdrawn from warehouse for consumption, on or after October 1, 1990:

(1) General note 3(c)(ii)(D) to the HTS is modified by striking out "6702.90.60" and inserting "6702.90.65" in lieu thereof.

(2) General note 3(c)(v)(B) to the HTS is modified by adding new subdivision (5) after general note 3(c)(v)(4) and at the same indentation, as follows:

"(5) Pursuant to subsection 213(a)(5) of the CBERA, duty-free treatment shall be provided under the CBERA to an article (other than an article enumerated in subsection 213(b) of the CBERA) which is the growth, product, or manufacture of Puerto Rico if--

(I) the article is imported directly from the beneficiary country into the customs territory of the United States,

(II) the article was by any means advanced in value or improved in condition in a beneficiary country, and

(III) any materials are added to the article in a beneficiary country, such materials are a product of a beneficiary country or the United States.".

(c) Effective with respect to articles which are entered, or withdrawn from warehouse for consumption, on or after the date of signature of this proclamation:

(1) The following HTS subheadings are modified by inserting, in alphabetical order, the symbol "E" in the Rates of Duty 1-Special subcolumn in the HTS in the parentheses following the "Free" rate of duty in such subcolumn for each such subheading.

3005.10.50	4010.99.15	5903.20.20	6306.22.10
3005.90.50	5404.90.00	5903.90.10	6306.31.00
3918.10.31	5405.00.60	5903.90.20	6406.10.72
3921.90.11	5608.90.23	5906.91.20	6702.90.35
3926.90.57	5903.10.10	5906.99.20	7019.10.40
4010.91.15	5903.10.20	5910.00.10	9032.89.20

(2) The following HTS subheadings are modified by striking out "E*" in the Rates of Duty 1-Special subcolumn in the HTS and by inserting in lieu thereof "E" for each such subheading.

0210.90.20	5307.10.00	6307.90.94	9102.11.25	9102.29.55
0210.90.40	5307.20.00	6406.10.85	9102.11.50	9305.29.50
3403.11.50	5310.90.00	6504.00.30	9102.11.65	9401.20.00
3703.10.60	5608.90.30	6504.00.60	9102.19.20	9404.21.00
3920.20.00	5609.00.20	6506.10.60	9102.19.60	9404.29.90
3924.90.10	5702.99.20	6506.91.00	9102.21.10	9404.30.40
3925.30.10	5703.90.00	6506.99.00	9102.21.30	9404.90.20
3926.90.56	5911.40.00	6507.00.00	9102.21.70	9506.21.80
3926.90.90	6210.10.20	6701.00.00	9102.29.02	9506.29.00
4010.91.11	6214.10.10	6702.90.10	9102.29.04	9506.69.60
4010.99.11	6304.99.25	6703.00.60	9102.29.15	9506.91.00
5004.00.00	6306.39.00	7019.90.50	9102.29.25	9506.99.60
5006.00.10	6306.49.00	9006.91.00	9102.29.35	9507.90.80
5113.00.00	6307.90.60	9102.11.10	9102.29.45	9606.10.40

ANNEX III

MODIFICATIONS TO THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES (HTS) WITH RESPECT TO CERTAIN IMPORTS FROM THE FREELY ASSOCIATED STATES

(a) Effective with respect to products of the freely associated states which are entered, or withdrawn from warehouse for consumption, on or after October 1, 1990:

General note 3(c)(viii) to the HTS is modified:

(1) By striking out the title to such note and inserting in lieu thereof the following: "Products of the Freely Associated States".

(2) In subdivisions (B) and (G) of such note, by striking out "imported from" and inserting in lieu thereof "the growth, product or manufacture of" in each such subdivision.

(b) Effective with respect to products of the freely associated states which are entered, or withdrawn from warehouse for consumption, on or after January 1, 1992:

(1) General note 3(c)(viii) to the HTS is modified:

(i) By striking out subdivision (C) and inserting in lieu thereof the following:

"(C) Tunas and skipjack, prepared or preserved, not in oil, in airtight containers weighing with their contents not over 7 kilograms each, in an aggregate quantity entered in any calendar year from the freely associated states not to exceed 10 percent of United States consumption of canned tuna during the immediately preceding calendar year, as reported by the National Marine Fisheries Service, may enter the customs territory of the United States free of duty; such imports shall be counted against, but not be limited by, the aggregate quantity of tuna, if any, that is dutiable under subheading 1604.14.20 for that calendar year.".

(ii) By striking out the text of subdivision (D)(1) and inserting in lieu thereof "tunas and skipjack, prepared or preserved, not in oil, in airtight containers weighing with their contents not over 7 kilograms each, in excess of the quantity afforded duty-free entry under subdivision (C) of this note:".

(2) Chapter 16 of the HTS is modified by adding the following new additional U.S. note in numerical sequence:

"3. For purposes of subheadings 1604.14.20 and 1604.14.30, tunas and skipjack from the freely associated states may be entered free of duty under the appropriate subheading in an aggregate quantity provided by, and under the terms set forth in, general note 3(c)(viii)(C) to the tariff schedule. Goods from the freely associated states entered, or withdrawn from warehouse for consumption, in excess of such specified aggregate quantity shall be dutied under the appropriate subheading at the rate set forth in the "General" subcolumn of column 1.".

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