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Thursday
June 11, 1987

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Boston, MA.
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DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Parts 724, 725 and 726

Tobacco Acreage Allotment and Marketing Quota Regulations

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: This interim rule amends the regulations at 7 CFR Parts 724, 725 and 726 to provide that tobacco allotments and/or marketing quotas that are subject to a Conservation Reserve Program (CRP) approved contract shall not be eligible for sale under current applicable voluntary sale provisions during the term of the contract. The interim rule also would permit the sale of previously purchased or reallocated burley and flue-cured tobacco marketing quotas by producers when certain hardship situations exist. The county Agricultural Stabilization and Conservation (ASC) committee, with the concurrence of a State ASC committee representative, may approve the sale of purchased and reallocated quotas in individual cases.

DATE: Effective: June 11, 1987.

Comments due on or before July 13, 1987, in order to assure consideration.

ADDRESSES: Send comments to the Director, Tobacco and Peanuts Division, ASCS, Department of Agriculture, P.O. Box 2415, Washington, DC 20013. All written submissions made pursuant to this notice will be made available for public inspection in room 5750-South Building, USDA, between the hours of 8:15 a.m. and 4:45 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Raymond S. Fleming, Chief, Tobacco Program Adjustment Branch, Tobacco and Peanuts Division, USDA–ASCS, P.O. Box 2415, Washington, DC 20013 (202) 447–4318.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Department Regulation No. 1512–1 and has been classified as "not major." It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for customers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises, to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this rule applies are: Commodity Loan and Purchases; 10.051, as found in the catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any other provision of Law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 29, 1983).

Background

The Dairy and Tobacco Adjustment Act of 1983 amended the Agricultural Adjustment Act of 1938 to provide that the lease and transfer of flue-cured tobacco allotments and marketing quotas would be terminated after the 1986 crop.

7 CFR 725.72 and 726.68 currently provide that purchasers of tobacco marketing quotas must share in the risk of production of tobacco produced under such a quota for a five year period beginning with the crop year in which the purchase became effective. These regulations further provide that a transfer of such a quota by sale shall not be approved if all or a portion of the marketing quota was bought and/or reallocated and the transfer became effective during the current or in the four preceding years unless such marketing quota is subject to forfeiture as the result of the producer not sharing in the risk of production of the tobacco which is subject to such marketing quotas.

The intent of these regulations was to assure that tobacco marketing quotas were purchased for use by active tobacco producers and to prevent speculators from buying large quantities of such marketing quotas for the sole purpose of resale for a profit at a later date. These regulations serve a much needed purpose and will continue to be needed to prevent the purchase and resale of marketing quotas by speculators. However, economic conditions have changed drastically over the last three years and some growers who purchased such quota with the full intent of continuing to be full-time tobacco producers are being forced to modify their farming plans. To permit the sale of previously purchased and/or reallocated quota in certain hardship cases would help some financially distressed producers without adversly affecting the tobacco program.

Accordingly, this interim rule permits the county ASC committee with concurrence of a representative of the State ASC committee to approve, when certain hardship conditions exist, a transfer of a tobacco marketing quota by sale, without regard to the 5-year ownership requirement, when the farm marketing quota includes marketing quota that was previously bought and/or reallocated from the forfeiture pool.

This Interim Rule also provides that tobacco acreage allotments and marketing quotas subject to a Conservation Reserve Program contract may not be sold voluntarily until the CRP contract expires.

Since flue-cured tobacco farmers are in the process of selling marketing quotas, it has been determined that this interim rule shall become effective on the date of publication in the **Federal Register.** However, comments from interested persons are requested. After the comments have been received and reviewed, a final rule will be published setting forth any amendments which may be necessary to the interim rule.

List of Subjects in 7 CFR Parts 724, 725 and 726

Acreage allotments, Marketing quotas, Reporting and recordkeeping requirements, Tobacco.

Accordingly, Part 724, 725 and 726 of Chapter VII, Title 7 of the CFR are amended as follows:

PART 724—[AMENDED]

In Part 724:

a. The authority citation for Part 724 continues to read as follows:

Authority: Sec. 301, 313, 314, 314A, 316, 316A, 317, 363, 372–375, 377, 378, 52 Stat. 38, as amended, 47, as amended, 48, as amended, 96 Stat. 215, 75 Stat. 469, as amended, 96 Stat. 205, 79 Stat. 66, as amended, 52 Stat. 63, as amended, 65–66, as amended, 70 Stat. 206, as amended, 72 Stat. 995, as amended, 7 U.S.C. 1301, 1313, 1314, 1314–1, 1314b, 1314b–1, 1314c, 1363, 1372–75, 1377, 1378; sec. 401, 63 Stat. 1054, as amended, 7 U.S.C. 1421, unless otherwise noted.

b. Section 724.70 is amended by revising paragraph (m) to read as follows:

§ 724.70 Transfer of fire-cured, dark air-cured, and Virginia sun-cured tobacco allotments by lease, sale, or by owner under section 318 of the Act.

* * * * *

(m) *Tobacco allotment subject to an approved Conservation Reserve Program contract.* Allotments which are subject to an approved Conservation Reserve Program contract shall not be eligible for sale during the term of the contract.

* * * * *

PART 725—[AMENDED]

In Part 725:

a. The authority citation for Part 725 continues to read as follows:

Authority: Sec. 301, 313, 314, 314A, 316B, 317, 363, 372–375, 377, 378, 52 Stat. 38, as amended, 47, as amended, 48, as amended, 96 Stat. 215, 210, 79 Stat. 66, as amended, 52 Stat. 63, as amended, 65–66, as amended, 70 Stat. 206, as amended, 72 Stat. 995, as amended, 7 U.S.C. 1301, 1313, 1314, 1314–1, 1314b–2, 1314c, 1363, 1372–75, 1377, 1378; sec. 401, 63 Stat. 1054, as amended, 7 U.S.C. 1421, unless otherwise noted.

b. Section 725.72 is amended by revising paragraph (d)(5)(i) and adding (d)(5)(vi) to read as follows:

§ 725.72 Transfer of tobacco marketing quotas by lease or by sale.

* * * * *

(d) * * *

(5) * * *

(i) *Previous purchases and/or reallocated quota.* If the farm marketing quota includes quota that was bought, and/or reallocated from quota which has been forfeited and the purchase and/or reallocation became effective during the current year or in the four preceding years: Provided, that this provision shall not be applicable if:

(a) The quota being sold was purchased in such period, if forfeiture of such quota may be required by § 725.74, and if the pounds of quota being transferred do not exceed the pounds of quota for which forfeiture otherwise is required in accordance with the provisions of § 725.74; or

(b) The county ASC committee with concurrence of a representative of the State ASC committee determines that failure to approve the sale would cause an undue hardship on the seller.

Before approval of such a sale, the county ASC committee shall determine that one of the following conditions exist with respect to the farm for which the quota has been established: *(1)* Financial distress of the owner of the quota to the extent that current year financing is unlikely; *(2)* Settlement of an estate which includes the farm; *(3)* Disability of the owner of the quota to the extent that such person can no longer continue to share in the risk of production of the purchased and/or reallocated quota due to health reasons and *(4)* The owner of the quota is sharing is the risk of production as an investing producer and loses resources necessary to produce the crop due to such reasons as the loss of a tenant or share cropper and a replacement can not be obtained.

* * * * *

(vi) *Tobacco allotment and quota subject to an approved Conservation Reserve Program contract.* Allotments and quotas which are subject to an approved Conservation Reserve Program contract shall not be eligible for sale during the term of the contract.

PART 726—[AMENDED]

In Part 726:

a. The authority citation for Part 726 continues to read as follows:

Authority: Sec. 301, 313, 314, 314A, 316B, 317, 363, 372–375, 377, 378, 52 Stat. 38, as amended, 47, as amended, 48, as amended, 96 Stat. 215, 210, 79 Stat. 66, as amended, 52 Stat. 63, as amended, 65–66, as amended, 70 Stat. 206, as amended, 72 Stat. 995, as amended, 7 U.S.C. 1301, 1313, 1314, 1314–1, 1314b–2, 1314c, 1363, 1372–75, 1377, 1378; sec. 401, 63 Stat. 1054, as amended, 7 U.S.C. 1421, unless otherwise noted.

b. Section 726.68 is amended by adding paragraphs (d)(5)(vi) and (d)(5)(vii) to read as follows:

§ 726.68 Transfer of tobacco marketing quotas by lease, by sale or by the owner.

* * * * *

(d) * * *

(5) * * *

(vi) *Hardship cases.* If quota was purchased and/or reallocated to the farm effective for the current year or in the four preceding years such quota may be sold at anytime if the county ASC committee with concurrence of a representative of the State ASC committee determines that failure to approve the sale would cause an undue hardship on the seller. Before approval of such a sale, the county ASC committee shall determine that one of the following conditions exist with respect to the farm for which quota has been established:

(A) Financial distress of the owner of the quota to the extent that current year financing is unlikely;

(B) Settlement of an estate which includes the farm;

(C) Disability of the owner of the quota to the extent that such person can no longer continue to share in the risk of production of the purchased and/or reallocated quota due to health reasons; and

(D) The owner of the quota is sharing in the risk of production as an investing producer and loses resources necessary to produce the crop due to such reasons as the loss of a tenant or sharecropper and a replacement can not be obtained.

(vii) *Tobacco quota subject to an approved Conservation Reserve Program Contract.* Quotas which are subject to an approved Conservation Reserve Program contract shall not be eligible for sale during the term of the contract.

* * * * *

Signed in Washington, DC, on June 8, 1987.

Milton J. Hertz,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 87–13394 Filed 6–10–87; 8:45 am]

BILLING CODE 3410–05–M

Rural Electrification Administration

7 CFR Part 1736

Electric Standards and Specifications

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) amends 7 CFR Part 1736, Electric Standards and Specifications, by revising REA Bulletin 50–17 (DT–5B), REA Specification for Wood Crossarms (Solid and Laminated), Transmission Timbers and Pole Keys; REA Bulletin 50–18 (DT–5C), REA

Specification for Wood Poles, Stubs and Anchor Logs; and REA Bulletin 50–24 (DT–19), REA Specification for Quality Control and Inspection of Timber Products. These bulletins contain the REA material specifications, and quality control and inspection procedures for timber products. The changes consist of: (1) The addition of Ammoniacal Copper Zinc Arsenate (ACZA) to the list of REA acceptable preservative treatments with references to the appropriate analysis methods; (2) allow the use of lime ignition analysis method on penta treated Douglas-fir crossarms that have not been rafted in salt water; and (3) delete the reference to REA's "List of Inspectors." This reference was inadvertently left in Bulletin 50–17, Appendix A, when the provision to maintain a list of inspection agencies was deleted.

EFFECTIVE DATE: June 11, 1987. The incorporation by reference of the publications mentioned in this rule was approved by the Director, Office of the Federal Register, effective June 11, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. H. Robert Lash, Transmission and Timber Specialist, Transmission Branch, Electric Staff Division, Rural Electrification Administration, Room 1246–S, Washington, DC 20250–1500, telephone (202) 382–9098. The Final Impact Statement describing the options considered in developing this final rule and the impact of implementing the chosen options are available on request from Mr. Lash at the above address.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*), the Rural Electrification Administration is amending 7 CFR Part 1736, Electric Standards and Specifications, by revising REA Bulletin 50–17 (DT–5B), REA Specification for Wood Crossarms (Solid and Laminated), Transmission Timbers and Pole Keys; REA Bulletin 50–18 (DT–5C), REA Specification for Wood Poles, Stubs and Anchor Logs; and REA Bulletin 50–24 (DT–19), REA Specification for Quality Control and Inspection of Timber Products.

This action has been reviewed in accordance with Executive Order 12291, Federal Regulation. This action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumer, individual industries, Federal, state or local government agencies; or (3) result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States—based enterprises to compete with foreign-based enterprises in domestic or export markets, and, therefore, has been determined to be "not major."

REA has concluded that promulgation of this rule will not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq. (1976)) and, therefore, does not require an environmental impact statement or an environmental assessment.

This regulation contains no information or recordkeeping requirements which require approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*).

This action does not fall within the scope of the Regulatory Flexibility Act. This program is listed in the Catalog of Federal Domestic Assistance as 10.850, Rural Electrification Loans and Loan Guarantees. For the reasons set forth in the final rule related Notice to 7 CFR Part 3015 Subpart V in 50 FR 47034, November 14, 1985, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

Background

The Rural Electrification Administration (REA) maintains a system of bulletins that contains construction standards and specifications for materials and equipment which are applicable to electric system facilities constructed by REA electric borrowers in accordance with the REA loan contract. These standards and specifications contain standard construction units and material items and equipment units commonly used in REA electric and telephone borrowers' systems. As of January 1, 1986, ACA, the only REA acceptable waterborne preservative treatment for Douglas-fir, was no longer available. The manufacturer of ACA, has developed and received acceptance by American Wood Preservers' Association for a new preservation, ACZA, and has replaced ACA with this new formulation. Since most REA transmission line construction utilizing poles over approximately 50 feet are Douglas-fir, failure to take action in accepting ACZA, would leave borrowers with no REA accepted waterborne Douglas-fir wood products. The preservative ACZA is superior to ACA for the following reasons: (1) Less corrosive to hardware as shown by tests done by Southwestern Laboratories, Houston Texas; and (2) less toxic to the environment as reported by the Eastern Forest Products Laboratory, Canadian Forest Service. REA has reviewed both test reports and believe both to be reasonable.

In the 1982 version of Bulletin 50–17, Lime Ignition and Copper Pyridine methods of analysis of preservative retention were allowed. When revised in November 1985 the wording was revised and inadvertently restricted Douglas-fir crossarm manufacturers to use only one analysis method, copper pyridine. Bulletin 50–17 once again gives manufacturers the choice of which method of analysis they can use. When REA timber product specifications were revised in November 1985 to eliminate the REA "List of Inspectors," the reference to the "List of Inspectors" was not removed, although, the intent was to remove it at the time from Appendix A of Bulletin 50–24. This change corrects this oversight.

Since corrections are being made to these bulletins and since REA borrowers need a waterborne treatment for Douglas-fir poles, that is acceptable to REA, for REA financed projects, the agency finds, for good cause, that further notice and public procedure at this time are impracticable, unnecessary, or contrary to the public interest.

List of Subjects in 7 CFR Part 1736

Electric utilities, Engineering standards, Incorporation by reference.

PART 1736—ELECTRIC STANDARDS AND SPECIFICATIONS

In view of the above, 7 CFR Part 1736, § 1736.97(b) is amended by revising the entry for 50–17 (DT–5B), 50–18 (DT–5C), and 50–24 (DT–19).

1. The authority cited for 7 CFR Part 1736 is revised to read as follows:

Authority: 7 U.S.C. 901 et seq., 7 U.S.C. 1921 et seq.

2. The table in § 1736.97 is amended by revising paragraph (b) to read as follows:

§ 1736.97 Incorporation by reference of electric standards and specifications.

* * * * *

(b) * * *

50–17	DT–5B	June 2,1987	REA Specification for Wood Crossarms (Solid and Laminated), Transmission Timber and Pole Keys.
50–18	DT–5C	June 2, 1987	REA Specification for Wood Poles, Stubs and Anchor Logs.

50-24	DT-19	June 2, 1987	REA Specification for Quality Control and Inspection of Timber Products.

* * * * *

Dated: June 2, 1987.

Harold V. Hunter,

Administrator.

[FR Doc. 87-13326 Filed 6-10-87; 8:45 am]

BILLING CODE 3410-15-M

Farmers Home Administration

7 CFR Part 1980

Appraisal Fee Recovery on Guaranteed Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration amends its guaranteed loan regulations. This action is being taken to inform the field offices of how to submit the recovery of an appraisal fee on a guaranteed loan to the Finance Office. The intended effect is to provide a more efficient utilization of funds due the Government.

EFFECTIVE DATE: June 11, 1987.

FOR FURTHER INFORMATION CONTACT: Pandor Hadjy, Senior Loan Officer, Farm Real Estate and Production Division, USDA, Room 5448 South Building, 14th and Independence Avenue SW., Washington, DC 20250, Telephone (202) 475-4017.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291 and has been determined to be exempt from those requirements because it involves only internal agency management.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in **Federal Register.**

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

This final action has been reviewed in accordance with FmHA Instruction 1940-G, "Environmental Program." FmHA has determined that this final action does not constitute a major Federal action significantly affecting the quality of the human environment, and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

List of Subjects in 7 CFR Part 1980

Agriculture, Loan programs—Agriculture, Loan programs—Business and industry—Rural Development Assistance, Loan programs—Housing and Community Development.

Therefore, Chapter XVIII, Title 7 of the Code of Federal Regulations is amended as follows:

PART 1980—GENERAL

1. The authority citation for Part 1980 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—General

§ 1980.83 [Amended]

2. Section 1980.83(b) is amended by adding an entry at the end of the table to read as follows:

1980-40 Reverse a Report of Liquidation Expense.
Used by FmHA to collect appraisal fees recovered from the liquidation of loans assets. (2)

Subpart B—Farmer Program Loans

§ 1980.146 [Amended]

3. Section 1980.146(c)(2) is amended by adding at the end of the paragraph the following: The funds that are collected as recovery of an appraisal fee will be forwarded to the Finance Office along with Form FmHA 1980-40, "Reverse a Report of Liquidation Expense."

Dated: April 17, 1987.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 87-13389 Filed 6-10-87; 8:45 am]

BILLING CODE 3410-07-M

Animal and Plant Health Inspection Service

9 CFR Part 51

[Docket No. 87-065]

Animals Destroyed Because of Brucellosis; Correction

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; correction.

SUMMARY: We are correcting the amendatory language of a final rule that added a breed association to the list of registered breed associations. The final rule, published on March 4, 1987 (51 FR 6523-6524, Docket Number 86-126), amended § 51.1, paragraph (cc); however, a document published on April 2, 1986 (51 FR 11299-11300, Docket Number 86-006), had removed the paragraph designations for definitions and had placed them in alphabetical order in § 51.1. Therefore, the final rule should have amended § 51.1, not § 51.1, paragraph (cc). Accordingly, we are correcting the regulation as set forth below.

FOR FURTHER INFORMATION CONTACT: Dr. Jan D. Huber at (301) 436-5965.

Correction

The following correction is made to FR Doc. 87-4478, published on March 4, 1987, on pages 6523-6524:

§ 51.1 [Corrected]

On page 6524, first column, Part 51, amendatory language for item two is corrected to read as follows:

"2. In § 51.1, the definition of Registered breed association is amended by inserting the "American Blonde d'Aquitaine Association," immediately after "The American Black Maine-Anjou Association."

Done in Washington, DC this 5th day of June, 1987.

J.K. Atwell,

Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 87-13248 Filed 6-10-87; 8:45 am]

BILLING CODE 3410-34-M

9 CFR Part 78

[Docket No. 87-070]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the regulations governing the interstate movement of cattle because of brucellosis by changing the classification of Ohio from Class A to Class Free. This action is necessary because we have determined that Ohio meets the standards for Class Free status. The effect of this action is to relieve certain restrictions on the interstate movement of cattle from Ohio.

EFFECTIVE DATE: Interim rule effective June 11, 1987. Consideration will be

given only to comments postmarked on or before August 10, 1987.

ADDRESSES: Send written comments to Steven B. Farbman, Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 87-070. Comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Jan Huber, Senior Staff Veterinarian, Domestic Programs Support Staff, Veterinary Services, APHIS, USDA, Room 812, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; 301-436-5965.

SUPPLEMENTARY INFORMATION:

Background

The brucellosis regulations (contained in 9 CFR Part 78 and referred to below as the regulations) provide a system for classifying States or portions of States according to the rate of brucella infection present and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or areas that do not meet the minimum standards for Class C are required to be placed under Federal quarantine. The State of Ohio is designated as Class A status. This document amends the regulations to change the brucellosis program status of Ohio from Class A to Class Free.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the 12 months preceding classification as Class Free. The Class C classification is for States or areas with the highest rate of brucellosis, with Class A and Class B in between. Restrictions are more stringent for movements of cattle from Class A States or areas compared with movements from Class Free States or areas, and are more stringent for movements from Class B States or areas compared with movements from Class A States or areas, and so on.

The basic standards for the different classifications of States or areas concern maintaining: (1) A cattle herd infection rate not to exceed a stated level during 12 consecutive months; (2) a rate of infection in the cattle population (based on the percentage of brucellosis reactors found in the Market Cattle Identification (MCI) program—a program of testing at stockyards, farms, ranches, and slaughtering establishments) not to exceed a stated level; (3) a surveillance system that includes testing of dairy herds, participation of all slaughtering establishments in the MCI program, identification and monitoring of herds at high risk of infection, including herds adjacent to infected herds and herds from which infected animals have been sold or received, and having an individual herd plan in effect within a stated number of days after notification of brucellosis in a herd; and (4) minimum procedural standards for administering the program.

Before the publication of this interim rule, Ohio was classified as a Class A State because of the herd infection rate and the MCI reactor prevalence rate. However, a review of the brucellosis program establishes that Ohio should be changed to Class Free status.

To attain and maintain Class Free status, a State or area must (1) remain free from field strain *Brucella abortus* infection for 12 consecutive months or longer, (2) must maintain a 12 consecutive months MCI reactor prevalence rate not to exceed one reactor per 2,000 cattle tested (0.050 percent), and (3) have an approved individual herd plan in effect within 15 days of locating the source herd or recipient herd. Ohio now meets the criteria for classification as Class Free.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of Ohio reduces certain testing and other requirements on the interstate movement of these cattle. Testing requirements for cattle moved interstate for immediate slaughter or to quarantined feedlots are not affected by the changes in status. Cattle from certified brucellosis free herds moving interstate are not affected by this change in status. We have determined that the change in brucellosis status made by this document will not affect market patterns significantly and will not have a significant economic impact on those persons affected by this document.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V.)

Emergency Action

Dr. John K. Atwell, Deputy Administrator of the Animal and Plant Health Inspection Service for Veterinary Services, has determined that an emergency situation exists, which warrants publication of this interim rule without prior opportunity for public comment. Immediate action is warranted to remove unnecessary restrictions on the interstate movement of certain cattle from Ohio.

For this reason, we find that, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest; and good cause is found for making this interim rule effective less than 30 days after publication of this document in the **Federal Register.** We are requiring that comments concerning this interim rule be submitted within 60 days of its publication. We will discuss comments received and any amendments required in a final rule that will be published in the **Federal Register.**

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

PART 78—BRUCELLOSIS

Accordingly, 9 CFR Part 78 is amended as follows:

1. The authority citation for Part 78 continues to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 78.41 [Amended]

2. Section 78.41, paragraph (a) is amended by adding "Ohio" before "Pennsylvania".

3. Section 78.41, paragraph (b) is amended by removing "Ohio".

Done in Washington, DC, this 5th day of June, 1987.

J.K. Atwell,

Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 87–13247 Filed 6–10–87; 8:45 am]

BILLING CODE 3410–34–M

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9 CFR Part 78

[Docket No. 87–058]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the regulations governing the interstate movement of cattle because of brucellosis by changing the classification of Missouri from Class B to Class A. This action is necessary because we have determined that Missouri meets the standards for Class A status. The effect of this action relieves certain restrictions on the interstate movement of cattle from Missouri.

EFFECTIVE DATE: July 13, 1987.

FOR FURTHER INFORMATION CONTACT: Dr. Jan Huber, Domestic Programs Support Staff, VS, APHIS, USDA, Room 812, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8389.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule published in the Federal Register and effective February 13, 1987 (52 FR 4599–4600, Docket Number 87–008), we amended the regulations governing the interstate movement of cattle because of brucellosis by changing the classification of Missouri from Class B to Class A. We did not receive any comments, which were required to be filed on or before April 14, 1987. The facts presented in the interim rule still provide a basis for the amendment.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of Missouri reduces certain testing and other requirements on the interstate movement of these cattle. Testing requirements for cattle moved interstate for immediate slaughter or to quarantined feedlots are not affected by these changes in status. Also, cattle from certified brucellosis-free herds moving interstate are not affected by this change in status. We have determined that the change in brucellosis status made by this document will not affect market patterns and will not have a significant economic impact on those persons affected by this document.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule without change, the interim rule that amended 9 CFR Part 78 and that was published at 52 FR 4599–4600 on February 13, 1987.

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 5th day of June, 1987.

J.K. Atwell,

Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 87–13249 Filed 6–10–87; 8:45 am]

BILLING CODE 3410–34–M

FEDERAL TRADE COMMISSION

16 CFR Parts 3 and 4

Practice for Adjudicative Proceedings; Miscellaneous Rules

AGENCY: Federal Trade Commission.

ACTION: Final rules.

SUMMARY: The Commission has revised its Rules of Practice and Procedure governing the filing in adjudicative proceedings of documents, such as motions, proposed findings, and briefs, that include *in camera* information. The revision makes clear that two versions of such documents are to be filed, one for the proceeding's *in camera* record, and another for its public record. The revision is intended to ensure a complete public record and to prevent inadvertent public disclosure of *in camera* material.

EFFECTIVE DATE: The rules are effective June 11, 1987.

FOR FURTHER INFORMATION CONTACT: Teresa A. Hennessy, Office of the General Counsel, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580 (202) 326–2444.

SUPPLEMENTARY INFORMATION: The Commission has clarified its procedures for the filing of documents in adjudicative proceedings that contain information that has been granted *in camera* status by the Administrative Law Judge ("ALJ") pursuant to § 3.45(b) of the Commission's Rules of Practice. In reviewing such documents, the Commission has found it difficult to identify the *in camera* information they contain. The Commission also wishes to ensure that the public records of its adjudicative proceedings are complete, while guarding against the inadvertent public disclosure of *in camera* materials.

Accordingly, the Commission has amended its Rules of Practice to make clear that when a party considers it necessary to include *in camera* information in any document filed by the party in an adjudicative proceeding, two versions of the document must be filed, one for the proceeding's *in camera* record and another for its public record. The rules impose similar requirements upon ALJ's with respect to their rulings and initial decisions that contain *in camera* material. And they specify that, where applicable, time periods that run from date of service begin from service of the *in camera* version of the document, not the public record version. The rules allow additional time for the filing of the public record version. They do not, however, preclude references to or general descriptions of *in camera* material that do not disclose the *in camera* material itself. Conforming changes also are made to other rules.

List of Subjects

16 CFR Part 3

Administrative practice and procedure, Investigations.

16 CFR Part 4

Administrative practice and procedure, Freedom of Information Act, Privacy Act, Sunshine Act.

For these reasons, 16 CFR Parts 3 and 4 are revised to read as follows:

PART 3—RULES OF PRACTICE FOR ADJUDICATIVE PROCEEDINGS

1. The authority for Part 3 continues to read as follows:

Authority: Sec. 6, 38 Stat. 721 (15 U.S.C. 46), unless otherwise noted.

2. Section 3.22 is amended by revising paragraphs (a), (b), (c), and (e) to read as follows:

§ 3.22 Motions.

(a) *Presentation and disposition.* During the time a proceeding is before an Administrative Law Judge, all motions therein, except those filed under § 3.42(g) or § 4.17, shall be addressed to the Administrative Law Judge, and, if within his authority, shall be ruled upon by him. Any motion upon which the Administrative Law Judge has no authority to rule shall be certified by him to the Commission, with his recommendation where he deems it appropriate. Such recommendation may contain a proposed disposition of the motion or other relevant comments or observations. Where the Commission believes that a recommendation or an amplification thereupon would assist it in its deliberations, it may order the Administrative Law Judge to file a recommendation. If the Administrative Law Judge includes in any ruling or recommendation information that has been granted *in camera* status pursuant to § 3.45(b), the Judge shall file two versions of the ruling or recommendation. A complete version shall be marked *"In Camera"* on the first page and shall be served upon the parties. The complete version will be placed in the *in camera* record of the proceeding. An expurgated version, to be filed within five days after the filing of the complete version, shall omit the *in camera* information that appears in the complete version, shall be marked "Public Record" on the first page, shall be served upon the parties, and shall be included in the public record of the proceeding. All written motions shall be filed with the Secretary of the Commission, and all motions addressed to the Commission shall be in writing.

(b) *Content.* All written motions shall state the particular order, ruling, or action desired and the grounds therefor. If a party includes in a motion information that has been granted *in camera* status pursuant to § 3.45(b), the party shall file two versions of the motion in accordance with the procedures set forth in § 3.45(e). The time period specified by § 3.22(c) within which an opposing party may file an answer will begin to run upon service on that opposing party of the *in camera* version of a motion.

(c) *Answers.* Within ten (10) days after service of any written motion, or within such longer or shorter time as may be designated by the Administrative Law Judge or the Commission, the opposing party shall answer or shall be deemed to have consented to the granting of the relief asked for in the motion. If an opposing party includes in an answer information that has been granted *in camera* status pursuant to § 3.45(b), the opposing party shall file two versions of the answer in accordance with the procedures set forth in § 3.45(e). The moving party shall have no right to reply, except as permitted by the Administrative Law Judge or the Commission.

* * * * *

(d) * * *

(e) *Rulings on motions for dismissal.* When a motion to dismiss a complaint or for other relief is granted with the result that the proceeding before the Administrative Law Judge is terminated, the Administrative Law Judge shall file an initial decision in accordance with the provisions of § 3.51. If such a motion is granted as to all charges of the complaint in regard to some, but not all, of the respondents, or is granted as to any part of the charges in regard to any or all of the respondents, the Administrative Law Judge shall enter his ruling on the record, in accordance with the procedures set forth in paragraph (a) above, and take it into account in his initial decision. When a motion to dismiss is made at the close of the evidence offered in support of the complaint based upon an alleged failure to establish a *prima facie* case, the Administrative Law Judge may, if he so elects, defer ruling thereon until the close of the case for the reception of evidence.

* * * * *

3. Section 3.24(a)(2) is revised to read as follows:

§ 3.24 Summary decisions.

(a) * * *

(2) Any other party may, within ten (10) days after service of the motion, file opposing affidavits. The Administrative Law Judge may, in his discretion, set the matter for oral argument and call for the submission of briefs or memoranda. If a party includes in any such brief or memorandum information that has been granted *in camera* status pursuant to § 3.45(b), the party shall file two versions of the document in accordance with the procedures set forth in § 3.45(e). The decision sought by the moving party shall be rendered within thirty (30) days if the pleadings and any depositions, answers to interrogatories, admissions on file, and affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to such decision as a matter of law. Any such decision shall constitute the initial decision of the Administrative Law Judge and shall accord with the procedures set forth in § 3.51(c). A summary decision, interlocutory in character and in compliance with the procedures set forth in § 3.51(c), may be rendered on the issue of liability alone although there is a genuine issue as to the nature and extent of relief.

* * * * *

4. Section 3.45 is amended by revising paragraphs (b) and (d) and by adding paragraph (e) to read as follows:

§ 3.45 In Camera orders.

(a) * * *

(b) *In camera treatment of documents and testimony.* The Administrative Law Judge may order documents, testimony, or portions thereof offered into evidence, whether admitted or rejected, to be placed *in camera* upon a finding that their public disclosure will likely result in a clearly defined, serious injury to the person, partnership or corporation requesting their *in camera* treatment. This finding shall be based on the

standard articulated in *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961); *see also Bristol-Myers Co.*, 90 F.T.C. 455, 456 (1977), which established a three-part test that was modified by *General Foods Corp.*, 95 F.T.C. 352, 355 (1980). No document, testimony, or portion thereof offered into evidence, whether admitted or rejected, may be withheld from the public record unless it falls within the scope of an order issued in accordance with this section, stating the date on which *in camera* treatment will expire and specifying:

(1) A description of the documents or testimony;

(2) A statement of the reasons for granting *in camera* treatment; and

(3) A statement of the reasons for the date on which *in camera* treatment will expire. Any party desiring, for the preparation and presentation of the case, to disclose *in camera* documents or testimony to experts, consultants, prospective witnesses, or witnesses, shall make application to the Administrative Law Judge setting forth the justification therefor. The Administrative Law Judge, in granting such application for good cause found, shall enter an order protecting the rights of the affected parties and preventing unnecessary disclosure of information. *In camera* documents and the transcript of testimony subject to an *in camera* order shall be segregated from the public record and filed in a sealed envelope, bearing the title, the docket number of the proceeding, the notation *"In Camera* Record under § 3.45," and the date on which *in camera* treatment expires.

(c) * * *.

(d) *Briefs and other submissions referring to in camera information.* Parties shall not disclose information that has been granted *in camera* status pursuant to § 3.45(b) in the public version of proposed findings, briefs, or other documents. This provision does not preclude references in such proposed findings, briefs, or other documents to *in camera* information or general statements based on the content of such information.

(e) *When in camera information is included in briefs and other submissions.* If a party includes specific information that has been granted *in camera* status pursuant to § 3.45(b) in any document filed in a proceeding under this part, the party shall file two versions of the document. A complete version shall be marked *"In Camera"* on the first page and shall be filed with the Secretary and served upon the parties in accordance with the rules in this part. Any time period within which these rules allow a party to respond to a document shall run from the date the party is served with the complete version of the document. An expurgated version of the document, marked "Public Record" on the first page and omitting the *in camera* information that appears in the complete version, shall be filed with the Secretary within five days after the filing of the complete version, unless the Administrative Law Judge or the Commission directs otherwise, and shall be served upon the parties. The expurgated version shall indicate any omissions with brackets or elipses.

5. Section 3.46(a) is revised to read as follows:

§ 3.46 Proposed findings, conclusions, and order.

(a) *General.* At the close of the reception of evidence, or within a reasonable time thereafter fixed by the Administrative Law Judge, any party may file with the Secretary of the Commission for consideration of the Administrative Law Judge proposed findings of fact, conclusions of law, and rule or order, together with reasons therefor and briefs in support thereof. Such proposals shall be in writing, shall be served upon all parties, and shall contain adequate references to the record and authorities relied on. If a party includes in the proposals information that has been granted *in camera* status pursuant to § 3.45(b), the party shall file two versions of the proposals in accordance with the procedures set forth in § 3.45(e).

* * * * *

6. Section 3.51(c)(1) is revised to read as follows:

§ 3.51 Initial decision.

* * * * *

(c) *Content.* (1) The initial decision shall include a statement of findings (with specific page references to principal supporting items of evidence in the record) and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record (or those designated under paragraph (c)(2) of this section) and an appropriate rule or order. If the Administrative Law Judge includes in the initial decision information that has been granted *in camera* status pursuant to § 3.45(b), the Judge shall file two versions of the initial decision. A complete version, to be filed within the time period provided by § 3.51(a), shall be marked *"In Camera"* on the first page, and shall be served upon the parties. The complete version will be placed in the *in camera* record of the proceeding. Any time period under this Part that begins with the date of service on a party of an initial decision shall begin to run from the date the party is served with the complete version of the initial decision. An expurgated version, marked "Public Record" on the first page and omitting the *in camera* information that appears in the complete version, shall be filed within five days after the filing of the complete version. The expurgated version shall indicate any omissions with brackets or elipses. The expurgated version shall be placed in the public record of the proceeding and served upon the parties.

* * * * *

7. Sections 3.52(f) through 3.52(j) are redesignated as §§ 3.52(g) through 3.52(k), respectively, and a new § 3.52(f) is added to read as follows:

§ 3.52 Appeal from initial decision.

* * * * *

(f) *In camera information.* If a party includes in any brief to be filed under this section information that has been granted *in camera* status pursuant to § 3.45(b), the party shall file two versions of the brief in accordance with the procedures set forth in § 3.45(e). The time period specified by this section within which a party may file an answering or reply brief will begin to run upon service on the party of the *in camera* version of a brief.

* * * * *

PART 4—MISCELLANEOUS RULES

8. The authority for Part 4 continues to read as follows:

Authority: Sec. 6, 38 Stat. 721 (15 U.S.C. 46), unless otherwise noted.

9. Section 4.9(b)(5) introductory text is revised to read as follows:

§ 4.9 Public records.

* * * * *

(b) * * *

(5) *Adjudicative proceeedings and litigated orders.* (16 CFR 3.1–3.24, 3.31–3.55, 4.7)—Except for transcripts of matters heard *in camera* pursuant to § 3.45 and documents filed *in camera* pursuant to §§ 3.22, 3.24, 3.45, 3.46, 3.51 and 3.52; (i) The versions of pleadings and transcripts of prehearing conferences (to the extent made available under § 3.21(e), motions, certifications, orders, and the transcripts of hearings (including public conferences), testimony, oral arguments, and other material made a part thereof, and exhibits and documents received in evidence or made a part of the public record in adjudicative proceedings;

* * * * *

10. Section 4.9(c) is amended by revising the title to read "Confidentiality and *in camera* records."

11. Section 4.9(c)(2) is redesignated as § 4.9(c)(3), and a new § 4.9(c)(2) is added to read as follows:

§ 4.9 Public records.

* * * * *

(c) * * *

(2) Motions seeking *in camera* treatment of documents submitted in connection with a proceeding under Part 3 of these rules shall be filed with the Administrative Law Judge who is presiding over the proceeding.

* * * * *

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 87-13159 Filed 6-10-87; 8:45 am]

BILLING CODE 6750-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-24553; File No. S7-21-86]

Financial Responsibility Rules

AGENCY: Securities and Exchange Commission.

ACTION: Final rule amendments.

SUMMARY: The Securities and Exchange Commission ("Commission") is amending its net capital, recordkeeping and quarterly securities count rules under the Securities Exchange Act of 1934 ("Act") in connection with the treatment of repurchase and reverse repurchase agreements entered into by registered broker-dealers. The recordkeeping rule is amended to specifically require broker-dealers to maintain certain books and records with respect to their repurchase and reverse repurchase transactions, including securities records and copies of all confirmations. The quarterly securities count rule is amended to clarify that broker-dealers are required to account for securities that are the subjects of repurchase and reverse repurchase agreements, as they do for other securities for which they are responsible. The net capital rule is amended to establish deductions from net worth in arriving at net capital for repurchase and reverse repurchase agreements under certain risk circumstances. The rule is further amended to require additional capital when the broker-dealer has attained a high degree of leverage as a result of those agreements. The rule as amended will also require deductions regarding transactions with affiliates when the affiliate's records are not made available for examination.

EFFECTIVE DATE: Ninety days from publication in the Federal Register, except for amendments to §§ 240.17a-3 and 240.17a-13 which will be effective on July 25, 1987.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, (202) 272-2904, Julio A. Mojica, (202) 272-2372, or Michael P. Jamroz, (202) 272-2398, Division of Market Regulation, 450 5th Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

In September of 1986, the Commission proposed amendments to its financial responsibility rules relating to repurchase and reverse repurchase agreements ("repos" and "reverse repos").[1] Those proposed amendments were the result of the failures of several government securities dealers which caused substantial harm to public investors and broker-dealers through fraudulent practices or inadequate accountability.[2]

In response to those failures, the Congress has enacted the Government Securities Act ("GSA") which, among other things, granted the Department of Treasury ("Treasury") authority to adopt financial responsibility rules for all brokers and dealers in government securities, including those currently registered with the Commission.[3] Subsequently, the Treasury has proposed rules that, to a large extent, incorporate existing Commission financial responsibility regulations.[4] With some modification, the Treasury's proposed rules would require all government securities brokers and dealers to comply with Securities Exchange Act Rules 17a-3, 17a-4, 17a-5, 17a-7, 17a-8, 17a-11, 17a-13 and 15c3-3. The modifications to the Treasury's proposed version of Commission Rules 17a-3 and 17a-13[5] include those amendments proposed by the Commission in September.

The Treasury also proposed to apply Rule 15c3-3 to all government securities dealers, with certain modifications. The proposed modifications to Rule 15c3-3[6] relate to hold in custody repos[7] and would alter the requirements proposed by the Commission in September. In its release, the Commission proposed to require broker-dealers that enter into hold in custody repurchase agreements to: (i) Disclose the rights and liabilities of the parties, including the fact that the Securities Investor Protection Corporation ("SIPC") has taken the position that coverage under the Securities Investor Protection Act of 1970 may not be available; (ii) confirm the securities that are subject to such agreement; and (iii) maintain possession and control of those securities with certain exceptions. The Commission's proposed amendments would not require possession and control during the trading day for securities subject to hold in custody repurchase agreements of over $1 million. That exemption was provided to facilitate the settlement of government securities transactions during the trading day.

The comments rearding the proposed amendments to Rule 153-3 were favorable in most instances except with respect to the requirement to disclose the rights and liabilities of the parties to repurchase agreements. The Commission has determined, however, to repropose the amendments to Rule 15c3-3 in a manner that will substantially conform Rule 15c3-3 to the Treasury's rule. The Commission's proposal is the subject of a separate release.

Although not every comment is discussed in this release, the comments received with respect to Release No. 34-23602 have been reviewed extensively by the Commission and incorporated, as appropriate, in the amendments that the Commission is adopting today. In addition, a summary of comments has been prepared and placed in Public File No. S7-21-86. The comments received by the Commission regarding the proposed amendments to Rules 17a-3 and 17a-13 were generally favorable. With respect to Rule 15c3-1, the comments suggested that:

(i) The increased capital requirement for excess margin would inhibit the broker-dealer's ability to control credit risk;

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[1] *See* Securities Exchange Act Release No. 23602 (September 4, 1986) 51 FR 32658 (September 15, 1986). A repurchase agreement involving a security is the sale of that security at a specified price with a simultaneous agreement to repurchase the security at a specified price on a specified future date. A reverse repurchase agreement involving a security is the purchase of that security at a specified price with a simultaneous agreement to resell the security at a specified price on a specified future date.

[2] *See* The Regulation of the Government Securities Market, Report by the Securities and Exchange Commission to the Subcommittee on Telecommunications, Consumer Protection and Finance of the Committee on Energy and Commerce of the U.S. House of Representatives (June 20, 1985).

[3] *See* section 15C(b) of the Securities Exchange Act as amended by the GSA.

[4] *See* 52 FR 5660 (February 25, 1987).

[5] *See* 17 CFR 240.17a-3 and 17 CFR 240.17a-13.

[6] *See* 17 CFR 240.15c3-3.

[7] A hold in custody repurchase agreement is a repurchase agreement where the broker-dealer retains custody of the counterparty's securities.

(ii) The deduction for reverse repos should not be 100% of the deficit and should allow for margin calls; and

(iii) The examination of the affiliate should be limited to verification of which entity has possession and control over the collateral. The amendments to Rules 17a–3, 17a–13 and Rule 15c3–1 and the comments received with respect to those rules are discussed in greater detail below.

II. Accountability for Money and Securities

1. Rule 17a–3

Rule 17a–3 prescribes the books and records that a broker-dealer is required to maintain. The proposed amendments will specifically require a broker-dealer to: (i) Maintain a separate ledger reflecting the assets and liabilities resulting from repo and reverse repo transactions (commonly referred to as the "Repo Book"); (ii) record securities subject to repos and reverse repos on the securities record; and (iii) maintain copies of confirmations that it sends out with regard to repurchase transactions. The commentators generally supported the amendments to Rule 17a–3 and the Commission has determined to adopt the proposed amendments to ensure accountability for the funds and securities involved in repo transactions.

2. Rule 17a–13

Rule 17a–13 requires that a broker-dealer physically count, verify and account for securities held in his physical possession or otherwise within his control or direction. Currently, the Rule does not contain a specific reference to securities that are the subjects of repurchase and reverse repurchase agreements. The purpose of the amendment is to make it clear that a broker-dealer is held accountable for repo securities as it is other securities subject to its possession or control. The commentators generally expressed support for the amendment and the Commission is adopting it in the form proposed.[8]

III. Leverage and Risk Control

1. Introduction

Securities Exchange Act Rule 15c3–1 requires that a broker-dealer's net capital must exceed the greater of $25,000 or 6⅔ percent of its aggregate indebtedness [9] if the broker-dealer does not elect the alternative method. If it elects the alternative method under paragraph (f), the broker-dealer's net capital must exceed the greater of $100,000 or 2 percent of its aggregate debit items as computed in accordance with the Securities Exchange Act Rule 15c3–3a Formula for Determination of Reserve Requirement for Brokers and Dealers ("Reserve Formula"). Net capital, defined in paragraph (c)(2) of Rule 15c3–1, is computed by deducting from net worth, among other things, illiquid assets, unsecured receivables, and certain percentage deductions of the market value of securities and commodities positions of the firm. Those percentages generally take into account market risk, liquidity and volatility of the broker-dealer's holdings.

2. Reverse Repurchase Agreements Deficits

When the uniform net capital rule was adopted in 1975, the Commission required broker-dealers to deduct from net worth in arriving at net capital the amount by which the contract price of a reverse repo exceeded the value of the securities received under the agreement ("reverse repo deficit").[10] The Commission's rule reflected that if a broker-dealer does not receive securities or other property of sufficient worth to cover the counterparty's obligation under a reverse repurchase agreement, the broker-dealer is exposed to risk for the amount of the deficiency.

In 1982, the Commission adopted the current treatment of reverse repo deficits [11] Instead of deducting the entire deficit, the Commission amended the rule such that only a percentage of the deficit, depending on the term of the agreement, would be required to be deducted. Those amendments were in response to the concerns of broker-dealers regarding the application of the rule to the practices of the time. The rule recognized that many repurchase agreements were term, as opposed to overnight agreements, and reverse repo deficits were likely to occur as time passed.

Some commentators suggested that the reverse repo deficit deduction should be similar to the proposed charges for repo deficits.[12] Under the proposal, the broker-dealer would not deduct the entire repo deficit as it would a reverse repo deficit. The proposal would only require a deduction when the repo deficit exceeded certain specified constraints. The Commission designed the repo deficit deductions in this manner to recognize that broker-dealers normally provide excess securities under a repo as a "cushion" or margin. Conversely, the Commission understands that when broker-dealers engage in reverse repos, they normally receive excess securities. Therefore, the deduction for reverse repo deficits not only more accurately reflects risk, but also the current industry practice. Accordingly, the Commission has adopted the proposed amendment.

3. Repurchase Agreement Deficits

For repo deficits, the proposed amendments required broker-dealers to deduct the largest amount computed under three separate tests. Under the first test, the broker-dealer deducts the amount by which the value of U.S. Treasury securities subject to repurchase agreements with a counterparty exceeds 105 percent of the funds received by the broker-dealer under those agreements. This charge takes into account the risk that the broker-dealer is exposed to when it delivers securities under a repurchase agreement that are valued in excess of the amount the broker-dealer receives from the counterparty.

Under the second test, the broker-dealer deducts the excess of the difference between the market value of securities subject to repurchase agreements with a counterparty and the funds received (if less than the market value of the securities) over 25 percent of the broker-dealer's tentative net capital. The second charge takes into account the exposure to risk incurred by the broker-dealer in delivering a concentration of excess securities under repurchase agreements to one counterparty.

Under the third test, the broker-dealer compares the aggregate market value of

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[8] One commentator asked if substitution of securities subject to a repurchase agreement would cause the thirty day period under the rule to start again. Paragraph (b)(3) to Rule 17a–13 requires verification of securities "* * * subject to his control or direction but not in his physical possession, where such securities have been in said status for longer than thirty days". The Commission takes the position that the substitution of securities subject to a repurchase agreement changes the status of those securities for purposes of Rule 17a–13. Consequently, any substitution would cause the thirty day period to start again.

[9] The term aggregage indebtedness is defined in paragraph Rule 15c3–1(c)(1).

[10] *See* Securities Exchange Act Release No. 11497 (June 26, 1975), 40 FR 29729 (July 16, 1975).

[11] *See* Securities Exchange Act Release No. 18737 (Mar. 13, 1982), 47 FR 21759 (May 20, 1982). Subparagraph (c)(2)(iv)(F) of Rule 15c3–1 prescribes a schedule of deductions ranging from zero to 100 percent for deficits resulting from reverse repurchase agreements (*i.e.*, the difference between the contract price and the market value of the security). The amount of the charge depends on the maturity of the repo agreement.

[12] A repurchase agreement deficit occurs when the market value of securities subject to a repurchase agreement exceeds the contract price of the repurchase agreement.

securities subject to repurchase agreements to the total amount of funds it has received under such agreements. If the aggregate market value of the securities exceeds the funds received by an amount greater than 300 percent of the broker-dealer's tentative net capital, the broker-dealer is required to deduct the amount equal to the excess over 300 percent of the broker-dealer's tentative net capital. The third computation compares the aggregate repurchase agreement exposure with all counterparties to the broker-dealer's tentative net capital.

The Commission continues to believe that the three alternative tests accurately measure the risks entailed in repurchase transactions. Accordingly, the Commission has adopted the proposed amendments with two modifications. As in the case of reverse repo deficits, the commentators requested that margin calls be taken into account. In recognition of the industry practice of requesting margin when exposure exceeds certain limits, the Commission has modified the amendments to reduce the repo deficit for purposes of the rule by margin calls outstanding one business day or less. In computing the deductions, the broker-dealer is allowed to net repurchase and reverse repurchase agreements into with the same party.[13]

The commentators also pointed out that the 105% parameter under the first test should be increased where the securities subject to the repo are not United States Treasury securities. These commentators noted that it was common industry practice to require Government Agency Securities valued in excess of 105 percent of the funds received in the repo. For this reason, the factor has been increased to 110 percent for mortgage-backed securities and to 120 percent for other securities.

4. Excess Margin on Reverse Repos

While most broker-dealers properly protect themselves against credit risk related to reverse repos by receiving securities that are valued in excess of the funds they have extended under the agreement, some broker-dealers create leverage by obtaining the use of funds through matched repurchase agreements. Those broker-dealers enter into reverse repurchase agreements, receive securities that are valued substantially in excess of the amount advanced, then sell the securities pursuant to repurchase agreements for an amount of cash greater than the amount advanced under the reverse repurchase agreements. The net funds obtained are then used in the business of the broker-dealer.

Under the amendments, the broker-dealer is required to increase its required net capital by ten percent of the excess market value of U.S. Treasury securities subject to reverse repos agreements with one counterparty over 105 percent of the funds paid pursuant to such agreements. Commentators reported that this amendment would inhibit the credit function of the broker-dealer because it would require capital when the broker-dealer is protecting itself against credit risk.

The Commission does not wish to interfere in the normal credit policies of a broker-dealer. The Commission, however, believes that the leverage obtainable in repurchase transactions is of such magnitude that some restraint is necessary. Restraint in the use of "customer" property usually occurs through Rule 15c3–3, which prevents use of customer funds and securities to finance the broker-dealer's inventory. If Rule 15c3–3 were applicable to repurchase transactions, there would be no need for this amendment. However, the Commission, relying to some degree on the determination of the Securities Investor Protection Corporation that for purposes of the Securities Investor Protection Act [14] repo participants are not customers, has not taken the position that repo participants are "customers" for purposes of Rule 15c3–3. Such a determination would in effect result in a 100 percent capital charge as to the excess margin because the broker-dealer would likely fund the additional Reserve Account deposit with its own capital

In sum, the Commission believes that the use of excess repo margin does raise concerns. Indeed, the misappropriation of excess margin accounted for a large percentage of total losses in both the E.S.M. and Bevill, Bresler failures. Accordingly, the Commission believes that because the broker-dealer has obtained leverage through the use of third party funds, an additional capital requirement is appropriate. Therefore, the Commission adopts the proposed amendments, but with one modification as suggested by the commentators.[15] The 105% parameter will apply only to reverse repos using U.S. Treasury securities. As in the repo deficit area, the appropriate parameter for mortgage-backed securities will be 110%. The parameter for securities other than U.S. Treasury and mortgaged-backed securities will be 120 percent. With this modification, the Commission believes that the amendment provide assurance that firms will be able to meet customer obligations without unduly revising current industry practices.

5. Transactions with Affiliates

The amendments announced today also include a deduction from net worth in arriving at net capital for intercompany transactions with affiliates where the registered broker-dealer is potentially exposed to loss unless the books and records of the affiliate are available for examination. The amendment covers all intercompany receivables (not otherwise deducted) and liabilities to affiliates where collateral given to the affiliate exceeds the amount of the liability. The comment letters stated that the scope of the examination of the affiliate should be limited to verification of the location and control of the collateral. The Commission believes, however, that it is difficult, if not impossible, to determine which entity has control over collateral without the ability to conduct a broad examination. the Commission has clarified the language of the amendment, however, to indicate that the purpose of the examination is to demonstrate the validity of the receivable or payable.

[13] The Commission recognizes that when a broker-dealer enters into repurchase agreements using proprietary securities, the firm may incur a deduction because of a repo deficit and a deduction, or haircut, related to the securities. The Commission also understands that it is difficult for broker-dealers that engage in a significant amount of repurchase transactions to identify the specific securities that were used in a particular repurchase agreement. For those broker-dealers that believe they have a program which can specifically indentify those proprietary securities which are used in a particular repurchase agreement, the Commission will entertain requests for no-action positions that would allow any repurchase agreement deficit deduction to be reduced by the haircut already incurred with respect to the repurchase agreement securities.

[14] The status of repo participants for SIPA purposes has become more uncertain, however, as the United States District Court for the District of New Jersey has decided that repo participants are customers for purposes of the Securities Investor Protection Act of 1970 ("SIPA"). The United States District Court for the District of New Jersey decided in *Cohen v. Army Moral Support Fund (in re Bevill, Bresler and Schulman)*, Adv. Proc. No. 85–2103 (slip op.) (D.N.J. Oct. 23, 1986 that repo transactions were purchases and sales rather than secured loans. The practical effect of this decision was to extend coverage under the Securities Investor Protection Act to repo participants within that jurisdiction.

[15] The Commission understands that it is difficult for broker-dealers that engage in significant repurchase agreement activity to identify whether specific securities obtained under a reverse repurchase agreement were used by the firm to obtain the use of funds. The Commission is willing to entertain no-action requests from those broker-dealers that can show that specific securities received under a reverse repurchase agreement were not used to obtain funds.

The Commission emphasizes that a broad review of the books and records of the affiliate will be necessary in some cases because the assets pledged as collateral by the affiliate in the intercompany loan may be fungible, for example securities or commodities positions. If the assets are fungible, and examiner will need to determine, by review of the firm's use of all of the assets of that group, if the assets pledged by the affiliate are being used for another purpose.

The Commission's concerns extend beyond the question of control over collateral. In past examinations and investigations, the Commission has noted that some registered broker-dealers have used unregistered affiliates to embezzle customer funds or conduct fraudulent transactions. Those transactions have, in some cases, been initiated in the registered broker-dealer and transfered, via an intercompany account, to an unregistered affiliate upon regulatory investigation.

The Commission does, however, adopt this amendment with the understanding that examiners will use discretion in applying the rule. The Commission expects any examination to be limited to demonstrating the validity of the receivable or payable. Moreover, no examination would be necessary if the examiner believes that the capital of the registered broker-dealer is not at risk as a result of the transactions. For example, under most circumstances examiners should not find it necessary to question transactions with affiliated publicly held companies that are subject to the independent annual audit requirements under the Securities Exchange Act Rules.

Some commentators have suggested that futures commission merchants be exempt from this provision. The amendments announced today include that modification. The Commission has also decided to exempt registered government securities brokers or dealers from the provision.

IV. Summary of Final Regulatory Flexibility Analysis

The Commission has prepared a final Regulatory Flexibility Analysis in accordance with 5 U.S.C. 604 regarding the amendments to Rules 17a–3, 17a–13 and 15c3–1. The Analysis notes that the objective of the amendments is to further the purposes of the various financial responsibility rules which are to provide safeguards with respect to the financial responsibility and related practices of brokers and dealers and to require broker-dealers to maintain such records as necessary or appropriate in the public interest or for the protection of investors. The analysis states that the amendments would subject small broker-dealers to additional record-keeping, disclosure, capital and accountability requirements. The Analysis states that the Commission did not receive any comments concerning the Initial Regulatory Flexibility Analysis. A copy of the Final Regulatory Flexibility Analysis may be obtained by contacting Michael P. Jamroz, Division of Market Regulation, Securities and Exchange Commission, Washington, DC 20549 (202) 272–2398.

V. Statutory Authority

Pursuant to the Securities Exchange Act of 1934 and particularly sections 15(c)(3), 17 and 23 thereof, 15 U.S.C. 78*o*(c)(3), 78q, and 78w, the Commission is adopting amendments to §§ 240.15c3–1, 240.17a–3, and 240.17a–13 of Title 17 of the Code of Federal Regulations in the manner set forth below.

List of Subjects in 17 CFR Part 240

Brokers, Reporting and recordkeeping requirements, Securities.

VI. Text of Amendments

In accordance with the foregoing, 17 CFR Part 240 is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read in part as follows:

Authority: Sec. 23, 48 Stat. 901, as amended; 15 U.S.C. 78w * * *. § 240.15c3–1, § 240.17a–4 and § 240.17a–13 are also issued under Secs. 15(c)(3) and 17(a), 15 U.S.C. 78*o* (c)(3) and 78q(a).

2. By revising paragraphs (c)(2)(iv)(F)(*1*), (c)(2)(iv)(F)(*2*) and (c)(2)(iv)(F)(*3*) and by adding paragraphs (a)(9) and (c)(2)(iv)(H) of § 240.15c3–1 as follows:

§ 240.15c3–1 Net capital requirements for brokers and dealers.

(a) * * *

(9) *Certain Additional Capital Requirements for Brokers or Dealers Engaging in Reverse Repurchase Agreements.* Notwithstanding the provisions of paragraphs (a)(1)–(8) of this section, a broker or dealer shall maintain net capital in addition to the amounts required under paragraphs (a) or (f) of this section in an amount equal to 10 percent of:

(i) The excess of the market value of United States Treasury Bills, Bonds and Notes subject to reverse repurchase agreements with any one party over 105 percent of the contract prices (including accrued interest) for reverse repurchase agreements with that person; and

(ii) The excess of the market value of securities issued or guaranteed as to principal or interest by an agency of the United States or mortgage related securities as defined in section 3(a)(41) of the Act subject to reverse repurchase agreements with any one party over 110 percent of the contract prices (including accrued interest) for reverse repurchase agreements with that person; and

(iii) The excess of the market value of other securities subject to reverse repurchase agreements with any one party over 120 percent of the contract prices (including accrued interest) for reverse repurchase agreements with that person.

* * * * *

(c) * * *

(2) * * *

(iv) * * *

(F)(*1*) For purposes of this paragraph:

(*i*) The term "reverse repurchase agreement deficit" shall mean the difference between the contract price for resale of the securities under a reverse repurchase agreement and the market value of those securities (if less than the contract price).

(*ii*) The term "repurchase agreement deficit" shall mean the difference between the market value of securities subject to the repurchase agreement and the contract price for repurchase of the securities (if less than the market value of the securities).

(*iii*) As used in paragraph (c)(2)(iv)(F)(*1*) of this section, the term "contract price" shall include accrued interest.

(*iv*) Reverse repurchase agreement deficits and the repurchase agreement deficits where the counterparty is the Federal Reserve Bank of New York shall be disregarded.

(*2*) (*i*) In the case of a reverse repurchase agreement, the deduction shall be equal to the reverse repurchase agreement deficit.

(*ii*) In determining the required deductions under paragraph (c)(2)(iv)(F)(*2*)(*i*) of this section, the broker or dealer may reduce the reverse repurchase agreement deficit by:

(*A*) Any margin or other deposits held by the broker or dealer on account of the reverse repurchase agreement;

(*B*) Any excess market value of the securities over the contract price for resale of those securities under any other reverse repurchase agreement with the same party;

(*C*) The difference between the contract price for resale and the market value of securities subject to repurchase agreements with the same party (if the

market value of those securities is less than the contract price); and

(*D*) Calls for margin, marks to the market, or other required deposits which are outstanding one business day or less.

(*3*) (*i*) In the case of repurchase agreements, the deduction shall be:

(*A*) The excess of the repurchase agreement deficit over 5 percent of the contract price for resale of United States Treasury Bills, Notes and Bonds, 10 percent of the contract price for the resale of securities issued or guaranteed as to principal or interest by an agency of the United States or mortgage related securities as defined in section 3(a)(41) of the Act and 20 percent of the contract price for the resale of other securities and;

(*B*) The excess of the aggregate repurchase agreement deficits with any one party over 25 percent of the broker or dealer's net capital before the application of paragraphs (c)(2)(vi) or (f)(3) of this section (less any deduction taken under paragraph (c)(2)(iv)(F)(*3*)(*i*)(A) of this section or, if greater;

(*C*) The excess of the aggregate repurchase agreement deficits over 300 percent of the broker or dealer's net capital before the application of paragraphs (c)(2)(vi) or (f)(3) of this section.

(*ii*) In determining the required deduction under paragraph (c)(2)(iv)(F)(*3*)(*i*) of this section, the broker or dealer may reduce a repurchase agreement deficit by:

(*A*) Any margin or other deposits held by the broker or dealer on account of a reverse repurchase agreement with the same party to the extent not otherwise used to reduce a reverse repurchase deficit;

(*B*) The difference between the contract price and the market value of securities subject to other repurchase agreements with the same party (if the market value of those securities is less than the contract price) not otherwise used to reduce a reverse repurchase agreement deficit; and

(*C*) Calls for margin, marks to the market, or other required deposits which are outstanding one business day or less to the extent not otherwise used to reduce a reverse repurchase agreement deficit.

* * * * *

(*H*) Any receivable from an affiliate of the broker or dealer (not otherwise deducted from net worth) and the market value of any collateral given to an affiliate (not otherwise deducted from net worth) to secure a liability over the amount of the liability of the broker or dealer unless the books and records of the affiliate are made available for examination when requested by the representatives of the Commission or the Examining Authority for the broker or dealer in order to demonstrate the validity of the receivable or payable. The provisions of this subsection shall not apply where the affiliate is a registered broker or dealer, registered government securities broker or dealer or bank as defined in section 3(a)(6) of the Act or insurance company as defined in section 3(a)(19) of the Act or investment company registered under the Investment Company Act of 1940 or federally insured savings and loan association or futures commission merchant registered pursuant to the Commodity Exchange Act.

* * * * *

3. By revising paragraphs (a)(4)(v), (a)(4)(vi), (a)(5) and (a)(8), and adding paragraph (a)(4)(vii) to § 240.17a–3.

§ 240.17a–3 Records to be made by certain exchange members, brokers and dealers.

(a) * * *

(4) * * *

(v) Securities failed to receive and failed to deliver;

(vi) All long and all short securities record differences arising from the examination, count, verification and comparison pursuant to Rule 17a–13 and Rule 17a–5 hereunder (by date of examination, count, verification and comparison showing for each security the number of long or short count differences);

(vii) Repurchase and reverse repurchase agreements;

(5) A securities record or ledger reflecting separately for each security as of the clearance dates all "long" or "short" positions (including securities in safekeeping and securities that are the subjects of repurchase or reverse repurchase agreements) carried by such member, broker or dealer for his account of for the account of his customers or partners or others and showing the location of all securities long and the offsetting position to all securities short, including long security count differences and short security count differences classified by the date of the physical count and verification in which they were discovered, and in all cases the name or designation of the account in which each position is carried.

* * * * *

(8) Copies of confirmations of all purchases and sales of securities, including all repurchase and reverse repurchase agreements, and copies of notices of all other debits and credits for securities, cash and other items for the account of customers and partners of such member, broker or dealer.

* * * * *

4. By revising paragraph (b)(1), (b)(2) and (b)(3) of § 240.17a–13 as follows:

§ 240.17a–13 Quarterly security counts to be made by certain exchange members, brokers and dealers.

* * * * *

(b) * * *

(1) Physically examine and count all securities held including securities that are the subjects of repurchase or reverse repurchase agreements;

(2) Account for all securities in transfer, in transit, pledged, loaned, borrowed, deposited, failed to receive, failed to deliver, subject to repurchase or reverse repurchase agreements or otherwise subject to his control or direction but not in his physical possession by examination and comparison of the supporting detail records with the appropriate ledger control accounts;

(3) Verify all securities in transfer, in transit, pledge, loaned, borrowed, deposited, failed to receive, failed to deliver, subject to repurchase or reverse repurchase agreements or otherwise subject to his control or direction but not in his physical possession, where such securities have been in said status for longer than thirty days;

* * * * *

By the Commission.

June 4, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87–13390 Filed 6–10–87; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

[T.D. 87–76]

Customs Regulations Amendment Relating to the Customs Service Field Organization, Beaufort-Morehead City, NC

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

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to change the Customs field organization by extending the geographic limits of the port of entry of Beaufort-Morehead City, North Carolina. Currently, Customs officers assigned to the port provide service at many locations which are outside the

existing port limits. This expansion will better serve the public by including several locations routinely requiring Customs service within the official port limits.

EFFECTIVE DATE: July 13, 1987.

FOR FURTHER INFORMATION CONTACT: Richard Coleman, Office of Inspection and Control (202–566–9425).

SUPPLEMENTARY INFORMATION:

Background

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public, by notice published in the **Federal Register** on December 18, 1986 (51 FR 45345), Customs proposed to amend § 101.3, Customs Regulations (19 CFR 101.3), by extending the geographic limits of the port of entry of Beaufort-Morehead City, North Carolina, located in the Wilmington, North Carolina, Customs District in the Southeast Region.

The proposed expanded port limits were as follows:

The port of entry of Beaufort-Morehead City, North Carolina, shall include all that area in Carteret County, North Carolina, bounded by a line beginning at a point of intersection of State Road 1147 and U.S. Highway 70; then east along U.S. Highway 70 to its intersection with the corporate limits of Morehead City; then north and east along the corporate limits of Morehead City to its intersection with the west bank of Newport River; then north along the shoreline of the Newport River to Crab Point; then in a direct line eastward across Newport River to the mouth of Wading Creek; then east along the south bank of Wading Creek to its intersection with North Carolina State Road 101; then south along State Road 101 to its intersection with U.S. Highway 70; then south along U.S. Highway 70 to its intersection with Lennoxville Road; then east along Lennoxville Road to Lennoxville Point; then southwest across Taylor Creek and west along the southern shore of Carrot Island to a point opposite the western end of Horse Island; then in a direct line southwest to the southeast tip of Fort Macon State Park; then west along the south shore of Bogue Banks to a point directly south of State Road 1147; then north along State Road 1147 to the point of beginning.

No comments were received in response to the notice proposing this change. Therefore, after further review of the matter, Customs has determined that it is in the public interest to adopt the change as proposed.

Executive Order 12291 and Regulatory Flexibility Act

Because this document relates to agency organization it is not subject to E.O. 12291. Accordingly, a regulatory impact analysis and the review prescribed by that E.O. are not required. Similarly, this document is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Customs routinely establishes and expands Customs ports of entry throughout the U.S. to accommodate the volume of Customs-related activity in various parts of the country. Although this amendment may have a limited effect upon some small entities in the area affected, it is not expected to be significant because establishing and expanding port limits in other areas has not had a significant economic impact upon a substantial number of small entities to the extent contemplated by the Act. Nor is it expected to impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Drafting Information

The principal author of this document was John E. Doyle, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

Authority

This change is made under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by E.O. No. 10289, September 17, 1951 (3 CFR 1949–1953 Comp. Ch. II), and pursuant to authority provided by Treasury Department Order No. 101–5, dated February 17, 1987 (52 FR 6282).

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Imports, Organization and functions (Government agencies).

Amendments to the Regulations

PART 101—GENERAL PROVISIONS

1. The authority citation for Part 101, Customs Regulations (19 CFR Part 101), continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 1, 66, 1202 (Gen. Hdnote. 11), 1624, Reorganization Plan 1 of 1965; 3 CFR 1965 Supp.

§ 101.3 [Amended]

2. To reflect this change, the list of Customs regions, districts, and ports of entry in § 101.3(b), Customs Regulations (19 CFR 101.3(b)), is amended by removing "(T.D. 55637)" after Beaufort-Morehead City in the column headed "Ports of entry" in the Wilmington, North Carolina, Customs District of the Southeast Region and inserting, in its place, the phrase, "including the territory described in T.D. 87–76."

William von Raab,

Commissioner of Customs.

Approved:

John P. Simpson,

Assistant Secretary of the Treasury.

May 14, 1987.

[FR Doc. 87–12561 Filed 6–10–87; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 86F–0159]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of poly[[6-[(1,1,3,3-tetramethylbutyl)amino]-*s*-triazine-2,4-diyl][(2,2,6,6-tetramethyl-4-piperidyl)imino]hexamethylene [(2,2,6,6-tetramethyl-4-piperidyl)imino]] as a stabilizer for olefin copolymers used in contact with food. This action responds to a petition filed by Ciba-Geigy Corp.

DATES: Effective June 11, 1987. Objections by July 13, 1987.

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

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of May 7, 1986 (51 FR 16896), FDA announced that a petition (FAP 6B3921) had been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the safe use of poly[[6-[(1,1,3,3-tetramethylbutyl] amino]-*s*-triazine-2,4-diyl][(2,2,6,6-tetramethyl-4-piperidyl)imino] hexamethylene[(2,2,6,6-tetramethyl-4-piperidyl)imino]] as a stabilizer for polyethylene and olefin copolymers used in the manufacture of articles or components of articles

intended for food-contact use. The petitioner subsequently requested use of this additive only in olefin copolymers complying with § 177.1520(c) (21 CFR 177.1520(c)), items 3.1 and 3.2.

FDA has evaluated the data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that the regulations should be amended by adding an additional condition of use for poly[[6-[(1,1,3,3-tetramethylbutyl) amino]-*s*-triazine-2,4-diyl][(2,2,6,6-tetramethyl-4-piperidyl)imino]hexamethylene [(2,2,6,6-tetramethyl-4-piperidyl)imino]] in 21 CFR 178.2010(b).

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before July 13, 1987, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

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 Food Safety and Applied Nutrition, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 178.2010 is amended in paragraph (b) by adding a third limitation for use of "Poly[[6-[(1,1,3,3-tetramethylbutyl) amino]-*s*-triazine-2,4-diyl][(2,2,6,6-tetramethyl-4-piperidyl)imino]hexamethylene [(2,2,6,6-tetramethyl-4-piperidyl)imino]]," to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* * * * *	
Poly[[6-[(1,1,3,3-tetramethylbutyl) amino]-*s*-triazine-2,4-diyl][(2,2,6,6-tetramethyl-4-piperidyl)imino]hexamethylene-[(2,2,6,6-tetramethyl-4-piperidyl)imino]] (CAS Reg. No. 70624-18-9).	For use only: * * * 3. At levels not to exceed 0.1 percent by weight of olefin copolymers complying with § 177.1520(c) of this chapter, items 3.1 and 3.2. The finished polymers are to contact food only under conditions of use B through H described in Table 2 of § 176.170(c) of this chapter and when contacting fatty foods of Types III, IV-A, V, VII-A, and IX described in Table 1 of § 176.170(c) of this chapter, the finished articles are to have a volume of at least 18.9 liters (5 gallons).
* * * * *	

Dated: May 27, 1987.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-13279 Filed 6-10-87; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8142]

Income Tax; Taxable Years Beginning After December 31, 1953; Notice to Employees of Earned Income Credit

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the procedures necessary to implement the statutory requirement that employers notify certain employees whose wages are not subject to income tax withholding that they may be eligible for the refundable earned income credit. These temporary regulations provide guidance to the employers that are required to comply with those notification procedures. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules Section of this issue of the **Federal Register.**

EFFECTIVE DATE: Taxable years of employees beginning after December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Robert H. Ginsburgh of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T) (202–566–3297, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations relating to the procedures necessary to implement the statutory requirement that employers notify certain employees whose wages are not subject to income tax withholding that they may be eligible for the refundable earned income credit. This document reflects the amendment made by section 111 (e) of the Tax Reform Act of 1986 (100 Stat. 2108). The temporary

regulations provided by this document will remain in effect until superseded by later temporary or final regulations.

Regulatory Flexibility Act; Executive Order 12291

No general notice of proposed rulemaking is required by 5 U.S.C. 553 (b) for temporary regulations. Moreover, the Internal Revenue Service has concluded that the regulations herein will not have a significant impact on a substantial number of small entities. Accordingly, the Regulatory Flexibility Act does not apply and no Regulatory Flexibility Analysis is required for these temporary regulations. The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required.

Drafting Information

The principal author of these temporary regulations is Robert H. Ginsburgh of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these temporary regulations, both on matters of substance and style.

List of Subjects in 26 CFR 1.0–1 through 1.58–8

Income taxes, Tax liability, Tax rates, Credits.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

PART 1—[AMENDED]

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

Authority: 26 U.S.C. 7805. * * * Section 1.32–1T is also issued under the authority of 26 U.S.C. 32.

Par. 2. New § 1.32–1T is added immediately after § 1.31–2 to read as follows:

§ 1.32–1T Temporary regulations; questions and answers concerning the employer's notification requirement.

(a) *Introduction*—(1) *Scope.* This section prescribes temporary question-and-answer regulations under section 111(e) of the Tax Reform Act of 1986, Pub. L. 99–514.

(2) *Effective date.* This section is effective with respect to any taxable year of an employee beginning after December 31, 1986.

(b) *Questions concerning the employer's notification requirement.* The following questions and answers address the implementation of the employer's notification requirement:

Q–1: To whom must an employer furnish a written notice to comply with the notification requirement provided in section 111(e) of the Tax Reform Act of 1986?

A–1: The employer must furnish the written notice to each employee who was employed by the employer at any time during the calendar year, and who did not have any income tax withheld during the calendar year in question. However, the employer does not have to furnish the written notice to any employee who did not have any income tax withheld during the calendar year in question because the employee claimed exemption from withholding pursuant to section 3402(n).

Q–2: What information must be contained in the written notice?

A–2: The written notice must contain all the information contained in Notice 797, You May Be Eligible for a Refund on Your Federal Income Tax Return Because of the Earned Income Credit (EIC), although the employer is not required to use Notice 797 (that is, the employer may use his own written notice form, but its wording must be an exact reproduction of the wording used in Notice 797). Notice 797 may be obtained from the Internal Revenue Service.

Q–3: When must an employer furnish the written notice?

A–3: The employer must furnish the written notice to the employee within one week (before or after) of the date that the employee is furnished his or her Form W–2, Wage and Tax Statement.

Q–4: How must an employer furnish the written notice to the employee?

A–4: The employer may furnish the notice to the employee along with the employee's Form W–2. If the employer does not furnish the notice along with the employee's Form W–2, the employer must furnish the written notice to the employee by direct, personal delivery to such employee or by first class mail addressed to such employee. For purposes of the preceding sentence, direct personal delivery means hand delivery to the employee. Thus, for example, an employer does not meet the requirements of this section if the notice is sent through inter-office mail or is posted on a bulletin board.

Q–5: With what other procedure must an employer comply to satisfy the notification requirement provided in section 111(e) of the Tax Reform Act of 1986?

A–5: The employer must comply with all other procedures required by the Internal Revenue Service in any Publication or in any Form and its accompanying instructions.

* * * * *

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 353 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

James I. Owens,

Acting Commissioner of Internal Revenue.

Approved: May 29, 1987.

J. Roger Mentz,

Assistant Secretary of the Treasury.

[FR Doc. 87–13364 Filed 6–10–87; 8:45 am]

BILLING CODE 4830–01–M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF-253; Re: Notice No. 607]

Establishment of Sonoma Coast Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: ATF is establishing a viticultural area in Sonoma County, California, known as Sonoma Coast, and withdrawing from consideration a proposal to revise the boundary of the Russian River Valley viticultural area. This final rule is based on a notice of proposed rulemaking published in the **Federal Register** on October 24, 1986, at 51 FR 37755, Notice No. 607. The establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers better identify wines they

purchase. The use of this viticultural area as an appellation of origin will also help winemakers distinguish their products from wines made in other areas.

EFFECTIVE DATE: July 13, 1987.

FOR FURTHER INFORMATION CONTACT: John A. Linthicum, FAA, Wine and Beer Branch, (202) 566-7626.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR, Part 4. These regulations allow the establishment of definitive viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in Subpart C of Part 9. Section 4.25a(e)(2), outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area.

Petition

Ms. Sara Schorske, a wine industry consultant residing in Santa Rosa, California, petitioned ATF to establish a viticultural area in Sonoma County, to be known as "Sonoma Coast," and to revise the boundary of the approved Russian River Valley viticultural area. In response to this petition, ATF published a notice of proposed rulemaking in the Federal Register on October 24, 1986, at 51 FR 37755, Notice No. 607. In response to this notice, ATF received five comments which are discussed below.

Sonoma Coast

General Description. The size of the Sonoma Coast viticultural area is approximately 750 square miles. It includes 35 bonded wineries and 11,452 acres of grapevines, approximately one-third of the total grapevine acreage in the county.

ATF has established ten other viticultural areas in Sonoma County: Sonoma Valley, Los Carneros, Chalk Hill, Alexander Valley, Sonoma County Green Valley, Dry Creek Valley, Russian River Valley, Northern Sonoma, Knights Valley, and Sonoma Mountain. In addition, all of Sonoma County is within the approved North Coast viticultural area.

Name. "Sonoma Coast" is the name of a State beach located north of Bodega Bay. The mountain ranges located within sight of the Pacific Ocean, although known by many proper names throughout the State, are generically called the Coast Ranges.

In addition, variants of the name "Sonoma Coast" have also applied to the approved area historically. Most of the area is located in the Fifth Supervisory District of Sonoma County. This area has been called "the coastal region of the county" since an agriculture census taken in 1893. Most of the area is also located in the Coastal Planning Area, established by the Sonoma County Planning Department. Tourism pamphlets refer to part or all of the area as "the coastal region."

Geographical Features. The approved area includes only the portion of the county which is under very strong marine climate influence. The climate of the area is manifested by persistent fog and the classification "Coastal Cool," under Robert L. Sisson's microclimate classification system. This system defines a "Coastal Cool" area as an area having a cumulative duration of less than 1,000 hours between 70° and 90° Fahrenheit, during the months of April through October. In addition to the "Coastal Cool" versus "Coastal Warm" climate classification, the inland boundary corresponds approximately with other geographical features which affect viticultural features.

The Environmental Resources Management section of the Sonoma County General Plan contains a map of the marine fog intrusion which shows that its inland limit corresponds approximately with the approved boundary. The boundary corresponds approximately with four vegetation regions which are distinctively coastal: Coastal Cypress/Pine, Redwood, Coastal Prairie/Scrub Mosaic, and Coastal Saltmarsh, according to A.W. Kuchler's *Natural Vegetation of California.*

The inland boundary corresponds approximately with the maximum July temperature of 84 °F. isobar in Robert Elwood's *Climate of Sonoma County.* It is noteworthy that the next closest isobar (86 °F.) is much farther inland, and the lower temperature isobars are closely spaced. This implies that the inland boundary corresponds with a significant change in microclimate.

Russian River Valley

The Russian River Valley viticultural area was established in T.D. ATF-159, published in the Federal Register of October 23, 1983, at 48 FR 48813. Mr. Sisson's system was also used in the establishment of the Russian River Valley viticultural area which is classified as "Coastal Cool." In the preamble of the Russian River Valley final rule, ATF concluded that the entire area was "Coastal Cool" and that this microclimate distinguished it from the neighboring Alexander Valley which was classified as "Coastal Warm." The petition for establishment of the "Sonoma Coast" viticultural area challenged the accuracy of the boundary between "Coastal Cool" and "Coastal Warm" at the inland limit of the Russian River Valley viticultural area.

Mr. Sisson has never tested the microclimate in the eastern one-third of the approved Russian River Valley viticultural area. Throughout most of this area, the terrain is too steep for practical grape-growing. However, there are a few isolated, but well-established vineyards in this area. The selection of grape varieties and viticultural practices at these vineyards more closely resemble "Coastal Warm" characteristics than "Coastal Cool."

Mr. Louis Foppiano participated in drafting the petition for establishment of the Russian River Valley viticultural area. He stated that Franz Valley Road was chosen as the eastern boundary for convenience, and not on the basis of specific historical or geographical evidence. He believes that the area which ATF proposed to exclude Notice No. 607 is probably warmer than the rest of the approved area. Mr. Mark Lingenfelder is Vineyard Manager of Chalk Hill Winery, formerly Donna Maria Vineyards, located in the relatively undeveloped area between Chalk Hill Road and Brooks Creek. He believes that it would be reasonable to remove this area from the Russian River Valley viticultural area since it is probably warmer than the rest of the approved area.

Inland to the east of the Russian River Valley and the proposed "Sonoma Coast" boundaries, the approved Knights Valley area was classified as Region III on the basis of thermograph readings located in the approved area. This classification is warmer than either "Coastal Cool" or "Coastal Warm."

In T.D. ATF-233, published in the Federal Register of August 26, 1986 at 51 FR 30352, ATF extended the southern boundary of the "Coastal Warm" Alexander Valley viticultural area to

include a transitional area east of Healdsourg. Sometimes this area is under persistent fog and is "Coastal Cool," and at other times it is not. The purpose of the proposed revision of the Russian River Valley was to curtail it to areas which are "Coastal Cool."

In Notice No. 607, ATF specifically requested actual thermograph readings or other objective geographical evidence that the original boundary of the Russian River Valley was incorrect. No such evidence was ever received, and all of the above discussion is subjective. Therefore, ATF is withdrawing the proposal to revise the boundary of the Russian River Valley viticultural area.

Boundaries

The proposed boundary of the Sonoma Coast viticultural area is adopted unchanged. The proposed revision of the boundary of the Russian River Valley, § 9.66, is withdrawn from consideration.

Public Comments

ATF received five letters on this proposal, including three public comments on the proposal, and two persons requesting clarification of the proposed boundary. Copies of ATF's correspondence clarifying the proposed boundary were included in the public comment file.

Brice C. Jones, President of Sonoma-Cutrer Vineyards, endorsed the establishment of the proposed Sonoma Coast area.

Two executives of Geyser Peak Winery, located in Geyserville, California, were opposed to the proposal, John P. McClelland, Chairman of the Board, and Paul S. Pigoni, Vineyard Manager. Both were opposed because the name "Sonoma" has been overused, and the word "Coast" should not apply to the shore of the San Pablo Bay, or to other inland areas. Including Sonoma Coast, the name "Sonoma" is part of the name of five viticultural areas previously named. Each of these areas was established on the basis of a petition containing evidence that the name was appropriate, and was being used correctly. Overuse of the name is not germane to the criteria for establishment of a viticultural area.

With respect to the word "Coast," ATF has established the North Coast and Central Coast viticultural areas to include only terrain which is under coastal influence. Although it is true that all of Sonoma County is under coastal influence to some degree, the petition and notice of proposed rulemaking for Sonoma Coast focused on the distinction between "Coastal Cool" versus "Coastal Warm." More refined criteria were used for Sonoma Coast, since it is much smaller than North Coast or Central Coast.

In addition to these public comments, ATF received two letters of support before the notice of proposed rulemaking was published. Peter S. Friedman of Belvedere Winery, Healdsburg, California, and Barry C. Lawrence, of Eagle Ridge Winery, Petuluma, California, both submitted letters supporting the petition in March 1986.

Mr. Lawrence also submitted aerial photographs showing that the inland limit of the marine fog intrusion is approximately at the boundary established for Sonoma Coast.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rule, will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this final rule is not a "major rule" since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or

(c) Significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Drafting Information

The principal author of this document is John A. Linthicum, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural area, Wine issuance.

PART 9—[AMENDED]

27 CFR Part 9 is amended as follows:

1. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

2. The table of sections for 27 CFR Part 9 is amended by adding the heading of § 9.116 to read as follows:

Sec.

* * * * *

9.116 Sonoma Coast.

3. Subpart C of 27 CFR Part 9 is amended by adding § 9.116 to read as follows:

§ 9.116 Sonoma Coast.

(a) *Name.* The name of the viticultural area described in this section is "Sonoma Coast".

(b) *Approved map.* The approved maps for determining the boundary of the Sonoma Coast viticultural area are the following six U.S.G.S. topographic maps:

(1) Sonoma County, California, scale 1:100,000, dated 1970;

(2) Mark West Springs, California, 7.5-minute series, dated 1958, photoinspected 1978;

(3) Healdsburg, California, 7.5-minute series, dated 1955, photorevised 1980;

(4) Jimtown, California, 7.5-minute series, dated 1955, photorevised 1975;

(5) Guerneville, California, 7.5-minute series, dated 1955; and

(6) Cazadero, California, 7.5-minute series, dated 1978.

(c) *Boundary description.* In general, the boundary description of the Sonoma Coast viticultural area is found on the U.S.G.S. Topographic Map of Sonoma County, California, scale 1:100,000, dated 1970. When a point of the boundary description is found on one of the 7.5-minute quadrangles, the boundary description indicates this in parentheses. The boundary description is as follows:

(1) The beginning point is the point at which the Sonoma County-Mendocino County line meets the shoreline of the Pacific Ocean.

(2) The boundary follows the shoreline of the Pacific Ocean southerly

to the Sonoma County-Marin County line.

(3) The boundary follows the Sonoma County-Marin County line southeasterly to San Pablo Bay.

(4) The boundary follows the shoreline of San Pablo Bay easterly to the Sonoma County-Napa County line.

(5) The boundary follows the Sonoma County-Napa County line northerly to the peak of Arrowhead Mountain.

(6) From the peak of Arrowhead Mountain, the boundary proceeds in a straight line westerly to the peak of Sonoma Mountain.

(7) From the peak of Sonoma Mountain, the boundary proceeds in a straight line northwesterly to the peak of Taylor Mountain.

(8) From the peak of Taylor Mountain, the boundary proceeds in a straight line northwesterly to the point, near the benchmark at 184 ft. elevation in Section 34, Township 8 North, Range 8 West, at which Mark West Road crosses an unnamed stream which flows northwesterly into Mark West Creek. (Mark West Springs map)

(9) From this point, the boundary proceeds northerly in a straight line to the headwaters of Brooks Creek, in Section 4, Township 8 North, Range 8 West. (Mark West Springs map)

(10) The boundary follows Brooks Creek northwesterly to its confluence with the Russian River. (Healdsburg map)

(11) The boundary proceeds southwesterly in a straight line to an unidentified peak at elevation 672 ft. (Healdsburg map)

(12) The boundary proceeds northwesterly in a straight line to the peak identified as Black Peak. (Healdsburg map)

(13) The boundary proceeds westerly in a straight line to an unidentified peak at elevation 857 ft. (Healdsburg map)

(14) The boundary proceeds westerly in a straight line to the peak of Fitch Mountain at elevation 991 ft. (Healdsburg map)

(15) The boundary proceeds northwesterly in a straight line to the intersection, near a benchmark at elevation 154 ft. in the town of Chiquita, of a light-duty road (known locally as Chiquita Road) and a southbound primary highway, hard surface road (known locally as Healdsburg Avenue). (Jimtown map)

(16) The boundary follows that road (known locally as Healdsburg Avenue) southerly through the city of Healdsburg to the point at which it is a light-duty, hard or improved surface road, identified on the map as Redwood Highway, which crosses the Russian River, immediately south of the city of Healdsburg at a bridge (known locally as the Healdsburg Avenue Bridge). (Healdsburg map)

(17) The boundary follows the Russian River southerly to a point, near the confluence with Dry Creek, opposite a straight line extension of a light-duty, hard or improved surface road (known locally as Foreman Lane) located west of the Russian River. (Healdsburg map)

(18) The boundary proceeds in a straight line to that road and follows it westerly, then south, then westerly, onto the Guerneville map, across a secondary highway, hard surface road (known locally as Westside Road), and continues westerly, then northwesterly to the point at which it crosses Felta Creek. (Guerneville map)

(19) The boundary follows Felta Creek approximately 18,000 ft. westerly to its headwaters, at the confluence of three springs, located approximately 5,800 feet northwesterly of Wild Hog Hill. (Guerneville map)

(20) The boundary proceeds in a straight line southwesterly to the southwest corner of Section 9, Township 8 North, Range 10 West. (Guerneville map)

(21) The boundary proceeds in a straight line southwesterly to the point in, Section 24, Township 8 North, Range 11 West, at which Hulbert Creek crosses the 160 ft. contour line. (Cazadero map)

(22) The boundary follows Hulbert Creek southerly to its confluence with the Russian River.

(23) The boundary follows the Russian River southwesterly to its confluence with Austin Creek.

(24) From this point, the boundary proceeds in a straight line northwesterly to the peak of Pole Mountain.

(25) From the peak of Pole Mountain, the boundary proceeds in a straight line northwesterly to the peak of Big Oat Mountain.

(26) From the peak of Big Oat Mountain, the boundary proceeds in a straight line northwesterly to the peak of Oak Mountain.

(27) From the peak of Oak Mountain, the boundary proceeds in a straight line northwesterly approximately 14.5 miles to the Sonoma County-Mendocino County line at the northeast corner of Section 25, Township 11 North, Range 14 West.

(28) The boundary follows the Sonoma County-Mendocino County line west, then southwesterly to the beginning point.

Signed: May 5, 1987.

Stephen E. Higgins,

Director.

Approved: May 21, 1987.

John P. Simpson,

Deputy Assistant Secretary, Regulatory, Trade and Tariff Enforcement.

[FR Doc. 87-13229 Filed 6-10-87; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: The Minerals Management Service (MMS) establishes procedures to obtain testimony from witnesses or persons who have knowledge of serious accidents, fires, blowouts, or spills that occurred during oil, gas, or sulphur operations in the Outer Continental Shelf (OCS). The testimony is needed by accident investigative panels to determine the cause or probable cause of an accident under investigation. These procedures will facilitate the meetings of those panels.

EFFECTIVE DATE: July 13, 1987.

FOR FURTHER INFORMATION CONTACT: William Cook, Telephone (703) 648-7818, (FTS) 959-7818.

SUPPLEMENTARY INFORMATION: A proposed rule was published in the **Federal Register** on April 24, 1986 (51 FR 15502), establishing procedures to obtain testimony from witnesses or persons who have knowledge of serious accidents, fires, blowouts, or spills that occurred during oil, gas, or sulphur operations in the OCS. The testimony is needed by accident investigative panels to determine the cause or probable cause of an accident under investigation. The procedures would facilitate the meetings of those panels.

Section 22(d) of the Outer Continental Shelf Lands Act (OCSLA) provides that the Secretary of the Interior (Secretary), or the Secretary of the Department in which the U.S. Coast Guard (USCG) is operating, shall make an investigation and public report on major fires, oil spills, deaths, and serious injuries occurring as a result of operations conducted pursuant to the OCSLA.

For any given spill or accident, the decision as to whether MMS or the

USCG will be the lead Agency in the investigation was determined by provisions of a Memorandum of Understanding (MOU) between the U.S. Geological Survey and the USCG published in the **Federal Register** on January 8, 1981 (46 FR 2199). The MMS is party to the MOU after it succeeded to the authority of the U.S. Geological Survey's Conservation Division concerning activities in the OCS by direction of Secretarial Order 3071 dated January 19, 1982.

When MMS is the lead Agency in the investigation of a major accident, an investigative panel may be appointed by the Regional Director in whose Region the accident occurred.

The panel may convene a meeting to take testimony from persons who have witnessed or are knowledgeable of the accident under investigation. Since such meetings affect persons other than MMS personnel, MMS concluded that rules pertaining to the conduct of such meetings should be published for public comment.

The accident investigation meeting seeks to establish what occurred in a given incident in an objective manner. The meeting is one step in the investigative process leading to an accident report. Neither the meeting itself nor the subsequent report directly result in a fine or other penalty against any person or thing. The completed investigation may result in a finding that the accident may have involved a violation of the regulations.

Such a finding, however, would be referred to a "Director's designee" for investigation into the possible violation under 30 CFR 250.70 to establish whether there is or is not sufficient evidence that a violation of the regulations occurred. If the finding is that there is sufficient evidence, the Director's designee will submit the case to a reviewing officer for further analysis and action under 30 CFR 250.80. If the finding is that there is not sufficient evidence to indicate that a violation occurred, the case is referred back to the investigative panel for further investigation, or the case is closed.

It is recognized that the accident investigation meeting transcripts may be used in other proceedings which are of an adversarial nature and, further, that the investigative panel's report on the accident may document lapses in compliance with regulations and Orders. Provisions were retained to allow the presence of legal counsel during the questioning of witnesses. Provisions pertaining to the location of meetings, testimony under oath, verbatim transcripts, subpoena power, and travel expenses were also included. The MMS requested comments, and six timely comments were received.

Discussion of Comments

Comment: Commenters generally endorsed the proposed rule but objected to the provision that the meetings are not subject to the Administrative Procedure Act (APA), 5 U.S.C. 554, and that person(s) who could be found to be responsible for the accident(s) are not allowed participation in the meeting(s) and cross-examination of the person(s) giving testimony. The commenters suggested that the proposed rule be amended to be subject to the APA and to allow cross-examination of witnesses.

Discussion: The accident investigation meeting is not a hearing required by the OCSLA, as amended, but is an administrative process used by MMS in an attempt to elicit all pertinent facts. The procedure is preliminary and does not result in harm to any person or other entity without an intervening process. The public report is not a rulemaking or adjudication in the sense of the APA.

Comment: One commenter suggested that the final regulation should cover the makeup of, and selection procedure for, the investigative panel appointed by the Regional Director when MMS is the lead Agency in the investigation of a major accident.

Discussion: The MMS disagrees with the commenter in that the panel is an internal body that is not properly addressed by regulation. The panel members and panel chairman are appointed by the appropriate Regional Director. The membership of the panel consists of MMS regional, district, and headquarters personnel. On occasion, the Office of the Solicitor is represented, and when requested, the USCG and National Transportation Safety Board may be represented.

Comment: One commenter suggested that proper cause must be shown when a subpoena is issued. The commenter does not specify what is proper cause.

Discussion: The MMS disagrees with the suggestion of the commenter. This is not a criminal proceeding. The need to obtain testimony concerning a major accident constitutes a proper cause, and MMS will issue a subpoena upon that basis.

Comment: One commenter suggested that MMS may wish to clarify that the purpose of the hearing (meeting) is to ascertain causation that would result in future correction rather than in future enforcement.

Discussion: The MMS calls attention to the second full paragraph in column three, page 15502, of the proposed rule where it is stated that the purpose of the meetings is to obtain information that would aid in determining the cause or probable cause of the accident under investigation and that such meetings are not intended to be adversarial proceedings. Further, the introductory paragraph specifies that these meetings "shall be fact-finding proceedings with no civil or criminal issues and no adverse parties."

Comment: One commenter recommended that the proposed regulation be applicable only to those significant events identified in section 22(d) of the OCSLA, as amended (incidents of major fires, major oil spills, death, or serious injury).

Discussion: The MMS disagrees with the commenter's suggestion. Section 22(d)(1) of the OCSLA states that the Secretary or the Secretary of the Department in which the USCG is operating may, in his discretion, "make an investigation and report of lesser oil spillages" and in section 22(d)(2) "make an investigation and a report of any injury."

Executive Order 12291

The purpose of this proposal is to provide procedures for accident investigative panels. These procedures would neither increase prices for consumers nor would they result in major cost increases for individual industries, Federal, State, or local government agencies, or geographic regions. Based on this assessment, the Department of the Interior (DOI) has determined that this document does not constitute a major rule under Executive Order 12291; therefore, a Regulatory Impact Analysis is not required.

Regulatory Flexibility Act

The DOI has also determined that, since this rule is procedural in nature, it would not have a significant economic effect on a substantial number of small entities.

Paperwork Reduction Act

This rule does not contain information collection which would require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Author: The principal author of this document is William S. Cook, Offshore Rules and Operations Division, MMS.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Investigations, Mineral royalties, Oil and gas reserves, Penalties, Pipelines, Public lands/mineral resources,

Reporting and recordkeeping requirements.

Dated: May 7, 1987.

Donald T. Sant,

Acting Director, Minerals Management Service.

For the reasons set forth above, 30 CFR Part 250 is amended as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for Part 250 continues to read as follows:

Authority: Outer Continental Shelf Lands Act, 43 U.S.C. 1331 *et seq.*, as amended, 92 Stat. 629; National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* (1970); Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 *et seq.*

2. Section 250.45 is amended by adding paragraph (c) to read as follows:

§ 250.45 Accidents, fires, and malfunctions.

* * * * *

(c) Unless otherwise specifically ordered by the Director, all investigations conducted under the authority of sections 22(d) (1) and (2) of the Act shall be fact-finding proceedings with no civil or criminal issues and no adverse parties. The purpose of the investigation is to prepare a public report. Such investigations shall satisfy the following requirements:

(1) Any meetings shall be conducted in the appropriate MMS regional or district office or at some other convenient location determined by the panel chairperson. The chairperson may open a meeting, or any part of it, to the public if the chairperson determines that it would aid the panel in its work.

(2) All members of the panel shall be present at such meetings if possible. The chairperson may designate a member(s) of the panel to conduct meetings without all members present if the chairperson finds it to be appropriate.

(3) Appropriate oaths shall be administered by the chairperson or his/her designee to all persons giving testimony.

(4) A verbatim transcript shall be made of any oral testimony.

(5) Each person giving testimony shall be allowed to have legal and/or other representative(s) present to advise or counsel when giving testimony to the panel.

(6) Only the following persons shall address questions to any person giving testimony:

(i) The panel members, the panel's legal advisor, any experts the panel deems necessary, and

(ii) The testimony transcriber.

(7) The chairperson of the panel may, if necessary, issue a subpoena to any witness or person who has knowledge of the accident pursuant to section 22(f) of the Act. A witness or a person who has knowledge of the accident may be required to attend a meeting at a place not more than 100 miles from the place where the subpoena is served.

(8) Any witness or person who has knowledge of the accident and is subpoenaed to testify under this subsection shall be entitled to be paid the same fees and mileage paid for similar services in the U.S. District Courts. The MMS shall pay fees and mileage for those persons that MMS has called if the persons so request.

(9) When witness(es) or person(s) who have knowledge of the accident cannot appear to testify due to injury or who are not required to appear as provided in paragraph (c)(7) of this section, the panel may then move the meeting site to a location more convenient to the witness(es) or person(s), or the panel may accept a sworn written statement in lieu of oral testimony.

[FR Doc. 87-13303 Filed 6-10-87; 8:45 am]
BILLING CODE 4310-MR-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09-87-02]

Special Local Regulations; Budweiser Trophy Race, Detroit River

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Budweiser Trophy Race (formerly Stroh Thunderfest) to be held on the Detroit River. This event will be held on 9, 10, 11, and 12 July 1987. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective on 9 July 1987 and terminate on 12 July 1987.

FOR FURTHER INFORMATION CONTACT: CWO Gerald M. Trackim, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522-3982.

SUPPLEMENTARY INFORMATION: On April 6, 1987 the Coast Guard published a notice of proposed rule making in the **Federal Register** for these regulations (52 FR 10905). Interested persons were requested to submit comments and no comments were received.

Drafting Information

The drafters of this regulation are CWO Gerald M. Trackim, project officer, Office of Search and Rescue and LCDR M. V. Mosebach, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Budweiser Trophy Race will be conducted on the Detroit River on 9–12 July 1987. This event will have an estimated 25 Hydroplanes which could pose hazards to navigation in the area. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (U.S. Coast Guard Group Detroit, MI).

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the event. This should have a favorable impact on commercial facilities providing services to the spectators. Any impact on commercial traffic in the area will be negligible.

Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35

2. Part 100 is amended to add a temporary § 100.35–0902 to read as follows:

§ 100.35–0902 Budweiser Trophy Race—Detroit River.

(a) *Regulated Area:* That portion of the Detroit River lying between Belle Isle and the U.S. shoreline, bound on the west by the Belle Isle Bridge and on the east by a north-south line drawn through

the Waterworks Intake Crib Light (LL 1022).

(b) *Special Local Regulations:* (1) The above area will be closed to navigation or anchorage from 7:30 A.M. (local time) until 5:30 P.M. on 9, 10, 11, and 12 July 1987.

(2) An escape zone for recreational craft will also be established from the Rooster Tail Marina out to Lake St. Clair.

(3) Special care shall be exercised by the Master or operator of every vessel proceeding up or down the main channel of the Detroit River between Belle Isle and Windmill Point.

(4) Vessels desiring to transit the restricted area may do so only with prior approval of the Patrol Commander and when so directed by that officer. The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. These rules shall not apply to participants in the event or vessels of the patrol, in the performance of their assigned duties.

(5) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(6) Effective Dates: These regulations will become effective on 9 July 1987 and terminated on 12 July 1987.

Dated: June 8, 1987.

A.M. Danielsen,

RADM, U.S. Coast Guard Commander, Ninth Coast Guard District.

[FR Doc. 87-13356 Filed 6-10-87; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD1 87-10]

Regatta; Empire State Regatta, Albany, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary regulation with request for comments.

SUMMARY: This temporary rule provides notice that the 1987 Empire State Regatta will be held beginning at 6:00 a.m. on June 12, 1987 and ending at 6:00 a.m. on June 15, 1987. The permanent regulation for this regatta sets the effective period for this annual event as either the first or second weekend (Friday, Saturday, Sunday into early Monday) in June as published in the Coast Guard Local Notice to Mariners and in a **Federal Register** notice. This document notifies the affected public of the effective period for the 1987 regatta. Also, the race course location is being changed from last year resulting in an additional restriction to non-participating vessels wishing to transit the area. These regulations are needed to provide for the safety of participants and spectators on navigable waters during the event.

DATES: This temporary regulation becomes effective on Friday, June 12, 1987 at 6:00 a.m. and terminates on Monday, June 15, 1987 at 6:00 a.m.

ADDRESSES: Comments should be mailed to Commander (b), Third Coast Guard District, Governors Island, New York, NY 10004-5098. The comments will be available for inspection and copying at the Boating Safety Office, Governors Island, New York, NY. Normal office hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Lucas A. Dlhopolsky, (212) 668-7974.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rule Making has not been published for these regulations and they are being made effective in less than 30 days from the date of publication. Following normal rulemaking procedures is unnecessary regarding announcement of the 1987 effective dates. The permanent regulation for this regatta (33 CFR 100.308) specifies that the regatta will be held on either the first or second weekend in June and that the effective dates will be published in the Coast Guard Local Notice to Mariners and in a **Federal Register** notice. This final rule provides notice of the specific dates and times for the 1987 regatta which will be held on the first weekend in June this year.

Additionally, the sponsor has relocated the race course approximately one-half nautical mile north (upstream) of its position in 1986. In so doing not only commercial marine traffic but also all recreational vessel traffic will be unable to transit either from north or south through the regulated area during the effective period of this regulation. There was insufficient time to publish this change in a Notice of Proposed Rulemaking. Therefore, this temporary regatta regulation provides notice of the additional restriction to transiting recreational vessel traffic. Although this regulation is published as a final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure that the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under **"ADDRESSES"** in this preamble. Comments should include their names and addresses, identify the docket number (CGD1 87-10) for this regulation, and give reasons for their remarks. Due to the limited time for comment, verbal comments submitted by telephone are acceptable. Based upon comments received, the regulation may be changed.

Drafting information: The drafters of this notice are Mr. Lucas A. Dlhopolsky, project officer, Third Coast Guard District Boating Safety Office, and LCDR R.F. Duncan, project attorney, First Coast Guard District Legal Office.

Discussion of Regulations: The Empire State Regatta is a crew racing event which serves as the annual Northeast Regional Championships. The event is sponsored by the Empire State Regatta Fund, Inc. of New Scotland, NY on behalf of the United States Rowing Association. Since the sponsor held this race in the same location on two consecutive years and installed permanent course marking apparatus under the Hudson River near Albany, NY, a permanent amendment to Part 100 of Title 33, Code of Federal Regulations, Section 100.308, was promulgated in 1986. As stated in that section, the effective period for this event each year was to be the first or second weekend (Friday through early Monday morning) in June as published in the Coast Guard Local Notice to Mariners and in a **Federal Register** notice. Announcements in these publications would provide the public with full and adequate notice of the dates and times of this annual shell race. This year (1987) the Empire State Regatta will be held on the weekend of June 13 and 14. Placement of the race course submerged wire grid will begin at 6:00 a.m. on June 12 and be removed by 6:00 a.m. on June 15. This grid is suspended approximately six feet below the water's surface and criss-crosses the river from bank to bank in the regulated area. The location of the race course on the Hudson River will be moved approximately one half nautical mile north of last year's position. This change was made for several reasons and has enhanced the safety of the participants and increased visibility for the large spectator crowd expected at the Corning Preserve. The change in the race location has also eliminated the ability of recreational vessels under 60 feet in

length to transit by the race area as was possible last year.

In 1985 and 1986 the race course was situated between the northern end of Culver Dike and the I–90 Interchange Bridge. The racing shells started at the southern end of the course and raced north, upstream against the current to finish in view of the spectators. In order to do this the shells had to be held with their sterns against a floating starting dock. Strong currents in the area pushed against the lined up shells and as a result the starting dock was forced into a list and almost capsized. To eliminate this hazard to life and limb the race this year will be started upstream and run from north to south with the current. In order for the spectators to view the finish line the entire course had to be moved about one-half nautical mile north. It will be positioned between the I–90 Bridge at the southern end (River Mile 145.4) and the Dunn Memorial Bridge at the northern end (River Mile 147.2). The swing railroad bridge at mile 146.2 is about midway between these two points. This change not only made it safer for participants and more viewable by the spectators but also decreased the interference with the Port of Albany, the Albany Yacht Club and other commercial marine interests located at the southern end of last year's race course. However, because of the bend in the river at the new location the course wire grid complex, necessarily installed in straight lines, will extend diagonally across the river from bank to bank. This effectively causes the area to be impassible by any vessels once the race course grid is installed. The anchors for the grid were implanted in the river bed during the winter months while the river surface was frozen. Thus the location of the wire grid, predetermined by the location of the anchors, is unchangeable at this point. Although transiting navigation was not completely prevented during the race last year, those that could pass were limited to vessels less the 60 feet in length. In 1986 it is estimated that not more than 50 recreational vessels transited the area during the affected weekend. The sponsor of the Empire State Regatta will advise area yacht clubs of this restriction via letter or any other means available. The effect on commercial traffic will be the same as last year and is minimized through early coordination allowing commercial marine users to avoid scheduling shipments on the race weekend.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Temporary Regulation

PART 100—[AMENDED]

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.308 is revised to read as follows for June 12–15, 1987. Because this is a temporary rule, this revision will not appear in the Code of Federal Regulations:

§ 100.308 Empire State Regatta, Albany, New York.

(a) *Regulated area.* That section of the Hudson River between the I–90 (Albany-Rennselaer) Bridge (River mile 145.4) on the south and the Dunn Memorial Bridge (River mile 147.2) on the north.

(b) *Effective period.* This regulation will be effective from 6:00 a.m. on Friday, June 12, 1987 through 6:00 a.m. on Monday, June 15, 1987.

(c) *Special local regulations.* (1) The regulated area shall be closed to all vessel traffic during the effective period.

(2) The sponsor shall make provisions for whatever action is necessary to adjust, alter, or remove any obstacle installed in the river to the degree necessary to allow passage of any Coast Guard or other rescue/law enforcement vessels in the event of an emergency which requires their presence either up or downstream of the race area.

(3) Official patrol vessels include Coast Guard and Coast Guard Auxiliary vessels, New York State and local police boats and other vessels so designated by the regatta sponsor or Coast Guard Patrol Commander.

(4) No person or vessel may enter or remain in the regulated area during the effective period unless participating in the event, or authorized to be there by the sponsor or Coast Guard patrol personnel.

(5) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(6) For any violation of this regulation, the following maximum penalties are authorized by law:

(i) $500 for any person in charge of the navigation of a vessel.

(ii) $500 for the owner of a vessel actually on board.

(iii) $250 for any other person.

(iv) Suspension or revocation of a license for a licensed officer.

Dated: June 8, 1987.

R.L. Johanson,

Rear Admiral (Lower Half), U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 87–13359 Filed 6–10–87; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 207

Navigation Locks and Approach Channels, Columbia and Snake Rivers, Oregon and Washington

AGENCY: Department of the Army, Corps of Engineers, DOD.

ACTION: Final rule.

SUMMARY: This final rule provides the district engineer with the authority to change(s) the order of precedence of vessels using Corps of Engineers navigation locks on the Columbia and Snake Rivers, Oregon and Washington, by (granting the district engineers in charge of the locks the authority to establish) establishing schedules for the lockage of recreational craft. Any schedule established for the lockage of recreational craft will be set only after public notice and opportunity for comment by the using public. Each such schedule will provide for a minimum of one lockage upstream and downstream (two lockages) each day. The purpose of the scheduling is to promote energy conservation by reducing the number of recreational lockages. Water saved by the reduced number of lockages will be diverted through hydroelectric power generators for the production of electrical energy.

EFFECTIVE DATE: June 11, 1987.

ADDRESS: HQUSACE (DAEN–CWO–M), Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Harold Tohlen, phone number (202) 272–0245.

SUPPLEMENTARY INFORMATION: The proposed rule was published in the **Federal Register** on December 6, 1982 (47 FR 54832) and comments were requested by January 10, 1983. The Portland and Walla Walla Districts of the U.S. Army Corps of Engineers also issued public

notices informing interested parties of the proposed regulation on December 17, 1982. Twenty-six comments were received: 2 from Federal and State agencies, 22 from recreational boaters, and 2 from commercial navigation interests. Individual responses were made to all commenters. The recreational boaters commented that lockage by fixed-time schedule would be a serious inconvenience and that scheduling was not required because there was no power shortage in the Northwest. The commercial navigation interests commented that recreational boat lockage scheduling could, at times, delay their operations.

Energy conservation is the reason that scheduling of recreational boat lockages is considered necessary on the Columbia and Snake Rivers. Energy conservation is and will continue to be in the national interest in order to save the Nation's fuel resources and reduce the dependency on imported oil. It is true that power surpluses may occur at some times during some years. Abundant water and low industrial power demand caused this to happen in early 1983; however, conservation could become very important at any time. Significant amounts of fuel (oil, coal, and natural gas) can be conserved by reducing the number of lockages. The energy represented by a single lockage is sufficient to provide half the annual heating requirement for a home in the Pacific Northwest. The electric power system in the West consists of hydrothermal combination of generation facilities. The electricity generated by the water saved by one less lockage can offset the use of 20 barrels of oil.

Decision

The Corps of Engineers multi-purpose projects along the Columbia and Snake Rivers serve energy users and commercial and recreational navigation interests. In order to balance the use of the facilities (between) among those interests, it is necessary to grant the district engineers in charge of the facilities the authority to establish schedules for the lockage of recreational craft. Therefore, the final rule does grant the district engineers that authority. In consideration of the comments received to the proposed rule and to better accommodate all project users, the final rule contains two provisions not in the proposed rule. First, § 207.718(a) of the final rule provides that the district engineer *may* issue a schedule for the lockage of recreational craft after (evaluating) issuing a public notice, soliciting public comment and considering those comments. In addition to the public comments, the district engineer will consider the expected energy situation, water supply, and the recreational use of the lock. The proposed rule stated that the district engineer *shall* issue a recreational lockage schedule and did not provide for public input to the scheduling process. Secondly, the final rule provides that commercial vessels may be locked through with recreational craft at the appointed time for lockage of recreational craft when a recreational craft lockage schedule is in effect, if safety and space permit. The proposed rule did not provide for the lockage of commercial vessels with recreational craft at the appointed time for lockage of recreational craft.

Significant Changes to the Regulation

Section 207.718(a): This section is revised to provide that the district engineer may issue a schedule for lockage of recreational craft after notice and opportunity for public comment. Recreational craft is defined in § 207.718(h)(3).

Section 207.718(f): The order of precedence when a recreational lockage schedule is in effect, is set out.

Section 207.718(h)(2): This section is revised to indicate that when a recreational lockage schedule is in effect, recreational craft will not be locked separately at other designated times.

Section 207.718(h)(3): This is a new section providing for special schedules for boating groups.

Executive Order 12291

These regulations have been revised by the Department of the Army in accordance with Executive Order 12291. They are classified as non-major regulations because they do not meet the criteria for major regulations established in this order.

Regulatory Flexibility Act Certification

The Secretary of the Army certifies these regulations will not have a significant economic impact on a substantial number of small entities and thus does not require the preparation of a regulatory flexibility analysis.

List of Subjects in 33 CFR Part 207

Navigation, Water tranportation, Vessels, Safety.

Accordingly, 33 CFR Part 207 is amended as follows:

The authority citation for 33 CFR Part 207 continues to read as follows:

Authority: 40 Stat. 266; 33 U.S.C. 1.

Section 207.718 is amended by revising paragraphs (a), (f), (h)(2), and by adding paragraph (h)(3) to read as follows:

§ 207.718 Navigation locks and approach channels, Columbia and Snake Rivers, Oregon and Washington.

(a) *General.* All locks, approach channels, and all lock appurtenances, shall be under the jurisdiction of the District Engineer, Corps of Engineers, U.S. Army, in charge of the locality. The district engineer may, after issuing a public notice and providing a 30-day opportunity for public comment, set (issue) a schedule for the daily lockage of recreational vessels. Recreational vessels are pleasure boats such a row, sail, or motor boats used for recreational purposes. Commercial vessels include licensed commercial passenger vessels operating on a published schedule or regularly operating in the "for hire" trade. Any recreational schedule shall provide for a minimum of one scheduled recreation lockage upstream and downstream (two lockages) each day. At the discretion of the district engineer, additional lockages may be scheduled. Each schedule and any changes to the schedule will be issued at least 30 days prior to implementation. Prior to issuing any schedule or any change to the schedule, the district engineer will consider all public comments and will evaluate the expected energy situation, water supply, and recreation use of the lock to determine the seasonal need for the schedule or change in schedule. The district engineer's representative at the locks shall be the project engineer, who shall issue orders and instructions to the lockmaster in charge of the lock. Hereinafter, the term "lockmaster" shall be used to designate the person in immediate charge of the lock at any given time. In case of emergency and on all routine work in connection with the operation of the lock, the lockmaster shall have authority to take action without waiting for instructions from the project engineer.

* * * * *

(f) *Precedence at Lock.* Subject to the order of precedence, the vessel or tow arriving first; at the lock will be locked through first, however, this precedence may be modified at the discretion of the lockmaster. If immediate passage is required, lockage of vessels owned or operated by the United States shall take precedence. The precedence of all other vessels shall be as follows:

(1) When a recreational vessel

lockage schedule is in effect, at the appointed time for lockage of recreation craft, recreation craft shall take precedence; however, commercial vessels may be locked through with recreation craft if safety and space permit. At other than the appointed time, the lockage of commercial and tow vessels shall take precedence and recreational craft may (only) lock through with commercial vessels only as provided in paragraph (h) of this sections.

(2) If a recreational vessel lockage schedule is not in effect, commercial and tow vessels shall take precedence. Recreational craft may be locked through with commercial craft. If no commercial vessels are scheduled to be locked through within a reasonable time, not to exceed one hour after the arrival of the recreational vessels at the lock, the recreational vessel may be locked through separately. If a combined lockage cannot be arranged, the recreational craft shall be locked through after waiting three commercial lockages.

* * * * *

(h) *Lockage*—(1) * * *

(2) *Recreational craft.* By mutual agreement of (all parties,) the lockmaster and the captains of the vessels involved, recreational vessels may be locked through with commercial vessels. Under the recreational vessel schedule, separate lockage will not be made by recreational vessels except in accordance with the recreational lockage schedule or when circumstances warrant, such as in an emergency. When recreational craft are locked simultaneously with commercial vessels, the recreational vessel will enter the lock chamber after the commercial vessel is secured in the chamber and when practicable will depart while the commercial vessel remains secured.

(3) *Special schedules.* Recreational boating groups may request special schedules by contacting the district engineer. The schedule for the daily lockage of recreational vessels will indicate the number of boats required for a special schedule and how many days' notice is required in order to arrange a special schedule.

* * * * *

John O. Roach, II,

Army Liaison Officer with the Federal Register.

June 5, 1987.

[FR Doc. 87-13288 Filed 6-10-87; 8:45 am]

BILLING CODE 3710-92-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 110, 417, and 434

[BERC-382-F]

Medicare Program; Application Fees for Health Maintenance Organizations

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This rule sets forth regulations governing the charging of application fees by the Federal government for the following.

- An entity that seeks qualification as a Federal health maintenance organization (HMO).
- An HMO that seeks expansion of its service area or qualification of a regional component of its organization as an HMO in itself.

We intend that these fees cover the administrative costs incurred in making these determinations.

EFFECTIVE DATE: For completed applications submitted after July 13, 1987.

FOR FURTHER INFORMATION CONTACT:
Cynthia L. Trower (202) 245-0787, Office of Prepaid Health Care; or
Rita McGrath (301) 594-6719, Office of Coverage Policy.

SUPPLEMENTARY INFORMATION:

I. Background

Title XIII of the Public Health Service Act (42 U.S.C. 300e through 300e–17), which was established by the Health Maintenance Organization Act of 1973 (Pub. L. 93–222), provides for standards under which an organization may be designated as a Federally qualified health maintenance organization (HMO). These standards involve the provision of basic health services and the organization and operation of HMOs and are implemented by regulations in 42 CFR Part 110 (redesignated in this final rule at 42 CFR Part 417, Subpart A). In addition, section 1876 of the Social Security Act authorizes Medicare payment to Federally qualified HMOs and certified competitive medical plans (CMPs) (collectively known as eligible organizations) through contracts under which the HMOs and CMPs are paid on a prepaid capitation basis that is either prospectively determined or based on the reasonable cost of furnishing covered services to Medicare beneficiaries. The regulations implementing section 1876 of the Social Security Act are set forth in 42 CFR Part 417. Section 1903(m) of the Social Security Act also authorizes Federal financial participation (FFP) to States that contract with either Federally qualified, or State qualified, HMOs to furnish services to Medicaid recipients on a prepaid capitation basis.

A. Change in Delegation of Authority

Until recently, the authority for determining whether an entity is a Federally qualified HMO within the meaning of section 1310(d) of the Public Health Service Act was delegated to the Assistant Secretary for Health of the Department of Health and Human Services (the Department). This delegation was published in the **Federal Register** on April 22, 1983 (48 FR 17395) and is set forth in regulations at § 417.406. However, that authority has been redelegated to the Administrator of HCFA as described in the **Federal Register** on March 21, 1986 (51 FR 9894). That document states that the "... change in authority for the Federal HMO program was made in order to more closely coordinate the Health Maintenance Organization Program with the Medicare Program and improve the objectives of both programs to improve health care and the use of prepaid health care."

B. Fees for Government Services

Under 31 U.S.C. 9701 (Fees and charges for Government services and things of value), informally known as the "User Fee Statute", Congress encourages Federal agencies to charge for a service or thing of value in certain circumstances so that the provision of the services or things of value is self-sustaining to the extent possible. Paragraph (b) of 31 U.S.C. 9701 requires that each such charge be both—

- Fair; and
- Based on—
  - —The costs to the government;
  - —The value of the service or thing to the recipient;
  - —Public policy or interest served; and
  - —Other relevant facts.

Courts have consistently upheld the imposition of fees by Federal agencies when the provisions of 31 U.S.C. 9701 are followed and the service provided by the Federal agency primarily benefits a specific recipient rather than the general public. As discussed below, we determined that the services provided by the Federal government in determining whether an organization meets the qualifications to be designated as a Federally qualified

HMO are services that should be subject to application fees under 31 U.S.C. 9701.

II. Provisions of the Proposed Rule

On August 27, 1986, we published a notice of proposed rulemaking (51 FR 30518) in which we proposed to charge an application fee for the following:

- An entity that seeks either qualification as a Federal health maintenance organization (HMO) or certification as a CMP.
- An HMO that seeks expansion of its service area or qualification of a regional component of its organization.
- A CMP that seeks expansion of its geographic area.

We proposed that each fee be payable at the time of submission of an application and be refunded, upon request, if an application is withdrawn within 10 business days of its receipt.

We proposed to charge the fee to entities for completed applications received on or after the effective date of this final rule. We also proposed that, if the information necessary for completion of an application is submitted to HCFA after the effective date of this final rule, we would charge the appropriate application fee.

Specifically, the fee proposed for both new HMO applications and applications from Federally qualified HMOs seeking qualification for regional components was $34,600. The fee proposed for a Federally qualified HMO seeking to expand its service area was $17,300. The fee proposed for an entity seeking certification as a CMP was $22,900. The fee proposed for a CMP seeking to expand its geographic area was $11,500.

We explained in the proposal that the amounts of the application fees were based on two elements. One element represented the average cost for salary, related benefits, and administrative costs per full-time equivalent (FTE) position in the Bureau of Health Maintenance Organizations and Resources Development, Health Resources and Services Administration (HRSA), HHS, in which the former Office of Health Maintenance Organizations was located prior to its transfer to HCFA in March 1986 and redesignation as the Office of Prepaid Health Care. We estimated the average cost per FTE in Federal fiscal year (FY) 1986 as $60,000 ($46,200 for salary and related benefits and $13,800 for administrative costs). An inflation factor of 4.2 percent (based on the factor used in FY 1987 Budget of the United States) was applied to this amount to determine the amounts of the application fees that were proposed for Federal FY 1987. The average cost per FTE in FY 1987, rounded to the nearest $1,000 is $62,000 ($47,400 for salary and related benefits and $14,400 for administrative costs.

The second element represented costs associated with outside specialists that are hired to help review applications (that is, specialists in marketing, law, finance, health services delivery, management and management information systems). We announced that we were especially interested in public comments concerning the amounts of these application fees.

Moreover, we stated that we were considering the use of an inflation factor that we would use to update the amount of each application fee at the beginning of each Federal fiscal year in the same manner as we used the inflation factor from the FY 1987 Budget of the United States to derive the proposed fees, as described above. In this connection, we discussed use of an update factor as measured by one of the consumer price indexes compiled by the Bureau of Labor Statistics (for example, the Consumer Price Index for All Urban Consumers) as an alternative to the inflation factor used in the annual Budget of the United States. We indicated our intent to ensure that the fees over time accurately reflect costs to the government for processing the HMO and CMP applications. We specifically requested comments concerning this issue also.

In addition, we proposed to make a technical conforming change in § 417.406 to state that an entity that is seeking an eligibility determination must comply with the application requirements of § 110.604. Also, we proposed to make technical revisions necessary to conform the regulations to the redelegation of authority published in the **Federal Register** of March 21, 1986 mentioned above.

Finally, we also indicated our intention to move the regulations in 42 CFR Part 110 that pertain to HMOs to 42 CFR Part 417 as part of this final rule.

III. Public Comments and Changes to the Proposed Rule

During the public comment period, we received 36 timely items of correspondence concerning the proposed rule. Although most of the comments were from HMOs, HMO management firms, and HMO associations, we also received comments from CMPs, a national preferred provider organization association, a State health agency, and a Medicare beneficiary who is a member of an HMO. All of the comments were critical of various aspects of the proposed rule.

A. Changes to the Proposed Rule

We have considered all of the arguments presented and, although we are finalizing many parts of the proposed rule, we have made several changes.

1. Fees for Certification of CMPs

We are withdrawing our proposal to charge application fees for an entity that seeks certification as a CMP or for a CMP that seeks expansion of its geographic area. We made this decision because we concluded that courts uphold user fees under the User Fee Statute only if a private benefit accrues to the payor of the fee. We have determined that the only benefit that accrues to an organization that receives CMP certification or expansion of a CMP's geographic area is the right to negotiate with HCFA for a prepaid contract under section 1876 of the Social Security Act. Only HMOs receive the benefit of guaranteed access to many employers that offer membership in HMOs along with traditional fee-for-service insurance, under the "dual choice" provision of section 1310 of the Public Health Service Act. The opportunity provided under the "dual choice" provisions appears to be the primary reason that an HMO seeks Federal qualification rather than the opportunity to furnish Medicare services. Of the 467 active Federally qualified HMOs and regional components, only 174 participate in Medicare. In addition, some third-party purchasers of health plans regard Federal qualification as a necessary prerequisite before they will consider a prepaid plan for a contract, even when "dual choice" does not apply. Therefore, we are not charging application fees for an entity that seeks certification as a CMP or for a CMP that seeks expansion of its geographic area.

2. Application Fee Amounts

In addition to lowering all fees, we have determined that whenever a review of an HMO regional component is completed by HCFA staff without any site visits, part of the fee ($8,000) will be returned to the HMO to reflect the reduced cost to the government. Specifically, we are charging application fee amounts as follows:

$18,400—For an entity seeking qualification as an HMO or an HMO seeking qualification of a regional component as an HMO in itself.

If, in the case of an HMO seeking qualification of a regional component, HCFA determines that there is no need for a site visit, $8,000 will be returned to the applicant.

$6,900—For an HMO seeking expansion of its service area.

$3,100—For a CMP seeking HMO qualification.

The amounts of the application fees are based on two elements. One element represents the average cost ($60,000) for salary, related benefits, and administrative costs per FTE position in the Bureau of Health Maintenance Organizations and Resources Development, Health Resources and Services Administration (HRSA) in which the former Office of Health Maintenance Organizations (now the Office of Prepaid Health Care) was located prior to its transfer to HCFA in March 1986. As explained above, we estimated the average cost per FTE in Federal FY 1986 as $60,000 ($46,200 for salary and related benefits and $13,800 for administrative costs). Next, an inflation factor of 4.2 percent (based on the factor used in the Federal FY 1987 Budget of the United States) was added to this amount to determine the amounts of the application fees that were proposed for Federal FY 1987. (Administrative costs include travel, standard level user charge (rent and utilities), telecommunications, printing, training, postage, express mail, supplies, equipment, ADP computer usage, and building service charges associated with support services provided by organizational components, for example, the computer center.)

The second element is associated with contractual support. The HMO qualification process requires specialists in marketing, law, finance, health services delivery, management, and management information systems. The Office of Prepaid Health Care, through contractual arrangements, complements its existing staff by contracting with non-Federal experts to review applications. These experts bring a valuable operational perspective to the review of the documents connected with the applications.

The amount of the application fee for a new HMO and a regional component with a site visit is $18,400. This reflects, rounded to the next $100, the following: Staff time associated with processing an application equals .2 FTE for a cost of $9,500. This includes the time of one qualification officer (.11 FTE) for a cost of $5,212, two qualification technical specialists (.05 FTE) for a cost of $2,369, the Office of Qualification management staff who participate in meetings before and after the HMO site visit (.013 FTE) for a cost of $616, and support personnel (.027 FTE) for a cost of $1,279. Administrative costs associated with processing the application are $2,876. The cost of the specialist reviewers provided under contract is $6,000, which covers travel and per diem for two reviewers at about 5.5 days per reviewer, for a total of 11 days per application.

The amount of the application fee for qualification of a regional component without a site visit is $10,400. This reflects, rounded to the next $100, the following: Staff time associated with processing an application equals .175 FTE for a cost of about $8,300. This includes the time of one qualification officer (.11 FTE) for a cost of $5,212, a qualification technical specialist (.025 FTE) for a cost of $1,184, the Office of Qualification management staff (.013 FTE) for a cost of $616, and support personnel (.027 FTE) for a cost of $1,279. Administrative costs associated with processing the application are $2,122.

Because a request for a service expansion does not require an indepth review, the amount of the application fee for an HMO service area expansion is $6,900. (This reflects, rounded to the next $100, the following: Staff time associated with processing an application equals .114 FTE for a cost of about $5,400. This includes the time of one compliance officer (.055 FTE) for a cost of $2,606, a technical specialist (.025 FTE) for a cost of $1,184, the Office of Compliance management staff (.007 FTE) for a cost of $332, and support personnel (.027 FTE) for a cost of $1,279. If there is a site visit, administrative expenses are $1,639. If there is no site visit, administrative expenses are $1,383. Because the total amounts are very close, the application fee for both cases is $6,900.

The amount of the application fee for a CMP that applies to be a Federally qualified HMO is $3,100. This fee is based on the difference between the cost of processing an HMO qualification application ($18,400) and the cost of processing a CMP application ($15,300). The CMP cost reflects, rounded to the next $100, the following: Staff time associated with processing an application equals .15 FTE for a cost of $7,100. This includes the time of one eligibility officer (.11 FTE) for a cost of $5,212; one technical specialist (.025 FTE) for a cost of $1,184; the Office of Qualification management staff (.0065 FTE) for a cost of $308; and support personnel (.0085) FTE for a cost of $403. Administrative costs associated with processing the application are $2,157. The cost of the two specialist reviewers under contract is $6,000.

3. Inflation Factor

During the comment period, we received no public comments on this issue. However, we have decided that the application fees will not be adjusted to reflect inflation. We made this decision because the primary variables that we expect to affect the level of our future administrative costs are not directly related to available measures of inflation, which reflect economic trends that are largely external to our activities. Thus, a periodic review of the appropriateness of the level of these fees is more likely to ensure that they are maintained at the correct level than would an automatic increase mechanism.

4. Incomplete Applications

An applicant that submits an incomplete application before the effective date of this final rule will not be charged an application fee if the information needed to complete the application is received by HCFA within 10 business days after notification by HCFA that the application is incomplete. However, if the information necessary for completion of the application is received by HCFA after the 10th business day, HCFA will charge the appropriate application fee.

We believe that this flexibility is necessary because of the possibility that we may receive a large number of applications near the effective date and not have the opportunity to conduct checks for completeness before the effective date. We do intend, however, to respond to applications as quickly as possible.

B. Responses to Public Comments

A discussion of the public comments received timely concerning the proposed rule and our responses follows.

1. Public Benefits of Qualifications

Comment: Several commenters questioned our appraisal of the benefits of the HMO qualification process. The commenters pointed out that the general public is the real beneficiary of the HMO qualification process, since the public is assured that these entities meet a certain standard of health care. The commenters stated that under 31 U.S.C. 9701, application fees may be charged only to those benefiting directly from Federal services. These commenters argued that because the general public, and not HMOs, is the beneficiary of the qualification process, HCFA cannot charge HMOs application fees.

Response: While the ultimate benefit of the Federal government's efforts to assure that certain standards are maintained by HMOs goes to the purchaser of health care, the more immediate beneficiary is the HMO that is determined to be qualified. Section

1301 of the Public Health Service Act sets certain specific standards HMOs must meet, but the qualification process applies these standards to specific entities. Qualified organizations may then hold themselves out to the public as such and may use this information as a marketing tool to distinguish themselves from those entities that have not met these standards. Thus, HMOs that receive Federal approval receive an unquestioned benefit primarily because of guaranteed access to those segments of the market, public or private, that regard Federal qualification as necessary.

Comment: Several commenters questioned our appraisal of the benefits of the qualification process regarding the availability of Medicaid contracts and the preemption of certain restrictive State laws that may affect Federally qualified HMOs. They stated that non-Federally qualified HMOs may also contract under Medicaid. In addition, all States permit the operation of HMOs. Moreover, Federal authority is not necessary to override State law.

Response: It is correct that under section 1903(m) of the Social Security Act, States may contract with non-Federally qualified HMOs to serve Medicaid eligibles. However, a State may prefer to contract with a Federally qualified HMO because of specific Medicaid provisions that are not applicable to other HMOs. For example, under section 1903(m) of the Social Security Act, as amended by section 2364 of the Deficit Reduction Act of 1984 (Pub. 98–369), States that offer Medicaid recipients enrollment in Federally qualified HMOs may restrict recipients from disenrolling without cause to once every six months (after the first month). This guarantees continuity of membership, a major advantage when dealing with Medicaid recipients. In addition, under section 1902(e)(2) of the Social Security Act, as amended by section 9517 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272), States can provide Medicaid recipients up to an additional six months of eligibility beyond that which normally applies, if the beneficiary is a member of a Federally qualified HMO, thus further stabilizing the HMO's enrollment.

With regard to the benefits of Federal preemption of restrictive State laws governing HMOs, although there has never been a need to enforce this provision formally, its existence has been a deterrent in States that have received pressure from the fee-for-service sector to exercise further control on HMO operations. The existence of this provision has also encouraged States to change laws so that HMO development is not impeded.

Comment: One HMO stated that Federal authority to override State law is very narrow and should be broadened to apply to all State laws that restrict HMO operations in excess of Federal requirements.

Response: Legislation would be necessary to broaden section 1311 of the Public Health Service Act, which overrides certain State laws restricting HMO operations. However, we believe the Federal government should not intervene in State regulatory actions except when vital Federal purposes are at stake. Furthermore, we believe that the current law is sufficiently broad to ensure that this is the case.

Comment: Many commenters stated that many HMOs do not operate for corporate purposes but to enhance the public good, thus charging user fees is not within the scope of the law.

Response: It is not material whether an HMO operates on a for-profit or not-for-profit basis. Rather, the User Fee Statue permits charging a fee when the Government provides a service or thing of value to a particular entity. While all providers of health services may be considered to provide a public service, HMOs are provided a Government "seal of approval" through the qualification process. This seal of approval is a "service or thing of value" under the User Fee Statute.

Comment: One commenter stated that a Federally-qualified HMO serving the Medicaid population is considered by the Internal Revenue Service (IRS) to be providing a "community benefit" for purposes of qualifying for non-profit status, and therefore qualification should not be considered a private benefit.

Response: The criteria employed by the IRS for determining the non-profit status of an entity are not material to these regulations. As explained above, Medicaid contracts are available to Federally qualified HMOs as well as other HMOs that are not Federally qualified. However, Federally qualified HMOs are afforded certain advantages, such as restrictions on disenrollment, that are not available to other Medicaid-contracting HMOs. Also, Medicaid State agencies are paying customers, as are other group purchasers of HMO services. The private benefit that accrues to HMOs that seek qualification is that the entity is shown to meet a standard required by the purchaser, whether public or private, as opposed to those HMOs that do not meet this standard.

Comment: One HMO stated that if access to Medicare and Medicaid contracts is to be considered a private benefit, then Medicare and State Medicaid agencies should be required to pay HMOs their community rate.

Response: The Medicaid payment rate is a matter between the State and the HMO. The Federal government's interest in the rate is limited to requiring that payments to HMOs do not exceed the State's costs for providing the same services on a fee-for-service basis. However, no HMO is required to accept a Medicaid contract (or a Medicare contract).

The Medicare payment rate is mandated by section 1876(a)(1)(D) of the Act and is established as 95 percent of the adjusted average per capita cost (AAPCC). Our experience indicates that the cost of providing services of most risk contracting HMOs and CMPs is less than their Medicare payment.

Section 1876(g)(2) of the Act provides that any difference between their revenue requirements (which may include a profit margin based on the HMO's non-Medicare business) and their average Medicare payments must be returned either to the beneficiaries (in the form of additional benefits or reduced cost sharing) or to the Federal government. Of the 152 HMOs and CMPs that contract with Medicare on a risk basis (as of April 1987), 107 have returned these savings to Medicare beneficiaries.

Comment: One organization representing HMOs stated that in order to be in compliance with the User Fee Statute as interpreted by the courts, HCFA must exclude any expenses incurred to serve an independent public interest. An HMO suggested that HCFA "share" the cost of reviews equally with HMOs and CMPs.

Response: The United States Court of Appeals for the District of Columbia Circuit in Electronic Industries Association v. F.C.C., 554 F. 2d 1109, 1115 (D.C. Cir. 1976) has required that fee schedules under 31 U.S.C. 9701 exclude "any expenses incurred to serve an independent public interest." However, we have concluded that while the public inherently benefits from increased competition provided by the qualification of additional HMOs, these benefits derive almost exclusively from the additional provider choices made available to the public, and do not involve substantial, broad and independent public benefits unrelated to the purpose of the fee. Rather, the direct and substantial recipients of these benefits are the HMOs themselves. Indeed the D.C. Circuit held that an

agency "is not prohibited from charging an applicant or grantee the full cost of services rendered to an applicant which also result in some incidental public benefits." (*See*, 554 F.2d at 1115.) Therefore, it is appropriate that HMOs bear the entire cost of the application process.

Comment: Many commenters questioned the marketplace value of the HMO qualification process to organizations.

Response: While many commenters stated that Federal qualification is of little value in marketing plans to sophisticated employers and other purchasers of health care, others acknowledged that the Federal HMO qualification requirements set the benchmark for standards in HMO care and that both the public and the private purchaser perceive qualification as a selling point.

Even through grant funds have not been available to HMOs for several years, the number of applications for HMO qualification (including regional components) tripled, from 59 in 1984 to 173 in 1986, belying the assertion that the qualification process has no inherent value to plans. Furthermore, Federal qualification is voluntary for HMOs: those organizations that determine that this service is of negligible value may forego the service.

Since February 1, 1985, HMOs (and CMPs) have been able to contract with Medicare on a risk basis under section 1876 of the Social Security Act, implemented in regulations at 42 CFR Part 417, Subpart C—Health Maintenance Organizations and Competitive Medical Plans. However, only 18 of the 108 HMOs that have qualified since February 1985 have entered into risk contracts.

Comment: One commenter questioned whether access to Medicare contracts is a benefit to HMOs and CMPs. The commenter stated that Medicare contracts are of "dubious value."

Response: We are not proposing to charge application fees on the basis of the economic benefit of Medicare contracts to HMOs and CMPs. As a general matter, the ability to enter into a contract with the Federal government is not the kind of benefit for which user fees are levied under 31 U.S.C. 9701.

Comment: One commenter stated that any benefit accruing to an HMO from the dual choice provision of section 1310 of the Public Health Service Act is negated by the requirement that premiums be community rated. An HMO stated that some employers are angered by HMOs attempting to enforce the dual choice mandate, and may actively seek other HMOs to the exclusion of the HMO originally seeking dual choice.

Response: In the 1970s, the dual choice mandate (the requirement that employers offer federally qualified HMOs along with traditional fee-for-service insurance) was established as support for an "infant" industry. The existence of this feature of the law, along with the increasing sophistication of both the industry and employers, has made it less and less necessary to formally enforce dual choice requirements. In most cases, employers voluntarily offer HMO options to their employees.

Section 1301 of the Public Health Service Act requires that premiums for Federally qualified HMOs be community rated. However, there is no such requirement for CMPs under section 1876(b)(2) of the Social Security Act, but then neither is there a dual choice provision for CMPs under the Social Security Act.

2. Fees are inconsistent with intent of Title XIII of the Public Health Service Act

Comment: Many commenters claimed that imposition of fees is inconsistent with the purposes of Title XIII of the Public Health Service Act and with Congressional intent to encourage formation of HMOs. Several HMOs stated that implementing the proposed fee structure will significantly discourage the application process, thus undermining the purpose of Title XIII of the Public Health Service Act.

Response: As noted above, in enacting the User Fee Statute, Congress expressed its intent that Federal agencies charge for certain services so that the provision of these services is self-supporting to the extent possible. (*See*, 31 U.S.C. 9701(a).)

While it is true that the initial intent of Title XIII of the Public Health Service Act was to encourage the development of HMOs through grants and other means, it also remains true that applying the standards contained in the Title XIII of the Public Health Service Act benefits particular organizations. Conferring status as a Federally qualified HMO benefits the organization as opposed to an organization not similarly qualified. Determining this special status is a thing of value to the Federally qualified HMO, as contemplated in 31 U.S.C. 9701.

The Federal government continues to encourage HMOs and other forms of competition in the health care marketplace. Imposition of fees to reimburse the Federal government for costs of doing business, pursuant to specific Congressional authorization, is not inconsistent with these goals.

Comment: Many commenters urged that we exempt HMOs from application fees since the existence of these organizations increases competition in the health care field and slows the overall growth of health care costs, for instance, by reducing inpatient stays in hospitals.

Response: While competition is a healthy phenomenon in the health care market, and even though it may reduce the overall cost of health care, competition is not at issue in this rule. Rather, the issue is that fiscal circumstances require that the Federal government refrain from underwriting the costs of activities that benefit specific enterprises. It is also not clear that competition will be adversely affected by the imposition of application fees, since many commenters suggested that they may forego the qualification process and anticipate little or no diminution of business as a result of this choice.

Also, we expect the number of applications for HMO qualification (including regional components and service area expansions) to decrease slightly (by 20 to 30 fewer applications) in FY 1987 from the 173 received in FY 1986. This is based on the fact that from October 1, 1986 through April 30, 1987 (the most recent seven months for which we have data) we have received only 69 applications for HMO qualification. We believe the decrease reflects a general slowing in the growth of the HMO industry.

3. Simplying the application process

Comment: An HMO management firm suggested that the proposed fee levels should be closely re-examined for reasonableness in relation to a logical and efficient scope of work. The commenter suggested that the Federal qualification review could be completed in less than five days of each outside reviewer's time if we do not focus on points that are overblown in importance, but instead "target" the scope of Federal review. Also, the commenter stated that closer coordination with State regulatory efforts could help to focus on truly important issues. The commenter recommends that State filings and examinations could be reviewed by HCFA before a site visit.

Response: We have sought ways to streamline the review process as discussed below by our use of smaller onsite teams and off-site reviews when appropriate for regional components and for expansions. The Federal review is focused on meeting the legal requirements of Title XIII of the Public Health Service Act and the regulations

at 42 CFR Part 110. States have requirements that differ from the Federal requirements and differ from State to State. The Federal review does, however, include contracting the State during the review process and often coordinating State and Federal efforts.

Comment: A State HMO association stated that the procedures for HMO service area expansion are duplicative, wasteful, unnecessary, burdensome, and internally contradictory and thus, charging a fee is "outrageous." For example, when an individual practice association (IPA) model HMO is expanding into a contiguous county simply by contracting with physicians located in that county, HCFA subjects the HMO to, in essence, the qualification process all over again. That is, a different group reviews the same materials, documents, contracts, certificates, and financial plans that were previously reviewed and finds numerous areas to question, although the information was previously approved by HCFA reviewers. This procedure contrasts with the simple, streamlined paper process used by reviewers in this State.

Response: The difference in fees between a full qualification review ($18,400) and an HMO service area expansion ($6,900) already reflects the difference in complexity between these two types of reviews. Each expansion requires the submission of a separate application, and each requires an analysis to ensure that Federal requirements are met. For example, the review must include an analysis of the additional contracting requirements and the adequacy of the following—

- The delivery system;
- Insolvency coverage for the additional providers; and
- Marketing projections.

In addition, State practices for reviewing prepaid plans vary widely and may not compare with Federal requirements.

4. Costs to the Federal Government in Processing Applications

Comment: An HMO asserted that its staff members, under contract with HCFA, do site evaluations for Federal HMO qualifications and that the resulting evaluation reports are a major part of the approval process. Since these consultant HMO reviewers each receive $1,000 per evaluation, the commenter suggests that a Federal HMO application process could not cost HCFA $34,600.

Response: A number of calculations go into the derivation of the average consultant cost per day and, thus, the ultimate calculation of this part of the application processing costs. First, each consultant used is paid a salary of $225 per day. Days per site visit per consultant vary from five to seven days with five days being the most frequently billed. In addition, there are other costs associated with consultant use such as travel, per diem, and contract administration fees. The average cost per consultant day for FY 1986 was about $550 a day. Thus, the cost to the government for each consultant used is about $2,750 for five days of work or $3,300 for six days of work. The assumption in our calculation of the application fee for FY 1987 uses a conservative average figure of $3,000 per consultant per application.

Comment: A State HMO association stated that it is impossible that the average cost per FTE in the Federal government is $60,000 for FY 1986.

Response: The calculation described in the proposed rule at 51 FR 30519 of how we arrived at average salaries produced an accurate historical average based on average salary data from the Bureau of Health Maintenance Organizations and Resource Development, the organizational affiliation in the Public Health Service of the HMO program before its transfer to HCFA. These averages were used for ease of calculation and the need to use historical data to project averages, ensuring that the fees are fair and equitable.

Comment: Many commenters questioned the basis for the administrative cost of $5,900 that was included in the calculation of costs for an HMO qualification or HMO regional component application.

Response: The administrative expense component of the fee is based on a prorated historical share per FTE per application for building services, supplies, data processing, and so forth. Approximately 55 percent of these costs are non-discretionary and are billed to the program regardless of workload. However, since we have revised the estimate of FTE requirements from .41 FTE to .2 FTE, the administrative expense component has likewise been lowered to $2,876.

Comment: An HMO's need for service area expansion is a continual aspect of HMO development and marketing, often occurring in small increments. A charge of $17,300 for each increment is clearly unrealistic and excessive.

Response: We agree that HMO expansion application fees may make incremental expansions financially unwise for HMOs. Each requested expansion requires the submission of a separate application. Because each application requires an analysis, HCFA expends funds to complete these reviews regardless of the size of the expansion. Because the review of a service area expansion is less detailed than the initial review, the cost of HCFA's review, and thus the fee charged, is substantially lower.

HMOs that are concerned about the cost of a service area expansion ($6,900) may want to consider delaying small expansions until ready to market in two or more areas.

Comment: Some commenters stated that HCFA can often complete reviews for regional component applications without a site visit, and that it is unfair to charge the full fee if this circumstance applies.

Response: Although it is usual practice to conduct a full review of a regional component that consumes the same amount of time and resources as an initial HMO review, there are rare occasions when there is no on-site review. Generally, the determination of whether to conduct an on-site visit will be made on a case-by-case basis after examining the individual circumstance of the applicant. However, we have identified two examples of the circumstances in which we generally will not require an on-site review:

- Creation of a regional component will not have a significant effect on the financial condition of the HMO.
- If only a very short time has passed since we reviewed the HMO on site and there have been no changes in the financial condition of the HMO.

The proposed rule did not provide for this possibility. After detailed analysis, we have determined that the cost for the review of a regional component without a site visit will be $10,400. (One qualification officer, one specialist, management, and support time for a total of .175 FTEs (about $8,300), plus overhead expenses (about $2,100).) The savings are $6,000 in consultant fees, $800 in overhead, and .25 FTE staff time ($1,200).

Applicants for regional components should submit the entire $18,400, however, and, if in the rare instance it is determined that a site visit is not needed, the difference of $8,000 will be returned to the HMO.

Comment: Several commenters questioned the methodology HCFA used to develop the cost basis for the application fees proposed, in particular our failure to conduct a time/cost study to derive costs.

Response: We developed the cost basis for each fee in a logical manner by determining the number of applications expected and allotting staff time accordingly. We have dropped the

amounts of the fees substantially from those initially proposed because our staffing estimate in the proposed rule inadvertently included staff outside the Office of Qualification.

Comment: Several commenters stated that HCFA overstated the personnel commitment for HMO qualifications because the size of the review team for actual onsite evaluations is smaller than the figures included in the proposed rule.

Response: The proposed rule based the fee calculation on an on-site review team size of six for HMOs. The team size of six was the average until early 1985. However, with the greatly increased number of applications received in the past two years, little increase in Federal staff, and scarce consultant dollars available, it was necessary to conserve resources and limit team size. This often meant that the qualification officer or other team members would be responsible for more than one review area. Another result was the increased average processing time for qualification applications.

Because of the comments received on this issue, we have carefully reviewed our records and the needs of the qualification process and have determined that currently average team size is five, with six as a maximum, and we occasionally use smaller teams. Thus, we have lowered the fee for both new HMO applications and applications from Federally qualified HMOs seeking qualification for regional components from $34,600 to $18,400, which will pay for the costs of a qualification officer, two HCFA specialist reviewers, two outside consultants, and costs associated with management, support staff, and overhead.

Comment: Several commenters questioned whether review of an HMO qualification or regional component application actually requires a personnel commitment of .41 full-time equivalent positions (FTEs).

Response: As noted above, we have reviewed the personnel commitments contained in the NPRM and significantly revised the personnel requirements. It takes the staff time of .20 FTE Federal staff to process one HMO qualification application. In addition, some expansion and regional component applications do not require an on-site visit. (See response below for further detail.) Also, an FTE reflects only 40 full-time hours allocated per week per employee rather than additional and actual time necessary to meet tight deadlines.

Comment: Some commenters stated that the amount of revenue generated by the proposed fees is likely to exceed the total appropriation for the former Office of Health Maintenance Organizations (including the Divisions of Qualification and Compliance) by about $1.2 million. The commenters stated that this fact proves the proposed fees far exceed the costs of the service to HCFA.

Response: The amount of revenue to be generated from application fees will not exceed HCFA's costs of providing the service. We expect some reduction in the number of total applications received because of the imposition of fees and the stage of maturity of the HMO industry, from just under 180 in FY 1986 to approximately 150 in FY 1987. We expect these application fees to generate $2.8 million during the next 12 months. HCFA's budget for all qualification activities for FY 1987 is $3,048,650 for direct operations. In addition, the consultant contract budget for experts to be used in the review process is $1.1 million. All overhead services are provided by HCFA. The costs of these services are not separately broken down, but they include all training, supplies, equipment, and all other administrative support services. Because of the magnitude of these services, it is not possible that the funds generated from the fees could exceed HCFA's actual costs.

Comment: Some commenters stated that the size of the fees is greater than the value of the services to the plans.

Response: Although significant value does accrue to individual plans, it is difficult to measure that value dollar-for-dollar and plan-for-plan. We are basing the amounts of the fees on the costs to HCFA of providing the service, rather than the absolute numeric dollar amount of the value to the plan. We believe the fees reasonably reflect the cost of the service performed and the value conferred upon the payor.

5. Expansion into a Rural Service Area

Comment: A primarily rural, non-profit HMO stated that it is unreasonable to impose the same rates for each expansion into a rural service area where the enrollment potential is limited. The commenter wrote that the proposed fee schedule will prohibit development of Federally qualified HMOs in rural markets. Thus, the commenter suggested that HCFA base application fees on the size of the population in the expansion area. For service area expansions that fall below a minimum population size determined by HCFA, the application fee could be based on the HMO's actual costs and the projected number of members at breakeven or after three years. Thus, the fee would relate directly to the area's potential for development.

Response: Even though expansion fees may present a heavier burden per enrollee for small, new, or rural organizations that may expect membership to remain small, we have determined that a flat fee must be imposed. These fees are based on Federal government expenditure of resources for the overall qualification activity. Expansions proposed by small and new organizations often require more intense review than large, sophisticated or experienced organizations because they often require more time and attention between submission of the application and the site visit as well as after the site visit, when additional materials may be required to buttress the application. New HMOs have less experience in the review process and its requirements. Also, new HMOs often have less experienced staff and their systems are not firmly established so that the expansion review cannot build as readily on prior experience with the applicant's company.

It is also not feasible to vary fees based on the geographic location of the applicant or on the potential benefits to individual plans of each separate review. Therefore, we believe it is proper for organizations to share equally in the overall cost of the review activity. This method ensures that all applicants will be treated equally and that the Federal government will not favor certain organizations or types of organizations over others.

6. Alternative Methodologies for Calculating Fees

Comment: One commenter wrote that the proposed fee schedule will prohibit development of Federally qualified HMOs in rural markets. The commenter suggested that HCFA base application fees on the size of the population so that the fee would relate to the area's potential for development. Another HMO recommended that application fees be based on plan size and age, or that perhaps HCFA could defer fees until certain enrollment levels have been met. A consulting firm said that large HMO chains may forego qualification and rely on their corporate identity to assure quality, but that new independent HMOs, which are least able to afford fees, must continue to rely on Federal qualification services.

Response: We recognize that the application fee for HMOs will be proportionately more burdensome for small, new, or rural organizations where the potential pool of enrollees is not as large. However, we do not believe that the size of the fee (which has been reduced to $18,400) will prohibit development of these HMOs. We

considered varying the fees based on the size of the organization. However, the fee is based on the Federal government's expenditure of resources to complete a review. This expenditure of resources is approximately the same regardless of the size of the organization. In fact, small, new organizations often require more intense review than large, sophisticated or experienced organizations because their applications are often incomplete or not detailed enough and their systems (for instance for quality control and financial management) are not firmly established. Therefore, we decided that it would be unfair to vary the fee based on projected enrollment or other factors.

Comment: One commenter suggested that proposed regional component applications submitted within six months of an initial qualification application should not be subject to a fee because those applications would be similar to the initial application in most sections and because HCFA would not have to expend significant resources to review them.

Response: As explained above, when the on-site visit is unnecessary, we will return the portion ($8,000) of the fee that would have been needed to conduct an on-site visit. However, even if an application for a regional component is received shortly after qualification, it is still our practice to send a team on-site to review the adequacy of the delivery system, any additional funding, insolvency, adequacy of marketing projections, and community rating. Since we perform a review, we charge a fee for this service.

7. Deferring Collection of Application Fees

Comment: One HMO requested that we defer the collection of application fees until new HMOs meet a certain enrollment level.

Response: It is not feasible to make fees contingent upon an eligible organization reaching a certain enrollment level. The costs to the Federal government are incurred prior to the qualification of an HMO and often even before a plan becomes operational. HMOs experience certain start-up costs that must be paid regardless of the plan's subsequent financial success; application fees must be considered another start-up cost.

8. Shifting Costs of Application Fees to Consumers

Comment: Many commenters suggested that application fees will be passed on to consumers. One HMO said that it is unrealistic to expect that the application fee can be recovered from enrollees in the current market environment.

Response: We expect that application fees may be passed on to consumers but expect the increase in individual premiums to be only a fraction of one percent.

Comment: One commenter suggested that fees will serve to increase HMO costs and to reduce the amount of additional benefits available to Medicare enrollees of HMOs.

Response: Section 1876(g)(2) of the Social Security Act provides that the difference between the costs of the HMO in furnishing services covered by Medicare (that is, the adjusted community rate) and the average amount HCFA pays for those services (payment for which is standardized, based on the county of residence and certain other factors concerning beneficiaries) must be returned to Medicare beneficiaries in the form of additional services, reduced premiums, or both. We are aware that increased HMO costs will reduce amounts available for additional benefits or reduced premiums although all HMOs providing health care services to Medicare beneficiaries must provide the minimum basic services. However, we expect the effect on individual beneficiaries to be negligible (that is, an increase in premiums of less than one percent, as stated above). If costs are passed on, they would be shared by HMO members, including Medicare beneficiaries.

Comment: One HMO said that Medicare beneficiaries and the Medicare Trust Fund are the real recipients of the benefits of Medicare contracts with HMOs because section 1876(g)(2) of the Social Security Act requires that "savings" be passed on to beneficiaries or returned to the Government.

Response: The adjusted community rate calculation for Medicare contracts permits HMOs to figure their usual profit margin into its costs for providing Medicare benefits. Only Medicare payments in excess of the adjusted community rate must be passed on to beneficiaries or returned to HCFA. However, the purpose of this regulation is to implement application fees for HMOs that benefit from the marketing advantages of the Federal "seal of approval" confirmed on qualified plans and the "dual choice" provision of section 1310 of the Public Health Service Act.

9. Fairness of fees for HMO applications only

Comment: Many commenters stated that HMOs are being treated unfairly because the Federal government does not charge a fee for certification of hospitals, skilled nursing facilities, home health agencies, laboratories, and other entities that must be certified in order to participate in Medicare.

Response: We may consider whether applying other types of user fees would be appropriate for other types of Medicare providers. In addition, qualifying for participation in Medicare is not free to hospitals. Most hospitals seek qualification through the Joint Committee on Accreditation of Hospitals in lieu of certification by Medicare. That organization does charge a fee for its accreditation services.

Comment: One commenter questioned the distinction between—

- The Federal HMO qualification process, which HCFA stated in the proposed rule primarily benefits the HMO and should be subject to application fees; and
- A review concerning whether an HMO continues to comply with Federal government requirements, which HCFA stated in the proposed rule primarily benefits the public at large (rather than an individual HMO).

Response: We agree that there is little distinction between the benefits to the public in the qualification process and in compliance reviews. Our original conclusion that the public benefits more from compliance reviews than does an individual HMO is arguable. The HMO benefits from continued compliance with financial stability and other qualification requirements in exactly the same way it benefits from initial qualification. Compliance reviews assure a continued market position for a qualified HMO, which for an HMO serves the same objective of the original application. Therefore, we are leaving open the question of fees for compliance reviews at this time. If, in the future, we consider initiating fees for compliance reviews, we would publish a proposed rule for public comment, which would include the proposed fees.

Comment: Several commenters questioned the fairness of imposing a fee now on the HMO qualification process since over 400 HMOs have already become qualified without being charged a fee. One commenter added that instead of application fees, the Federal government should impose a one time fee of all currently Federally qualified HMOs.

Response: Although the statute authorizing application fees was implemented in 1951 (*see*, section 501 of

Pub. L. 82–137, which enacted 31 U.S.C. 483a, later amended and recodified in 1982 as 31 U.S.C. 9701 by section 1 of Pub. L. 97–258), the Federal government has not chosen heretofore to exercise this authority with respect to the HMO qualification process, which began in 1974. However, failure to exercise authority does not abrogate its existence. We have determined that imposition of fees at this time is necessary, and it is appropriate to assess these fees against future users of this service. While 497 HMOs and regional components have been qualified since implementation of the Public Health Service Act in 1973, and have received the service for free in the past, HMOs will be assessed fees in the future for service area expansions and qualification of additional regional components.

The Federal government is not permitted to impose a retrospective fee on all currently qualified HMOs because such a fee is not permitted by the User Fee Statute.

10. Application fees as new taxes

Comment: Several commenters complained that Medicare is already saving money from contracts with HMOs and that the Federal government should not attempt to share further in HMO revenues. Some commenters suggested that the fees for HMOs attempting to qualify for a Medicare contract are taxes to be paid merely for the privilege of contracting with Medicare.

Response: The application fees we are instituting are not an attempt to share in the HMO industry profit. Rather, they are intended to eliminate costs now borne by the public to benefit the recipients of the qualification.

The proposed fee is also not a tax for the privilege of contracting with Medicare. Rather, Medicare should be viewed on a par with other group health plans seeking contracts for prepaid health care. The purchaser (Medicare or another group) seeks services meeting a certain standard (HMO qualification) and the HMO, in exchange for a capitated fee, seeks to provide service meeting the required standard.

Comment: One commenter stated that Federal taxes already are paid to support the qualification activity and that fees are in effect double taxation.

Response: HCFA's budget has been reduced by the amount expected to be collected in fees. These fees, which have been upheld consistently by the courts when promulgated in compliance with 31 U.S.C. 9701 (*See,* for example, Aeronautical Radio, Inc. v. United States, 335 F.2d 304, cert. denied 379 U.S. 966 (1964); Clay Broadcasting Corp. of Texas v. United States, 464 F.2d 1313 (5th Cir.), rev'd on other grounds 415 U.S. 336 (1972); National Cable Television Association, Inc. v. F.C.C., 554 F.2d 1094 (D.C. Cir. 1976); New England Power Co. v. U.S. Nuclear Regulatory Commission, 683 F.2d 12 (1st Cir. 1982).) are intended to replace Federal taxes by placing the financial responsibility for the activity on the user.

11. Impact of application fees on eligible organizations

Comment: One commenter stated that imposing application fees would—

- Force HMOs to expand too rapidly in order to avoid a succession of fees for incremental expansions.
- Encourage organizations to quality as CMPs because of the lower proposed application fees for CMPs.

Response: The Federal government will deny qualification in a proposed new area to an organization that attempts to expand without meeting the requirements of the law and regulations. HMOs are free to expand their operations at any time but may wish to defer applying for Federal qualification of small incremental areas. An organization that prefers to be certified as a CMP rather than a Federally qualified HMO may do so, but the organization will forego the benefits of the dual-choice mandate and other benefits of Federal qualification.

Comment: A CMP asserted that large insurers (presumably HMOs) that have been in business for several years with many enrollees and that have cash reserves to fund these fees are being given an unfair advantage over smaller plans, which will discourage some small or newly developing plans from seeking qualification. An HMO asserted that the impact of these "exorbitant" fees will fall greatest upon the smaller and non-profit organizations that do not have sizeable sums of money available.

Response: Although the application fees may impact more heavily on small, new, or rural organizations, we believe it is both unfair and impractical to vary fees based on these factors. Nonprofit organizations may raise premiums to recoup fees without jeopardizing their nonprofit status. Although some organizations may find it difficult to raise funds to pay these fees, it is not feasible for the Federal government to continue to bear these costs, and Congress has expressed its intent that the government not do so. (*See,* 31 U.S.C. 9701(a).)

Comment: A rural HMO claimed that the proposed fee (of $17,300) for expansion of a service area is nearly devastating, representing one-month's administrative income. The commenter added that because counties in its region have only 1,100 to 2,000 residents, anyone can figure out when such an expansion could pay for itself. A group practice model HMO with 5,700 members claimed that $34,600 for a regional component application would be a major preconditioned commitment, representing an outlay about equal to 10 percent of its current "tangible net worth". However, the HMO claims that it must expand in the long-term due to competition.

Response: The fee has been substantially lowered from the level proposed to $6,900. However, a rural HMO that considers this reduced amount excessive may want to delay incremental expansion in nearby counties until it is ready to expand in a sufficient number of counties with potential new enrollees to offset fees. HMOs contemplating establishing regional components in contiguous geographic areas may consider service area expansions instead, for a much smaller fee.

Comment: Several persons stated that the fees would discourage applications for HMO qualification, and that this would result in both a decline in quality and increased costs in non-Federally qualified HMOs.

Response: We estimate that the total revenues generated by these fees for HMOs will be less than $2 million in Federal FY 1987. This would represent a very small percentage of revenues of applying entities.

However, we expect a slight decline in the number of applications as a result of imposition of fees. We also expect this trend to be mitigated somewhat by the continued demand by employer groups and other purchasers for an independent review of HMO operations.

While non-Federally qualified HMOs will not be prohibited from reducing quality and inappropriately increasing charges, these organizations would find it difficult to compete in a market in which other organizations are improving services and reducing charges. For example, only Federally qualified HMOs and certified CMPs may contract with the Medicare program. Both types of plans must maintain quality assurance systems that are subject to review by Utilization and Quality Control Peer Review Organizations (PROs), established under title XI of the Social Security Act.

Comment: One commenter stated that decreased demand for qualification of plans that would result from qualification fees will, in turn, result in

lack of uniform monitoring of plan performance. Because fewer plans will be qualified, fewer plans will be monitored for compliance with Federal standards.

Response: As discussed above, we do expect that demand for qualification activities will decrease by 20 to 30 applications for FY 1987. This decrease is not related to the imposition of these nominal application fees, but is due to the fact that the recent growth in the number of HMOs being organized has begun to slow down. While it is true that non-Federally qualified HMOs will not be monitored for compliance with Federal standards, we expect that continued demand by employer groups and other purchasers for an independent review of HMO operations will lead these purchasers to seek out federally qualified HMOs to an even greater extent than in the past. In addition, a State government has oversight responsibilities for plans that operate in the State. (Even Federally qualified HMOs must be State licensed or meet the requirements set by a State.)

Comment: One commenter stated that Medicare contracts are an "increasingly marginal financial venture" for many plans, and the fees would make some Medicare plans nonviable.

Response: Organizations wishing to qualify for Medicare contracts, which do not wish also to take advantage of the dual choice mandate and other advantages of Federation qualification, may qualify as CMPs at no charge.

Comment: Many commenters said that since HMOs must bear the full cost of the fee prior to qualification, it is unfair for HCFA to amortize the fee over five years in its consideration of the impact of this rule.

Response: Our discussion in the proposed rule was intended only as an illustration of the relatively small order of magnitude of the anticipated fiscal impact. We did not intend to suggest that an affected entity should amortize the fee for tax purposes. In any event, because a Federally qualified HMO is subject to an annual compliance review, we were incorrect to suggest amortizing this intangible asset over a five-year period.

12. Other issues

Comment: One commenter stated that imposition of fees is not logical if title XIII of the Public Health Service Act is repealed, which is a goal of the Department.

Response: If Title XIII of the Public Health Service Act is repealed, qualification services would no longer be supplied by the Federal government. While qualification services are being provided, it is necessary to charge application fees.

Comment: One commenter stated that, under 31 U.S.C. 9701, the fees collected from HMOs will be deposited in the U.S. Treasury and will not accrue to HCFA.

Response: We are aware of this fact and have submitted a 1988 budget proposal that would allow us to credit any amounts collected to the HCFA appropriation. In addition, we plan to submit a legislative proposal that would allow HCFA to be credited with any amount of money raised by application fees to the appropriation on a recurring basis.

Comment: One commenter stated that the timing of our proposal to institute fees is poor, in that the Public Health Service Act "has not sunset" and Federal HMO qualification is of "questionable benefit."

Response: The timing of this proposal is related to budget deficits and the need to conserve public funds for vital public purposes. Should the applicable sections of the Public Health Service Act be repealed or organizations fail to request qualification or certification services to the same extent as in the past, HCFA will be prepared to adjust its operations.

Comment: The commenter stated that Federal law, including the Public Health Service Act, does not permit imposition of fees.

Response: Our authority for imposition of fees is 31 U.S.C. 9701 (Fees and charges for Government services and things of value). Title XIII of the Public Health Service Act neither authorizes nor prohibits fees.

Comment: One commenter suggested that this rule should not be implemented because it is an attempt to obtain money from the HMO and CMP industries as a result of their monetary success.

Response: We have determined that it is proper under 31 U.S.C. 9701 (User Fee Statute) to charge an application fee when qualifying HMOs. The amount of these fees is based on the cost to the Federal government of performing these services, and is reasonably related to the value conferred on the HMO. It is not designed as a mechanism through which to arbitrarily extract money from the HMO industry.

IV. Changes to the Regulations

We indicated in the proposed rule that we intended to move 42 CFR Part 110—Health Maintenance Organizations to 42 CFR Part 417—Qualification of Health Maintenance Organizations. However, because of the need to change cross-references to regulations and references to organizations, the task amounts to more than a single redesignation. Therefore, we plan to accomplish the move in a separate rulemaking document in the near future. In summary, we have made the following revisions in the final rule.

- In 110.604, we provide rules for collection of an application fee for—(1) an entity seeking to become an HMO; and (2) an HMO seeking qualification of a regional component or expansion of its service area.
- In 417.406, we provide that HCFA has the responsibility for determining if an entity is an eligible organization.
- We amended 417.494 to include the definition for "Health Maintenance Organization."
- We amended 434.2 to revise the definition for "Federally Qualified HMO."

V. Regulatory Impact Analysis

A. Background

Executive Order (E.O.) 12291 requires us to prepare and publish a final regulatory impact analysis for any final regulation that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in: an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a final regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a final regulation will not have a significant economic impact on a substantial number of small entities. for purposes of the RFA, we treat all HMOs as small entities.

In light of the significant amount of interest shown by commentors concerning the proposed rule and the questions raised as to the economic effects on a substantial number of HMOs as a result of this rule, we have voluntarily prepared a combined final regulatory impact analysis and regulatory flexibility analysis.

A majority of the 36 timely items of correspondence received on the proposed rule addressed the issue of the derivation of our application fee charges. Many of the criticisms brought up by the commenters on this issue were valid. After analyzing the potential consequences, we determined that these

application fees should be lowered to a point that more accurately reflected our true costs of providing Federal qualification of HMOs.

In commenting, small or rural HMOs argued that the application fees in the proposed rule would have hindered competition, and constituted substantial barriers to market entry and subsequent expansion within the HMO market. They stated that the amounts of the fees, particularly the fees for expansion, were so high compared to the additional revenue expected from expanding, especially in rural areas, that they were a disincentive for those entities to expand.

In the proposed rule, we stated that the cost of the fees would not be an imposition and provided an analysis of the economic data on which we based that statement. As stated in that proposed rule, in only one case would the proposed fee have been as much as one-half of one percent of the HMO's five-year expenses. Based on our analysis, even small HMOs would not be adversely affected. We continue to believe that neither the proposed nor the revised fees would have any anticompetitive effects.

As of April 30, 1987, there were 467 active, Federally qualified HMOs (including regional components). This is a substantial increase from earlier years, despite the termination of grant and loan subsidies early in this Administration. For a variety of reasons, including their demonstrated ability to contain health costs while providing quality health care, and the "dual choice" provision of section 1310 of the Public Health Service Act, HMOs have been a rapidly growing segment of the American health care delivery and financing system. As of June 1986, HMOs enrolled about 23.6 million persons as compared to 18.9 million persons in 1985 (InterStudy's National HMO June 1986 Update). This is a 24.9 percent increase. Revenues for 1985 were about $15 billion, an increase of about 25 percent from the prior year.

The revenue estimates for this final rule are based on 1986 data. Figures for 1987 should not differ significantly. In 1986, 66 entities sought qualification as an HMO; 92 HMOs sought qualification of a regional component; and 14 HMOs sought expansions. If a site visit is required to qualify a regional component, the fee is the same as for an entity seeking qualification as an HMO—$18,400. If a site visit is not required, the fee is $10,400. With or without a site visit, the fee for an expansion will be $6,900. The fee for a CMP seeking qualification as an HMO is $3,100.

In most, if not all, cases an HMO could recover the cost of the fee simply by increasing its premium a fraction of one percent. We therefore conclude that the imposition of these lowered fees will not have a significant effect on the financial viability of any HMOs, hinder competition, create a significant barrier to entry, or have any other adverse economic effect.

As stated above, in preparing the proposed rule, we also examined the possibility of imposition of fees for the ongoing compliance reviews of already qualified HMOs. We stated that we believe that those reviews, which serve to assure that HMOs continue to meet the financial stability and other requirements for Federal qualification, benefit the public at large (as opposed to the individual HMO) to a greater extent than do initial qualification reviews. Based on comments, we have reconsidered this conclusion, are analyzing the possibility of fees for compliance reviews, and may deal with it in a future rulemaking.

In addition, we also considered charging lower fees (perhaps related to projected revenues) for the smallest applicants. However, we do not believe that any applicants are small enough to find these lowered fees excessively burdensome. Further, the procedures and costs for reviewing applications are virtually identical for all applications, except when deficiencies require extra review. Because the smallest entities do not have the resources and sophistication of larger organizations, the cost of reviewing their less sophisticated applications is, if anything, higher. Thus, charging a flat fee unrelated to size is itself arguably a slight preference for such applicants. Therefore, we rejected this option.

VI. Other Required Information

A. Paperwork Reduction Act

Section 110.604 contains information collection requirements that are subject to Office of Management and Budget approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501) and has approved them (OMB Control No. 0938-0470).

List of Subjects

42 CFR Part 110

Grant programs/health, Health care, Health facilities, Health insurance, Health maintenance organizations, Loan programs/health.

42 CFR Part 417

Administrative practice and procedures, Health maintenance organization (HMO), Medicare.

42 CFR Part 434

Grant programs-health, Health maintenance organizations (HMO), Medicaid, Reporting and recordkeeping requirements.

Title 42 CFR is amended as set forth below:

TITLE 42—PUBLIC HEALTH

I. Chapter I, Part 110 is amended as follows:

CHAPTER I—PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH AND HUMAN SERVICES

PART 110—HEALTH MAINTENANCE ORGANIZATIONS

A. Subpart A is amended as follows:

Subpart A—Requirements for a Health Maintenance Organization

1. The authority citation for Subpart A is revised to read as follows:

Authority: Sections 215 and 1301 through 1318 of the Public Health Service Act, as amended (42 U.S.C. 216 and 300e through 300e-17).

2. Section 110.101 is amended by republishing the text of the introduction and by adding the following definition in alphabetical order:

§ 110.101 Definitions.

As used in this part: * * *

"HCFA" stands for Health Care Financing Administration.

* * * * *

B. Subpart F is amended as follows:

Subpart F—Qualification of Health Maintenance Organizations

1. The authority citation for Subpart F is revised to read as follows:

Authority: Sections 215 and 1301 through 1318 of the Public Health Service Act, as amended (42 U.S.C. 216 and 300e through 300e-17); and 31 U.S.C. 9701.

2. Section 110.604 is revised to read as follows:

§ 110.604 Application requirements.

(a) *General requirements.* This section sets forth application requirements for entities that seek qualification as HMOs; HMOs that seek expansion of their service areas; and HMOs that seek qualification of their regional components as HMOs.

(b) *Completion of an application form.* (1) In order to receive a determination concerning whether an entity is a qualified HMO, an individual authorized to act for the entity (the applicant) must complete an application form provided by HCFA.

(2) The authorized individual must describe thoroughly how the entity meets, or will meet, the requirements for qualified HMOs described in the Act and in Subparts A and F of this part.

(c) *Collection of an application fee.* In accordance with the requirements of 31 U.S.C. 9701, Fees and charges for Government services and things of value, HCFA determines the amount of the application fee that must be submitted with each type of application.

(1) The fee is reasonably related to the Federal government's cost of qualifying an entity and may vary based on the type of application.

(2) Each type of application has one set fee rather than a charge based on the specific cost of each determination. (For example, each Federally qualified HMO applicant seeking Federal qualification of one of its regional components as an HMO is charged the same amount, unless the amount of the fee has been changed under paragraph (f) of this section.)

(d) *Application fee amounts.* The application fee amounts for applications completed on or after [effective date of the final rule] are as follows:

(1) $18,400 for an entity seeking qualification as an HMO or qualification of a regional component of an HMO.

If, in the case of an HMO seeking qualification of a regional component, HCFA determines that there is no need for a site visit, $8,000 will be returned to the applicant.

(2) $6,900 for an HMO seeking expansion of its service area.

(3) $3,100 for a CMP seeking qualification as an HMO.

(e) *Refund of an application fee.* HCFA refunds an application fee only if the entity withdraws its application within 10 working days after receipt by HCFA. Application fees are not returned in any other circumstance, even if qualification or certification is denied.

(f) *Procedure for changing the amount of an application fee.* If HCFA determines that a change in the amount of a fee is appropriate, HCFA issues a notice of proposed rulemaking in the **Federal Register** to announce the proposed new amount.

(g) *New application after denial.* An entity may not submit another application under this subpart for the same type of determination for four full months after the date of the notice in which HCFA denied the application.

(h) *Disclosure of application information under the Freedom of Information Act.* An applicant submitting material that he or she believes is protected from disclosure under 5 U.S.C. 552, the Freedom of Information Act, or because of exceptions provided in 45 CFR Part 5, the Department's regulations providing exceptions to disclosure, should label the material "privileged" and include an explanation of the applicability of an exception described in 45 CFR Part 5.

II. Chapter IV, is amended as follows:

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

A. Part 417 is amended as follows:

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

1. The authority citation for Part 417 is revised to read as follows:

Authority: Secs. 1102, 1833(a)(1)(A), 1861(s)(2)(H), 1871, 1874, and 1876 of the Social Security Act as amended (42 U.S.C. 1302, 13951(a)(1)(A), 1395x(s)(2)(H), 1395hh, 1395kk, and 1395mm); section 114(c) of Pub. L. 97-248 (42 U.S.C. 1395mm note); section 1301 of the Public Health Service Act (42 U.S.C. 300e); and 31 U.S.C. 9701.

2. Subpart C is amended as follows:

Subpart C—Health Maintenance Organizations and Competitive Medical Plans

a. Section 417.406 is revised to read as follows:

§ 417.406 Eligible organization determinations.

(a) *Responsibility for making determinations.* (1) HCFA has the responsibility for determining if an entity is an eligible organization.

(2) The application requirements for eligible organizations are set forth in § 110.604 of this title.

(i) Paragraphs (a), (b), (f), (g), and (h) of that section apply to any entity that seeks a determination that it is an eligible organization.

(ii) Paragraphs (c), (d), (e), and (f) of that section apply only to an entity that seeks qualification as an HMO or an HMO.

(3) HCFA uses the procedures set forth in § 110.605 (a) through (d) of this title in determining whether an entity meets the definition of a competitive medical plan as set forth in § 417.407(b). For purposes of this paragraph, references in those sections to "qualified HMO" are deemed references to "competitive medical plan" and references to requirements for qualification are deemed references to the requirements contained in the definition of "competitive medical plan", except that references in those sections to the requirements of section 1301 of the Public Health Service Act, Subpart A of Part 110, and § 110.603 apply only to HMOs and not to CMPs.

(b) *Oversight of continuing eligibility.* (1) HCFA is responsible for overseeing an entity's continuing compliance with the definition of an eligible organization as set forth in § 417.407.

(2) If an entity no longer meets the definition of an eligible organization, HCFA will terminate the entity's contract as specified in § 417.494(b)(iii).

b. In § 417.407, paragraph (b) is revised to read as follows:

§ 417.407 Definition of an eligible organization.

* * * * *

(b) *Health maintenance organization (HMO).* An HMO is a legal entity that is a qualified HMO as defined in section 1301 of the Public Health Service (PHS) Act. The regulations for qualified HMOs are set forth in Subpart A of Part 110 of this title.

* * * * *

§ 417.494 [Amended]

c. In § 417.494, paragraph (b)(1)(iii) is amended by replacing the acronym "PHS" with "HCFA".

B. Part 434 is amended as follows:

PART 434—CONTRACTS

1. The authority citation for Part 434 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

§ 434.2 [Amended]

2. In § 434.2, the definition for "Federally Qualified HMO is amended by replacing "Public Health Service (PHS)" with "HCFA."

(Catalog of Federal Domestic Assistance Programs No. 13.773, Medicare-Hospital Insurance Program and No. 13.774, Medicare-Supplementary Medical Insurance Program)

Dated: April 29, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: May 15, 1987.

Don M. Newman,

Acting Secretary.

[FR Doc. 87-13361 Filed 6-10-87; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA-6910]

Changes in Flood Elevation Determinations; Arkansas et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Interim rule.

SUMMARY: This rule lists those communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer insurance on existing buildings and their contents.

DATES: These modified elevations are currently in effect and amend the Flood Insurance Rate Map (FIRM) in effect prior to this determination.

From the date of the second publication of notice of these changes in a prominent local newspaper, any person has ninety (90) days in which he can request through the community that the Administrator, reconsider the changes. These modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevation determinations are available for inspection at the office of the Chief Executive Officer of the community, listed in the fifth column of the table. Send comments to that address also.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2768.

SUPPLEMENTARY INFORMATION: The numerous changes made in the base (100-year) flood elevations on the FIRM(s) make it administratively infeasible to publish in this notice all of the modified base (100-year) flood elevations contained on the map. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

Any request for reconsideration must be based on knowledge of changed conditions, or new scientific or technical data.

These modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 65.4.

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.

These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

These elevations, together with the floodplain management measures required by 60.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time, enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities.

The changes in the base (100-year) flood elevations listed below are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a signficant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains.

PART 65—[AMENDED]

The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127. Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arkansas: Pulaski	City of Little Rock	Apr. 16, 1987, and Apr. 23, 1987, *Arkansas Democrat.*	The Honorable Thomas A. Prince, Mayor of the City of Little Rock, City Hall, Room 203, Markham and Broadway Streets, Little Rock, AR 72201.	Apr. 1, 1987	050181
Arkansas: Benton	City of Rogers	Apr. 23, 1987, and Apr. 30, 1987, *Northwest Arkansas Morning News.*	The Honorable John W. Sampier, Jr., Mayor of the City of Rogers, 300 West Poplar Street, Rogers, AR 72756.	Apr. 17, 1987	050013B
California: Sacramento	City of Sacramento	May 8, 1987, and May 15, 1987, *Sacramento Bee.*	The Honorable Anne Rudin, Mayor, City of Sacramento, Mayor and Council Offices, 915 "I" Street, Room 205, Sacramento, CA 95814-2684.	Apr. 28, 1987	060266C
California: Sacramento	City of Sacramento	May 28, 1987, and June 4, 1987, *Sacramento Bee.*	The Honorable Anne Rudin, Mayor, city of Sacramento, Mayor and Council Offices, 915 I Street, Room 205, Sacramento, CA 95814-2684.	May 19, 1987	060266C
California: Santa Barbara	Unincorporated areas	May 7, 1987, and May 14, 1987, *Santa Barbara News-Press.*	Mr. David Yager, County Supervisor, Santa Barbara County, 105 E. Anapamu Street, Santa Barbara, CA 93101.	Apr. 28, 1987	060331C
Florida: Clay County	Unincorporated areas	May 14, 1987, and May 21, 1987, *Clay County Crescent.*	The Honorable Larry R. Lancaster, Chairman, Clay County Board of Commissioners, Clay County, County Courthouse, P.O. Box 1366, Green Cove Springs, FL 32043.	May 6, 1987	120064
Georgia: Bibb and Jones	City Macon of and Bibb County.	Dec. 19, 1986, and Dec. 26, 1986, *Macon Telegraph and News.*	The Honorable George Israel, Mayor, city of Macon, P.O. Box 247, Macon, GA 31298.	Dec. 12, 1986	130011
Georgia: Cobb	City of Marietta	May 22, 1987, and May 29, 1987, *Marietta Daily Journal.*	The Honorable Vicki Chastain, Mayor, city of Marietta, P.O. Box 609, 205 Lawrence Street, Marietta, GA 30061.	May 11, 1987	130226
Iowa: Scott	City of Bettendorf	May 2, 1987, and May 9, 1987, *Quad City Times.*	The Honorable William C. Glynn, Mayor, city of Bettendorf, 1609 State Street, Bettendorf, IA 52722.	April 20, 1987	190240
Iowa: Mills	City of Emerson	Mar. 19, 1987, and Mar. 26, 1987, *Melbern Leader.*	The Honorable Quentin Johnson, Mayor, city of Emerson, City Hall, 410 Manchester, Emerson, IA 51533.	Mar. 9, 1987	190202
Maryland: Hartford	Town of Bel Air	Apr. 23, 1987, and Apr. 30, 1987, *The Aegis.*	The Honorable William N. McFaul, Town Administrator, 39 Hickory Avenue, Bel Air, MD 21014.	Apr. 2, 1987	240042

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Massachusetts: Worcester	City of Leominster	Apr. 13, 1987, and Apr. 20, 1987, *Fitchburg-Leominster Sentinel and Enterprise.*	The Honorable Richard Girouard, Mayor of the City of Leominster, City Hall, 25 West Street, Leominster, MA 01453.	Apr. 6, 1987	250314
Minnesota: Anoka	City of Coon Rapids	Mar. 20, 1987, and Mar. 27, 1987, *Coon Rapids Herald.*	The Honorable Robert Lewis, Mayor, City of Coon Rapids, 1313 Coon Rapids Boulevard, Coon Rapids, MN 55433.	Mar. 13, 1987	270011
Minnesota: Rice	City of Northfield	May 20, 1987, and May 27, 1987, *Northfield News.*	The Honorable William E. Gill, Mayor, City of Northfield, 801 Washington Street, Northfield, MN 55057.	May 13, 1987	270406
Ohio: Lorain	City of Lorain	Dec. 17, 1986, and Dec. 24, 1986, *Lorain Journal.*	The Honorable Alex M. Olojko, Mayor, City of Lorain, City Hall, 200 West Erie Avenue, Lorain, OH 44052.	Dec. 8, 1986	390351
Tennessee: Knox	Unincorporated areas	Apr. 6, 1987, and Apr. 13, 1987, *Knoxville News Sentinel.*	Honorable Dwight Kessel, Knox County Executive, City-County Building, Suite 651, 400 Main Street, Knoxville, TN 37902.	Mar. 27, 1987	475433
Tennessee: Shelby	Unincorporated areas	Feb. 6, 1987, and Feb. 13, 1987 *Commercial Appeal.*	The Honorable William N. Morris, Jr., Mayor, Shelby County Administration Building, 160 North Mid America Mall, Suite 850, Memphis, TN 38103.	Feb. 2, 1987	470214
Texas: Denton	Town of Corinth	Apr. 6, 1987, and Apr. 13, 1987 *Denton Record-Chronicle.*	The Honorable Shirley Spellersberg, Mayor of the town of Corinth, Route 3, 2003 South Corinth, Denton, TX 76205.	Apr. 1, 1987	481143
Texas: Tarrant	City of Keller	Mar. 27, 1987, and Apr. 3, 1987, *Fort Worth Star-Telegram.*	The Honorable Bruce Lee, Mayor of the city of Keller, 158 South Main, P.O. Box 770, Keller, TX 76248.	Mar. 16, 1987	480602B
Wisconsin: St. Croix	City of Hudson	Apr. 16, 1987, and Apr. 23, 1987, *Hudson Star Observer.*	The Honorable Mary Ellisson, Mayor, City of Hudson, City Hall, 505 Third Street, Hudson, WI 54016.	Apr. 6, 1987	555558
Wisconsin: St. Croix	Village of North Hudson	Apr. 16, 1987, and Apr. 23, 1987, *Hudson Star Observer.*	The Honorable Wallace Gregerson, Village President, Village of North Hudson, 400 Seventh Street, North, North Hudson, WI 54061.	Apr. 6, 1987	555568
Wisconsin: Pierce	City of Prescott	Apr. 15, 1987, and Apr. 22, 1987, *Prescott Journal.*	The Honorable Dean Hauschildt, Mayor, City of Prescott, City Hall, 233 North Broad Street, Prescott, WI 54071.	Apr. 6, 1987	555574
Wisconsin: St. Croix	Unincorporated areas	Apr. 16, 1987, and Apr. 23, 1987, *Hudson Star Observer.*	The Honorable Norman Anderson, Chairman, St. Croix County Board, 911 Fourth Street, Hudson, WI 54016.	Apr. 16, 1987	555578

Issued: May 22, 1987.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 87-13318 Filed 6-10-87; 8:45am]

BILLING CODE 6718-03-M

44 CFR Part 65

Changes in Flood Elevation Determinations; Connecticut et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations will be used in calculating flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

DATES: The effective dates for these modified base flood elevations are indicated on the following table and amend the Flood Insurance Rate Map(s) (FIRM) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed on the following table.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 646-2768.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified flood elevations for each community listed. These modified elevations have been published in newspaper(s) of local circulation and ninety (90) days have elapsed since that publication. The Administrator, has resolved any appeals resulting from this notification.

Numerous changes made in the base (100-year) flood elevations on the FIRMs for each community make it administratively infeasible to publish in this notice all of the changes contained on the maps. However, this rule includes the address of the Chief Executive Officer of the community, where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968, (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR Part 65.

For rating purposes, the revised community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management measures required by 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities.

These modified base flood elevations shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

The changes in the base flood elevations are in accordance with 44CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the

Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains.

PART 65—[AMENDED]

The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127. Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

State and County	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community Number
Connecticut: Hartford (FEMA Docket No. 6904).	Town of South Windsor	Dec. 24, 1986, and, Dec. 31, 1986, *The Hartford Courant.*	The Honorable Richard J. Sartor, South Windsor Town Manager, 1540 Sullivan Avenue, South Windsor, CO 06074.	Dec. 22, 1986	090036
Illinois: Du Page (Docket No. FEMA-6904).	City of West Chicago	Nov. 20, 1986, and Nov. 27, 1986, *West Chicago Press.*	The Honorable A. Eugene Rennels, Mayor, city of West Chicago, 475 Main Street, West Chicago, IL 60185.	Nov. 12, 1986	170219
Maryland: Anne Arundel (FEMA Docket No. 6904).	Anne Arundel County	Dec. 19, 1986, and Dec. 26, 1986, *The Capitol.*	The Honorable O.James Lighthizer, Anne Arundel County Executive, Arundel Center, P.O. Box 1831, Annapolis, MD 21404.	Dec. 9, 1986	240008
North Carolina: Guilford	Unincorporated areas FEMA Docket No. 6908.	Jan. 2, 1987, and Jan. 9, 1987, *Greensboro News and Record.*	The Honorable John Witherspoon, County Manager, Guilford County, P.O. Box 3427, Greensboro, NC 27402.	Dec. 22, 1986	370111
Texas: Tarrant (FEMA Docket No. 6904).	City of Blue Mound	Dec. 26, 1986, and Jan. 2, 1987, *Fort Worth Star-Telegram.*	The Honorable Dale Jensen, Mayor of the City of Blue Mound, Blue Mound City Hall, 1600 Bell Avenue, Fort Worth, TX 76131.	Dec. 1, 1986	480587
Texas: Fort Bend (FEMA Docket No. 6904).	Fort Bend County Municipal Utility District No. 34.	Nov. 26, 1986, and Dec. 3, 1986, *The Herald-Coaster.*	Ms. Sally M. Woody, President of the Board of Directors, Fort Bend County Municipal Utility District No. 34, 2000 West Loop South, Suite 1600, Houston, TX 77027.	Nov. 18, 1986	480228
Texas: Fort Bend (FEMA Docket No. 6904).	Fort Bend County Municipal Utility District No. 35.	Nov. 21, 1986, and Nov. 28, 1986 *The Herald-Coaster.*	Ms. Patsy McPherson, President of the Board of Directors, Fort Bend County Municipal Utility District No. 35, 2000 West Loop South, Suite 1600, Houston, TX 77027.	Nov. 20, 1986	481519
Texas: Bexar (FEMA Docket No. 6904).	City of San Antonio	Oct. 15, 1986, and Oct. 22, 1986, *San Antonio Light.*	The Honorable Henry Cisneros, Mayor of the city of San Antonio, Bexar County, P.O. Box 9066, San Antonio, TX 78285.	Oct. 10, 1986	480045
Texas: Smith (FEMA Docket No. 6904).	City of Tyler	Nov 11, 1986, and Nov. 18, 1986, *Tyler Courier-Times.*	The Honorable James R. Montgomery, Mayor of the City of Tyler, P.O. Box 2039, Tyler, TX 75704.	Oct. 29, 1986	480571
Virginia: Arlington (FEMA Docket No. 6904).	Arlington County	Nov. 17, 1986, and Nov. 24, 1986, *Northern Virginia Sun.*	The Honorable Mary Margaret Whipple, Chairman of the Arlington County Board of Supervisors, Arlington County Courthouse, 1400 North Courthouse Road, Arlington, VA 22201.	Nov. 12, 1986	515520

Issued: May 22, 1987.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 87-13321 Filed 6-10-87; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

Final Flood Elevation Determinations; Illinois et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing modified base flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below:

ADDRESSES: See table below:

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2768.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal the proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been proposed. It does not involve any collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

PART 67—[AMENDED]

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
ILLINOIS	
Gardner (village), Grundy County (FEMA Docket No. 6905)	
Illinois Central Gulf Railroad Ditch:	
Just upstream of State Highway 53	*583
Just downstream of Sherman Street overpass	*589
Maps available for inspection at the Building and Zoning Department, Village Hall, Major and Center Streets, Gardner, Illinois.	
MARYLAND	
Leonardtown (town), St. Mary's County (FEMA Docket No. 6907)	
McIntosh Run:	
Approximately 1.2 miles downstream of Jefferson Street	*7
Approximately 0.6 mile downstream of Jefferson Street	*8
Approximately 1,900 feet downstream of Jefferson Street	*9
Maps available for inspection at 28 Court House Drive, Leonardtown, Maryland.	
MICHIGAN	
Bloomfield (township), Oakland County (FEMA Docket No. 6907)	
Murphy Drain:	
About 1,300 feet upstream of Vista Lane	*910
Just downstream of control structure (about 1,500 feet downstream of Meadowood Lane)	*913
Just upstream of control structure (about 1,500 feet downstream of Meadowood Lane)	*915
About 300 feet upstream of Meadowood Lane	*918
Maps available for inspection at the Township Supervisor's Office, 4200 Telegraph Road, P.O. Box 489, Bloomfield Hills, Michigan 48013.	
NEBRASKA	
Bellevue (city), Sarpy County (FEMA Docket No. 6907)	
Shallow flooding (ponding):	
At Missouri River Mile 599.25, on the west side of Levee R-616, about 2.05 miles downstream of Mission Avenue	*961
At Missouri River Mile 600.00, on the west side of Levee R-616, about 1.39 miles downstream of Mission Avenue	*961
At Missouri River Mile 601.00, on the west side of Levee R-616, about 1,750 feet downstream of Mission Avenue	*961
Maps available for inspection at the Planning Commission, 210 West Mission Street, Bellevue, Nebraska.	
Sarpy County (unincorporated areas) (FEMA Docket No. 6907)	
Shallow flooding (ponding):	
At the confluence of Papillion Creek with the Missouri River, on the north side of the intersection of Levee R-613 and Levee R-616	*959
About 1.46 miles upstream of the confluence of Papillion Creek along the Missouri River on the west side of Levee R-616	*961
Maps available for inspection at the Building Inspector's Office, Sarpy County, County Courthouse, 1210 Golden Gate Drive, Papillion, Nebraska.	
NEW JERSEY	
Mount Laurel (township), Burlington County (FEMA Docket No. 6905)	
North Branch Pennsauken Creek: Approximately 1,000 feet downstream of Union Mills Road	*34
Maps available for inspection at the Mount Laurel Municipal Building, 100 North Mount Laurel Road, Mount Laurel, New Jersey.	
Pompton Lakes (borough), Passaic County (FEMA Docket No. 6905)	
Wanaque River:	
Upstream side of Riverdale Boulevard	*190
Approximately 400 feet upstream of Paterson-Hamburg Turnpike	*198
Downstream side of Wanaque Avenue	*208
Maps available for inspection at the Pompton Lakes Municipal Building, 25 Lenox Avenue, Pompton Lakes, New Jersey.	
NORTH CAROLINA	
Wilmington (city), New Hanover County (FEMA Docket No. 6907)	
Burnt Mill Creek:	
Just downstream of Colonial Drive	*13
Just upstream of Mercer Avenue	*16
About 1,700 feet upstream of Mercer Avenue	*20
Maps available for inspection at the Engineering Department, P.O. Box 1810, Wilmington, North Carolina.	
OHIO	
Warren County (unincorporated areas) (FEMA Docket No. 6905)	
Bear Run:	
At mouth	*608
About 800 feet downstream of State Route 3	*608
Carlisle Drain:	
At mouth	*665
Just upstream of Jill Lane	*669
Little Miami River:	
About 2,200 feet downstream of the confluence of Ertel Run	*592
About 500 feet upstream of State Route 48	*627
Just downstream of Stubbs Mill Road	*641
Just upstream of Interstate 71	*684
Just downstream of County Highway 30	*709
Just downstream of State Route 73	*722
About 1,100 feet upstream of County Boundary	*745
Twin Creek:	
At mouth	*664
Just downstream of Franklin-Trenton Road	*667
Just upstream of Chessie System	*674
Maps available for inspection at the Building and Zoning Department, Warren County Administration Building, 320 East Silver Street, Lebanon, Ohio.	
OREGON	
Marion County (unincorporated areas) (FEMA Docket No. 6907)	
Willamette River:	
1,500 feet north of the intersection of Butteville-Fargo Road and River Road, along River Road	*94
1,600 feet upstream from State Highway 219 bridge	*98
1,000 feet downstream of the Marion-Polk-Yamhill County boundary intersection	*116
North Santiam River:	
3,400 feet downstream from State Highway 226 bridge	*607
At State Highway 226 bridge	*619
7,600 feet upstream from State Highway 226 bridge	*645
Mill Creek:	
500 feet upstream of State Street bridge (in the City of Salem)	*185
300 feet downstream from Interstate Highway 5 bridge	*222
At City of Turner corporate limits	*267
500 feet west of the intersection of Boone Road SE and the Southern Pacific Railroad, along Boone Road SE	#1
Claggett Creek:	
500 feet downstream from Burlington Northern Railroad bridge	*133
600 feet upstream from Fisher Road NE bridge	*167
Battle Creek:	
At Sunnyside Road SE bridge	*402
50 feet upstream from Reese Hill Road SE bridge	*525
At Liberty Road SE bridge	*536
Powell Creek:	
At City of Salem corporate limits	*393
At Sunnyside Road SE bridge	*398
Middle Fork Pringle Creek:	
1,000 feet downstream from Southern Pacific Railroad bridge	*218
At Southern Pacific Railroad bridge	*226
East Fork Pringle Creek:	
1,100 feet downstream from Interstate Highway 5 bridge	*219
At Interstate Highway 5 bridge	*226
Maps are available for review at the Marion County Planning Department, 220 High Street, Salem, Oregon.	
PENNSYLVANIA	
Neshannock (township), Lawrence County (FEMA Docket No. 6905)	
Shenango River:	
At downstream corporate limits	*805
At upstream side of State Route 60	*806
At upstream side of Pulaski Road	*807
At upstream corporate limits	*809
Maps available for inspection at the Neshannock Township Building, 3131 Mercer Road, New Castle, Pennsylvania.	
TENNESSEE	
Pigeon Forge (city), Sevier County (FEMA Docket No. 6905)	
West Prong Little Pigeon River:	
About 0.55 mile downstream of U.S. Highway 441	*968
Just upstream of Highway 441	*978
Just downstream of Private Bridge	*982
Maps available for inspection at the Public Works Director's Office, P.O. Box 1066, Pigeon Forge, Tennessee.	
TEXAS	
Duncanville (city), Dallas County (FEMA Docket No. 6905)	
Tenmile Creek:	
Approximately 200 feet upstream of confluence with Horne Branch	*619

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
Approximately 290 feet upstream of Duncanville Road	*624
Approximately 100 feet downstream of Duncanville Road	*621
Horne Branch:	
Approximately 500 feet upstream of confluence with Tenmile Creek	*618
Approximately 1,400 feet upstream of confluence with Tenmile Creek	*623
Maps available for inspection at the Director of Public Works, 100 East Center Street, Duncanville, Texas.	
Houston (city), Harris, Fort Bend, and Montgomery Counties (FEMA Docket No. 6901)	
Clear Creek:	
Approximately 2,500 feet downstream of Hiram-Clarke Road	*64
Approximately 2,140 feet upstream of Hiram-Clarke Road	*65
Horsepen Creek: At upstream corporate limits	*111
Reinhardt Bayou: Approximately 50 feet upstream of Lee Road	*77
Sims Bayou:	
Approximately 280 feet upstream of LaPorte Freeway (State Route 225)	*14
Approximately 800 feet upstream of Park Place Boulevard	*15
Upstream side of Interstate Route 45	*29
Upstream side of Swallow Street	*36
Confluence of Tributary 10.12	*40
Upstream side of State Route 288	*47
Upstream side of Almeda Road	*52
Confluence of Tributary 17.82	*53
Confluence of Tributary 20.25	*57
Upstream side of Hillcroft	*63
Approximately 2,700 feet upstream of Settlemont Road	*70
Berry Bayou:	
Upstream side of Ahrens Street	*19
Approximately 800 feet upstream of Allendale Road	*21
Upstream side of Richey Drive	*24
Upstream side of Galveston, Houston, and Henderson Railroad	*31
Upstream side of Edgebrook Drive	*34
Tributary 2.00 to Berry Bayou:	
At confluence with Berry Bayou	*23
Wynbelts (extended)	*31
College Avenue culvert (upstream side)	*35
Tributary 3.31 to Berry Bayou:	
Approximately 1,300 feet downstream of Edgebrook Drive	*33
Approximately 650 feet upstream of Edgebrook Drive	*35
Tributary 10.12 to Sims Bayou:	
At confluence with Sims Bayou	*40
Approximately 300 feet upstream of Vasser Street	*40
Tributary 10.77 to Sims Bayou:	
Approximately 1,600 feet upstream of Selinsky Road	*40
Approximately 2,620 feet upstream of Selinsky Road	*41
Approximately 3,200 feet upstream of Selinsky Road	*42
Tributary 13.83 to Sims Bayou (formerly known as Tributary 13.73):	
Approximately 1,650 feet upstream of Airport Boulevard	*45
Approximately 2,520 feet upstream of Airport Boulevard	*46
Tributary 17.82 to Sims Bayou (formerly known as Tributary 17.76):	
At confluence of Sims Bayou	*53
Approximately 2,550 feet upstream of Tidewater Drive	*53
Tributary 20.25 to Sims Bayou (formerly known as Tributary 20.12):	
At confluence of Sims Bayou	*57
Approximately 100 feet upstream of South Post Oak Road	*58
Approximately 250 feet upstream of Anderson Road	*62
*National Geodetic Vertical Datum 1973 Releveling	
Maps available for inspection at 900 Bagby Street, Houston, Texas.	
Kendall County (FEMA Docket No. 6905)	
Cibolo Creek:	
At downstream County boundary	*1,270
Approximately 1.9 miles upstream of County boundary	*1,294
Balcones Creek:	
At confluence with Cibolo Creek	*1,270
Downstream side of Southern Pacific Railroad	*1,290
Postoak Creek:	
At downstream County boundary	*1,272
At downstream side of Silver Spur Trail	*1,276
At upstream side of Rolling Acres Trail	*1,308
Approximately 1,000 feet upstream of Rolling Acres Trail	*1,313
Maps available for inspection at the Tax Assessor's Office, 211 East San Antonio Street, Boerne, Texas.	
Richmond (city), Fort Bend County (FEMA Docket No. 6907)	
Brazos River:	
At downstream corporate limits	*80
At upstream corporate limits	*88
Maps available for inspection at 402 Morton, Richmond, Texas.	
WISCONSIN	
Dane County (unincorporated areas) (FEMA Docket No. 6907)	
East Branch Starkweather Creek:	
About 1,400 feet upstream of mouth	*849
About 3,200 feet downstream of Lien Road	*852
About 1,600 feet downstream of Lien Road	*853
Just downstream of Chicago, Milwaukee, and Pacific Railroad	*868
West Branch Starkweather Creek:	
About 1,700 feet downstream of U.S. Highway 51	*858
Just downstream of Hanson Road	*864
Wisconsin River:	
About 1.06 miles downstream of the intersection of the Dane, Sauk, and Iowa County boundaries	*730
About 0.30 mile upstream of U.S. Highway 12	*747
About 600 feet downstream of northern county boundary	*749
Portage Road Tributary:	
Just upstream of City of Madison Corporate Limits (about 1,100 feet downstream of Portage Road)	*865
Just downstream of I90-94 (about 1,500 feet upstream of Hayes Road)	*892
Maps available for inspection at the Platt Survey Office, Room 116, City County Building, Madison, Wisconsin 53709.	

Issued: May 22, 1987.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 87-13319 Filed 6-10-87; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[Docket No. 60549-6141]

Northeast Multispecies Fishery

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

ACTION: Notice of fishery reopening.

SUMMARY: NOAA issues this notice opening the Southern New England Closed Area. This will allow access to fishing grounds which have been closed during March, April, and May.

EFFECTIVE DATE: June 1, 1987.

FOR FURTHER INFORMATION CONTACT: Peter D. Colosi, Resource Policy Analyst, 617-281-3600, extension 525.

SUPPLEMENTARY INFORMATION: The Secretary issues this notice opening the Southern New England Closed Area which has been closed under § 651.21(b) during March, April, and May to protect spawning flounders.

This action is taken under § 651.21(b)(2)(ii) and complies with Executive Order 12291 and other applicable laws.

(16 U.S.C. 1801 *et seq.*)

List of Subjects in 50 CFR Part 651

Fisheries.

Dated: June 5, 1987.

William E. Evans,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 87-13384 Filed 6-8-87; 4:38 pm]

BILLING CODE 3510-22-M

50 CFR Part 672

[Docket No. 61220-7033]

Groundfish of the Gulf of Alaska

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

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the share of the sablefish target quota allocated to hook-and-line gear in the Western Regulatory Area of the Gulf of Alaska will be achieved on June 8, 1987. The Secretary of Commerce is prohibiting retention of sablefish in this district by persons

using hook-and-line gear after 12:00 noon on June 8, 1987 through December 31, 1987.

DATES: *Effective dates*: From 12:00 noon June 8, 1987, Alaska Daylight Time (ADT), until midnight, Alaska Standard Time (AST), December 31, 1987.

Comments: Public comment are invited on this closure until June 22, 1987.

ADDRESS: Comments should be addressed to Robert W. McVey, Director, Alaska Region (Regional Director), National Marine. Fisheries Service, P.O. Box 021668, Juneau, Alaska 99802.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg, Fishery Management Biologist, NMFS, 907–586–7230.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the exclusive economic zone in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act (Magnuson Act). Regulations implementing the FMP are at 50 CFR Part 672.

Section 672.20(a) establishes an optimum yield range of 116,000–800,000 metric tons (mt) for all groundfish species in the Gulf of Alaska, which is further divided annually into target quotas (TQs) for each groundfish species. For 1987, TQs were established for each of the groundfish species and apportioned among the regulatory areas and districts.

Section 672.2 defines the Western Regulatory Area in the Gulf of Alaska. The TQ for establish is 3,000 mt in this Area (52 FR 785, January 9, 1987). Section 672.24(b)(1) provides a share of the TQ for hook-and-line gear in the Western Regulatory Area equal to 55 percent of the TQ, or 1,650 mt. When the share of the TQ is taken, further catches of sablefish by hook-and-line vessels must be treated as prohibited species and discarded at sea.

Prior to the April 1 season starting date and during the course of the season, NMFS conducted an area registration program to estimate numbers of vessels participating in the sablefish hook-and-line fishery in each area throughout the Gulf of Alaska. NMFS registered 93 hook-and-line vessels for the Western Regulatory Area. Many of these vessels have quit the sablefish fishery and are now targeting on other species. Only about 25 vessels remain fishing for sablefish on the basis of information from processors that are receiving sablefish from the Western Regulatory Area. Based on average catch rates during the month of May and through the first week of June, NMFS estimates that the quota will be harvested by noon on June 8, 1987. Therefore, the Western Regulatory Area is closed to sablefish fishing by hook-and-line vessels at 12:00 noon, local time, on June 8, 1987. Further catches of sablefish by hook-and-line vessels must be treated as prohibited species and discarded at sea.

This closure will be effective upon filing for public inspection with the Office of the Federal Register and after it has been publicized for 48 hours through procedures of the Alaska Department of Fish and Game under § 672.22(b). Public comments on this notice may be submitted to the Regional Director as the address above for 15 days following its effective date.

Classification

Overharvesting of sablefish, which would increase the risk of overfishing of this species, will result unless this notice takes effect promptly. NOAA therefor finds for good cause that prior opportunity for public comment on this notice is contrary to the public interest and its effective date should not be delayed. This action is taken under §§ 672.22 and 672.24 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Dated: June 8, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

[FR Doc. 87–13388 Filed 6–8–87; 4:38 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 52, No. 112
Thursday, June 11, 1987

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 Ch. I

[Summary Notice No. PR-87-5]

Petitions for Rulemaking; Summary of Petitions Received and Dispositions of Petitions Denied or Withdrawn

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking and of dispositions of petitions denied or withdrawn.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and be received on or before, August 10, 1987.

ADDRESSES: Send comments on the petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB-10A), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202 426-3644.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on June 4, 1987.

Leonard Smith,

Manager, Program Management Staff.

PETITIONS FOR RULEMAKING

Docket No.	Petitioner	Description of the Petition
25226	Grant W. Meadows, Jr.	**Description of the Petition:** Petitioner proposes amendments to require the FAA to concurrently award an instrument airplane rating and an airplane rating on a flight instructor certificate. The current wording in certain sections of Part 61 requires an applicant for a flight instructor certificate with an airplane rating to meet the same criteria as an applicant for an instrument airplane rating on that certificate. Further, that until such time that the above ruling be made, a flight instructor with an airplane rating who holds an instrument airplane rating on his commercial pilot certificate be authorized in accordance with § 61.193(a)(1) to give the required instrument instruction for a pilot certificate or rating. **Regulations Affected:** 14 CFR Part 61, Subpart G, §§ 61.183(d), 61.183(e), 61.185(b), 61.187(a)(6), 61.193(a)(1), 61.195(b).

PETITIONS FOR RULEMAKING—Continued

Docket No.	Petitioner	Description of the Petition
		Petitioner's Reason for Rule: Petitioner states since he is not an "authorized instructor" under the current interpretation as used in the FAR that his students be given the same credit for the same instruction under the same conditions that another student receives from someone who is currently considered to be an "authorized instructor," so long as petitioner is acting within the privileges of his pilot license.

[FR Doc. 87-13269 Filed 6-10-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-NM-62-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which would require inspection for damage and cracking, and repair or replacement, as necessary, of the aft pressure bulkhead. This proposal is prompted by inspection reports and the results of recent testing by the manufacturer. It has been determined that to maintain an adequate level of safety, the aft pressure bulkhead must be inspected. Failure to detect and repair damage and cracks could result in possible rapid depressurization of the airplane.

DATES: Comments must be received no later than August 3, 1987.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention:

Airworthiness Rules Docket No. 87–NM–62–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT:
Mr. Owen E. Schrader, Airframe Branch, ANM–120S; telephone (206) 431–1923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 87–NM–62–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

As a result of recent testing by the manufacturer, it has been determined that to maintain an adequate level of safety on Boeing Model 747 series airplanes, inspection of the aft pressure bulkhead for fatigue cracks is required. FAA review of the results of inspections required by AD 85–22–12 has indicated that additional inspections are also necessary to detect accidental damage to the bulkhead. Accidental damage and/or cracking can lead to the failure of the bulkhead structure, which could result in rapid depressurization of the airplane.

The FAA has approved Boeing Company design improvements that will be installed on all new airplanes, in accordance with Boeing Production Revision Record (PRR) 80490, starting with line number 672. Installation of this modification or an equivalent FAA-approved modification on airplanes line numbers 1 through 671, would constitute terminating action for the inspections required by this AD.

The FAA has reviewed and approved Boeing Service Bulletin 747–53–2275, dated March 26, 1987, which describes procedures for inspection of the aft pressure bulkhead, and repair if cracks or accidental damage is found.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed that would require repetitive inspection for cracks and accidental damage of the aft pressure bulkhead of certain Boeing Model 747 airplanes in accordance with the previously mentioned service bulletin. The inspections are of four types: visual, X-ray, ultrasonic, and eddy current. If cracking or damage of the aft pressure bulkhead is detected, it must be repaired before further flight, in accordance with the previously mentioned service bulletin.

It is estimated that 210 airplanes of U.S. registry would be affected by this AD, that it would take approximately 356 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,990,400 for the initial inspection cycle.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 747 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes listed under Groups 1, 2, 3, and 4 in Boeing Service Bulletin 747–53–2275, dated March 26, 1987, certificated in any category. Compliance required as indicated, unless previously accomplished.

To detect cracking or accidental damage to the aft pressure bulkhead, accomplish the following:

A. Within 500 landings after the effective date of this AD, unless accomplished within the last 500 landings, perform a detailed visual inspection, in accordance with Boeing Service Bulletin 747–53–2275, dated March 26, 1987, or later FAA-approved revisions, of the aft side of the entire Body Station (BS) 2360 aft pressure bulkhead for damage such as dents, tears, nicks, gouges, or scratches; cracks at splices, doublers, and around the Auxiliary Power Unit (APU) pressure pan cutout; and, for Group 4 airplanes only, inspect from the forward side, the area adjacent to the window cutout for damage or cracks.

B. Repeat the inspection required by paragraph A., above, at intervals not to exceed the following:

1. 2,000 landings for Group 1 airplanes.

2. 1,000 landings for Groups 2 and 3 airplanes, unless one of the following apply:

a. 2,000 landings for Group 2 airplanes that operate the entire interval with aft lavatory complexes or galleys adjacent to the bulkheads.

b. 2,000 landings for Groups 2 and 3 airplanes that operate the entire interval with an intact protective shield on the lower half of the forward side of the bulkhead.

3. 1,000 landings for Group 4 airplanes.

C. For Groups 2 and 3 airplanes, that operate with a protective shield on the lower half of the forward side of the aft pressure bulkhead, within 500 landings after the effective date of this AD, and at intervals thereafter not to exceed 1,000 landings, perform a detailed visual inspection of the protective shield for damage in accordance with the procedures described in Boeing Service Bulletin 747–53–2275, dated March 26, 1987, or later FAA-approved revisions. If damage is found to the protective shield that exceeds the limits indicated in Boeing Service Bulletin 747–53–2275, dated March 26, 1987, or later FAA-approved revision, perform the

inspection required by paragraph A., above, prior to further flight.

D. Within 500 landings after the effective date of this AD or prior to the accumulation of 20,000 landings, whichever occurs later, unless accomplished within the last 3,500 landings, and at intervals thereafter not to exceed 4,000 landings, perform an eddy current, ultrasonic, and X-ray inspection of the aft side of the BS 2360 aft pressure bulkhead for cracks in accordance with Boeing Service Bulletin 747–53–2275, dated March 26, 1987, or later FAA-approved revision.

E. Within 500 landings after the effective date of this AD or prior to the accumulation of 20,000 landings, whichever occurs later, unless accomplished within the last 6,500 landings, and at intervals thereafter not to exceed 7,000 landings, perform a detailed visual inspection of the BS 2360 aft pressure bulkhead web to Y-ring lap joint area between radial stiffeners from the forward side of the bulkhead for cracks in accordance with Boeing Service Bulletin 747–53–2275, dated March 26, 1987, or later FAA-approved revision.

F. If any cracking or damage is found as a result of inspections required by this AD, repair prior to further flight in accordance with Boeing Service Bulletin 747–53–2275, dated March 26, 1987, or later FAA-approved revisions.

G. For the purpose of complying with this AD, the number of landings may be determined to equal the number of pressurizaion cycles where the cabin pressure differential was greater than 2.0 PSI.

H. For Model 747SR airplanes only, based on past and continued mixed operation of lower cabin differentials, the initial inspection thresholds and the repetitive inspection intervals specified in this AD may be multiplied by a 1.2 adjustment factor.

I. Upon the request of an operator, an FAA Principal Maintenance Inspector, subject to prior approval by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, may approve an alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety.

J. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

K. Installation of new and improved tear straps, center plate, and APU doubler structure in accordance with Boeing Production Revision Record (PRR) 80490, or an FAA-approved equivalent, constitutes terminating action for the inspections required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124–2207. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on June 4, 1987.

Temple H. Johnson,

Acting Director, Northwest Mountain Region.

[FR Doc. 87–13274 Filed 6–10–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 87–NM–57–AD]

Airworthiness Directives; Gulfstream American Model G–73 (Mallard) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to Gulfstream American Model G–73 (Mallard) series airplanes, which would require a visual inspection of the elevator up stop to detemrine if there is sufficient overlap of the contact surfaces of the elevator control torque tube arm and the elevator up stop bolt hex head, and would require the eventual installation of a new larger surface elevator up stop kit. This proposal is prompted by reports of the elevator control system jamming in the full stick-back takeoff position. This condition, if not corrected, could lead to loss of control of the airplane.

DATE: Comments must be received no later than August 3, 1987.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 87–NM–57–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Frakes Aviation, Cleburne Airport, Route 3, Box 229–B, Cleburne, Texas 76031. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. William S. Simmons, FAA, Southwest Region, Special Programs Branch, AWS–190, 4400 Blue Mound Road, Fort Worth, Texas 76193–0190; telephone (817) 624–5199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 87–NM–57–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Dicsussion

The FAA has received reports that the elevator control systems on Gulfstream American Model G–173 airplanes have jammed in the full stick-back (airplane nose-up) takeoff position during water takeoffs. This has occurred on takeoff as the airplane climbed onto the step from the water surface, and has required immediate action by the crew to reduce power and prevent climb-out to stall.

An investigation of the reasons for the cause of the jammed condition revealed that insufficient overlap of the contact surfaces of the elevator control torque tube arm (P/N 109410) and the elevator up stop bolt hex head (P/N G19–5–22) can allow the elevator control torque tube arm to slip under the elevator up stop bolt hex head and become jammed. Further FAA investigation of another airplane indicated that minor mis-rigging of the elevator control system could also cause this situation to occur. This condition, if not corrected, could result in a jammed elevator control system, with resultant loss of control of the airplane.

The FAA has reviewed and approved Frakes Aviation Service Bulletin G–73–FA26, dated May 1, 1987, which describes procedures for inspection of

the rigging of the elevator control system for sufficient overlap of the contact surfaces of the elevator control torque tube arm and the elevator up stop bolt hex head, and installation of a new larger surface elevator up stop kit (P/N FA112723K1).

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require the inspection and eventual installation of the elevator up stop kit, in accordance with the service bulletin previously mentioned.

It is estimated that 32 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Required parts will be furnished by Frakes Aviation at no cost to the operator. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,560.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($80.). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Gulfstream American (Frakes Aviation): Applies to Model G-73 (Mallard) series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent jamming of the elevator control system, accomplish the following:

A. Within 15 days after the effective date of this AD, visually inspect the overlapping contact surface between the elevator control torque tube arm, P/N 109410, and the elevator up stop bolt hex head, P/N G19-5-22, in accordance with Frakes Aviation Service Bulletin G-73-FA26, dated May 1, 1987 (hereinafter referred to as SB G-73-FA26), or later FAA-approved revisions.

1. If the elevator control torque tube arm is not overlapping the stop bolt hex head by one-half or more of the stop bolt hex head dimension, or if the center lines of the stop bolt hex head and the elevator control torque tube arm are not aligned within ⅛ inch (0.125 inch) side to side, prior to further flight install Frakes Aviation Stop Kit, P/N FA112723K1, in accordance with SB G-73-FA26, or later FAA-approved revision.

2. If the elevator control tube arm is overlapping the stop bolt hex head by one-half or more of the stop bolt hex head dimension, and if the center lines of the stop bolt hex head and the elevator control torque tube are aligned within ⅛ inch (0.125) side to side, within the next 100 hours time-in-service install Frakes Aviation Stop Kit, P/N FA112723K1, in accordance with SB G-73-FA26, or later FAA-approved revisions.

B. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the requirements of this AD.

C. An alternate means of compliance, which provides an acceptable level of safety, may be used when approved by the Manager, Airplane Certification Branch, FAA, Southwest Region.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to Frakes Aviation, Cleburne Airport, Route 3, Box 229-B, Cleburne, Texas 76031. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas.

Issued in Seattle, Washington, on June 4, 1987.

Temple H. Johnson,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-13268 Filed 6-10-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-ANM-8]

Proposed Revision of Hailey, ID; Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Hailey, Idaho, transition area by adding 700 foot controlled airspace to accommodate a Microwave Landing System (MLS) special instrument approach procedure for Horizon Airlines at Hailey, Idaho.

DATE: Comments must be received on or before July 26, 1987.

ADDRESSES: Send comments on the proposal to: Manager, Airspace & System Management Branch, ANM-530, Federal Aviation Administration, Docket No. 87-ANM-8, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

The official docket may be examined in the Office of Regional Counsel at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM-535, Federal Aviation Administration, Docket No. 87-ANM-8, 17900 Pacific Highway South, C-68966 Seattle, Washington 98168, Telephone: (206) 431-2535.

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, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted 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. 87-ANM-8". 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 any 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 at the address listed above 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, Airspace & System Management Branch, 17900 Pacific Highway South, C–68966, Seattle, Washington, 98168. 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 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish 700 foot transition airspace at Hailey, Idaho, to accommodate arrival and departure procedures to the Hailey Municipal Airport. This proposed action will also reduce the size of the existing 1,200 foot transition area.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

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, Transition area.

The Proposed Amendment

PART 71—[AMENDED]

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:

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

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

2. Section 71.181 is amended as follows:

Hailey, Idaho, Transition Area (Revised)

That airspace extending upward from 700 feet above the surface within 2 miles each side of the M–SUN MLS (lat. 43°30'31.08" N, long. 114°17'52.99" W), 328° azimuth, from 8.5 miles northwest to 5 miles southeast of the M–SUN MLS; and that airspace extending upward from 1,200 feet above the surface, within 4 miles each side of the M–SUN 328° azimuth, from 18 miles northwest to the M–SUN MLS, and that airspace from lat. 43°36'00" N, long. 114°27'00" W, thence eastbound to lat. 43°36'00" N, long. 114°00'00" W, thence southbound to lat. 43°17'30" N, long. 114°00'00" W, thence westbound to lat. 43°17'30" N, long. 114°27'00" W, thence northbound to point of beginning excluding that airspace overlying V–231 on the east side and V–500 on the south side.

Issued in Seattle, Washington, on May 26, 1987.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division Northwest Mountain Region.

[FR Doc. 87–13275 Filed 6–10–87; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 33

Regulation of Domestic Exchange-Traded Commodity Option Transactions; Exemptive Provision

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing to amend Part 33 of its regulations governing domestic exchange-traded commodity option transactions. Unlike various other Parts of the Commission regulations, Part 33 does not contain a general exemptive provision. To ensure consistency with these other Commission regulations and to facilitate requests for relief from certain provisions of Part 33, the Commission has proposed new regulation 33.11. As proposed, regulation 33.11 would provide that the Commission, upon written request or upon its own motion, may exempt any person from any provision of Part 33 (except for sections 33.9 and 33.10) if it finds that such action is not contrary to the public interest.

DATES: Comments must be received on or before June 26, 1987.

ADDRESSES: Comments may be mailed to the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Harold L. Hardman, Office of the General Counsel, 254–9880.

SUPPLEMENTARY INFORMATION: The Commission recently received a petition under regulation 13.2, 17 CFR 13.2, which, in essence, seeks relief from a provision of Part 33 of the Commission's regulations, 17 CFR Part 33.[1] In reviewing this petition, the Commission became aware that Part 33 does not contain a specific provision which would allow the Commission, in its discretion, to exempt a person from a provision of Part 33.

Specific exemptive provisions exist in a number of other sections of the Commission's regulations. For example, Part 32 of the Commission regulations, pertaining to the regulation of non-exchange traded commodity options, contains regulation 32.4(b) which provides that the Commission may

> by order, upon written request or upon its own motion, exempt any other person, either unconditionally or on a temporary or other conditional basis, from any provisions of this Part, other than sections 32.2, 32.8 and 32.9, if its finds, in its discretion, that it would not be contrary to the public interest to grant such exemption.

17 CFR 32.4(b). In addition, Part 31 of the Commission's regulations, which pertains to leverage transactions, contains a specific exemptive provision. *See* 17 CFR 31.24.

To ensure consistency in the Commission's regulations and expressly to permit the granting of relief from the provisions of Part 33 in appropriate cases, the Commission is proposing to amend Part 33 by adding regulation 33.11, a specific exemptive provision similar to that provided in regulation 32.4(b). Proposed regulation 33.11 generally provides that the Commission, upon written request or upon its own motion, may exempt any person from any provision of Part 33 (except sections 33.9 and 33.10 dealing with unlawful activities and fraud) if it finds, in its discretion, that it would not be contrary to the public interest to grant such exemption.

The Commission believes that the addition of a specific exemptive provision in Part 33 is consistent with findings by both the Congress and the Commission regarding the successes of the exchange-traded option programs. *See e.g.*, H.R. Rep. No. 624, 99th Cong.,

[1] Regulation 13.2 provides a procedure whereby a person may petition the Commission for the issuance, amendment or repeal of a rule of general application.

2d Sess. 14–15 (1986); 52 FR 777, 778 (Jan. 9, 1987); 51 FR 17464, 17465 (May 13, 1986). The Commission would emphasize, however, that this proposed action is not intended to suggest that the Commission will freely grant exemptive relief from the provisions of Part 33. The Commission will move cautiously in this regard. Thus, any request for exemptive relief must provide in detail why such relief should be granted by the Commission and why, in particular, such relief will not contravene the purposes of the regulations.

Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of those rules on small entities. The Commission previously has determined that contract markets not "small entities" for purposes of the Regulatory Flexibility Act. *See* 47 FR 18818 (April 30, 1982).

The proposed rule, if adopted, would relate to the trading of options on contract markets and would not have a significant economic impact on a substantial number of small entities. Accordingly, the Chairman, on behalf of the Commission, certifies, pursuant to section 3(a) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this proposed regulation will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. Chapter 35, requires agencies no later than the publication of a notice of proposed rulemaking in the **Federal Register** to forward to the Director of the Office of Management and Budget a copy of any proposed rule which contains a collection of information requirement. 44 U.S.C. 3504(h)(1). Because the regulation proposed herein does not contain a collection of information requirement, 44 U.S.C. 3502(4), or an information collection request, 44 U.S.C. 3502(11), the Commission has determined that the provisions of the Paperwork Reduction Act do not apply.

List of Subjects in 17 CFR Part 33

Commodity exchange, Commodity exchange designation procedures, Commodity exchange rules, Commodity futures, Commodity options.

For the reasons set forth in the preamble, Part 33 of the Code of Federal Regulations is proposed to be amended as follows:

PART 33—REGULATION OF DOMESTIC EXCHANGE-TRADED COMMODITY OPTION TRANSACTIONS

1. The authority citation for Part 33 would continue to read as follows:

Authority: 7 U.S.C. 2, 2a, 4, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 7b, 8, 9, 11, 12a, 12c, 13a, 13a–1, 13b, 19 and 21 unless otherwise noted.

2. Section 33.11 is proposed to be added to read as follows.

§ 33.11 Exemptions.

The Commission may, by order, upon written request or upon its own motion, exempt any person, either unconditionally or on a temporary or other conditional basis, from any provisions of this Part, other than §§ 33.9 and 33.10, if it finds, in its discretion, that it would not be contrary to the public interest to grant such exemption.

Issued in Washington, DC on June 5, 1987, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–13315 Filed 6–10–87; 8:45 am]

BILLING CODE 6351-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 270

[Release Nos. 34–24552; 35–24403; IC–15767; File No. S7–19–87]

Elimination of Filing Requirements for Preliminary Proxy Material Under Certain Circumstances; Filing Fees Where Only Definitive Proxy Material Is Filed; Shareholder Proposals

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Commission is publishing for comment proposed amendments to the proxy rules to eliminate filing of preliminary proxy material under certain circumstances. The Commission also is publishing for comment proposed amendments to Rule 14a–8, the shareholder proposal rule, to delete the limitation on inclusion of a security holder proposal in the registrant's proxy material where the proponent delivers written proxy materials to holders of more than 25% of a class of the registrant's securities. In the alternative, the Commission is considering modifying the 25% limitation or clarifying its applicability to the current meeting of security holders as well as to the meetings held in the following two years. In addition, proposed amendments would require that a registrant make any request for documentary support of a proponent's beneficial ownership claim promptly and extend from 14 to 21 calendar days the time period in which such documentation must be furnished.

DATE: Comments should be received on or before July 27, 1987.

ADDRESS: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comment letters should refer to File No. S7–19–87. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Caroline W. Dixon or Barbara J. Green, (202) 272–2589, Office of Disclosure Policy, Division of Corporation Finance, or for questions regarding applicability to investment companies, Robert E. Plaze, (202) 272–2107, Office of Disclosure and Adviser Regulation, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The Commission is publishing for comment proposed revisions to the proxy rules [1] under the Securities Exchange Act of 1934 ("Exchange Act").[2] The Commission is proposing amendments to Regulation 14A [3] (Rules 14a–6 [4] and 14a–8 [5]), to Regulation 14C [6] (Rule 14c–5 [7] and Instruction 2 to Item 4 of Schedule 14C [8]) and to Rule 20a–1 [9] under the Investment Company Act of 1940.[10]

I. Executive Summary

The Commission is proposing amendments to the proxy rules—to provide that a proxy statement or information statement will be filed with the Commission only in definitive form if such statement relates to an annual meeting, or special meeting in lieu of an annual meeting, of security holders at which the only matters to be acted upon are the election of directors, the selection of auditors and/or certain shareholder proposals. With regard to investment companies registered under

[1] 17 CFR 240.14a–1 through 240.14c–101.
[2] 15 U.S.C. 78a–78kk.
[3] 17 CFR 240.14a–1 through 240.14b–2.
[4] 17 CFR 240.14a–6.
[5] 17 CFR 240.14a–8.
[6] 17 CFR 240.14c–1 through 240.14c–101.
[7] 17 CFR 240.14c–5.
[8] 17 CFR 240.14c–101.
[9] 17 CFR 270.20a–1.
[10] 15 U.S.C. 80a–1 *et seq.*

the Investment Company Act of 1940, the exclusion from the requirement to file preliminary material also would apply if matters to be acted upon, in addition to those noted above, include a proposal to continue, without change, an advisory or other contract or agreement that previously has been the subject of a proxy solicitation for which proxy material was filed with the Commission and/or, in the case of an open-end investment company, a proposal to increase the number of shares authorized to be issued. The exclusion from filing preliminary proxy material would not apply, however, if a party has commenced an opposing solicitation in connection with the forthcoming meeting or if the registrant has received notice of the intention of a party to commence such a solicitation. The Commission also is proposing amendments to Rule 14a–8, the shareholder proposal rule, and to filing fee rules to accommodate the proposed changes in the filing requirements.

In addition, the Commission is proposing an amendment to Rule 14a–8 that would delete existing Rule 14a–8(a)(1)(ii), which provides for the exclusion of a shareholder proposal if the proponent delivers written proxy materials to holders of more than 25% of a class of the registrant's securities. In the alternative, the Commission is considering amendments to Rule 14a–8(a)(1)(ii) that would modify the 25% limitation to permit inclusion of shareholder proposals in the registrant's proxy material while the proponent is conducting a solicitation more widespread than that permitted under the present rule. As a further alternative, the Commission is considering retaining the 25% limitation but amending the rule to clarify that a proponent may not have his proposal included in the registrant's solicitation material for the forthcoming meeting if he delivers written materials to the holders of more than 25% of a class of the registrant's securities.

Another proposed change to Rule 14a–8 would require that, if a registrant requests documentation of a proponent's beneficial ownership, the registrant make such request promptly. Also proposed is a change from 14 to 21 calendar days for the time period within which a proponent must provide appropriate documentation.

II. Discussion of Proposals

A. Exclusion From Filing Preliminary Proxy Material

1. Scope

The Commission is proposing a revision to the proxy filing requirements to provide that certain proxy statements will be filed with the Commission only in definitive form. The proposed exclusion will affect only filing requirements; the definitive material will still be subject to being selected for review.

As proposed, the exclusion from filing preliminary materials would apply to a proxy statement or information statement distributed in connection with an annual meeting, or special meeting in lieu of an annual meeting, at which the only matters to be acted upon are the election of directors, the election, approval or ratification of auditors and/or certain shareholder proposals.[11] Submission of a security holder proposal pursuant to Rule 14a–8 would not in and of itself constitute an opposing solicitation. The Commission solicits comment as to whether submission or inclusion of Rule 14a–8 proposals should preclude reliance on the exclusion.

The exclusion would not apply if a party has commenced a solicitation in opposition in connection with the forthcoming meeting or if the registrant has received notice of a party's intention to commence such a solicitation. A proposed note would define "solicitation in opposition" as any solicitation opposing a proposal supported by the registrant or supporting a proposal that the registrant does not expressly support.[12]

a. Investment companies registered under the Investment Company Act of 1940. Investment companies also would file only definitive material where matters to be acted upon, in addition to those discussed above, include a proposal to continue an advisory or other contract without change and/or to increase the number of shares of an open-end company. The first category is proposed to cover the circumstances where the contract or agreement which is the subject of the vote already has been voted upon (either when initially adopted or subsequently continued) by the public shareholders.[13] The second category is proposed to be limited to open-end companies because dilution of control (the primary issue which arises in connection with a proposal to authorize new shares) is rarely an important consideration for open-end investment company security holders. Thus, such proposals tend to be routine and staff review not beneficial.

b. *Notice.* As proposed, for the purposes of this exclusion, a registrant would be deemed to have received notice of a party's intention to commence an opposing solicitation if public material is filed with the Commission in which an intent to solicit in opposition is indicated [14] or a written or oral communication indicating such an intent to solicit is furnished directly to the registrant by or on behalf of another party. Notice also will be presumed if the registrant's proxy material addresses an opposing solicitation. In cases where any such notice is given, filing of preliminary material will be required even if no actual solicitation develops.[15]

The Commission seeks comment as to whether the filing of publicly available material with the Commission indicating an intent to solicit in opposition should be sufficient to give the registrant notice. In addition, comment is solicited as to whether an oral communication should be included in the definition of notice, and, if so, whether it should be required to be made to an officer of the registrant or to be confirmed promptly in writing.

c. *Forty-five calendar day period.* As proposed, the registrant would not be required to file preliminary material if it first received notice of a party's intention to commence an opposing solicitation less than forty-five calendar days prior to its meeting date or if an opposing solicitation is commenced during such forty-five day period.[16] This should avoid inordinate disruptions of the registrant's printing, distribution and meeting schedule caused by the occurrence of such an event shortly before the definitive material is to be filed. In any event, the staff will continue to review *all* definitive materials, whether or not filed in preliminary form, if an opposing solicitation is undertaken. Further, since

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[11] If a registrant otherwise qualifying for the exclusion determines to change the nature of the meeting through the addition of other matters to be voted upon, the exclusion no longer would apply.

Paragraph (b) of Rule 14a–6 (17 CFR 240.14a–6(b)), which requires copies of any additional soliciting material to be filed at least two business days prior to furnishing such material to security holders, would not be affected by the proposals.

[12] Accordingly, not only election contests covered by Rule 14a–11 (17 CFR 240.14a–11) but also other proxy solicitations in opposition to the registrant would preclude availability of the exclusion.

[13] This exclusion is limited to proposals to continue a contract "without change." The phrase "without change," of course, would allow for changes in the date of the agreement, new signatures or correction of any typographical errors.

[14] Such public filings would include a Schedule 14B (17 CFR 240.14a–102) or a Schedule 13D indicating an intent to solicit (17 CFR 240.13d–101).

[15] The Commission notes, however, that the filing of a Schedule 14B or Schedule 13D does not itself trigger an obligation on the part of a registrant to comply with Rule 14a–11; such an obligation is triggered only by an actual solicitation.

[16] For example, if notice is received on or after March 1 and the meeting date is April 15, the registrant may still qualify for the exemption provided that the other criteria are met.

any proxy material addressing an opposing solicitation would be required to be filed in preliminary form, the exclusion would not apply if during this forty-five calendar day period the registrant revises its proxy material to respond to the solicitation.

The Commission also is considering and seeks comment on an alternative utilizing a fixed number of days, such as 10 calendar days, prior to the mailing date of the proxy statement. Comment also is solicited on whether some other date that has been established in advance, such as the record date or projected mailing date, should be used for this purpose. Comment is invited on the length of the time period that should be used for each alternative.

2. Related Amendments to Rule 14a–8, Shareholder Proposal Rule

Amendments to the timing requirements imposed by paragraphs (d)[17] and (e)[18] of Rule 14a–8 are necessary, as the paragraphs refer to the date of filing preliminary proxy material. For simplicity, the Commission is proposing to change the requirements with respect to all material whether or not required to be filed in preliminary form to key off of the date of the filing of definitive material. Comment is solicited both on the specific time periods proposed and on basing these time periods on the filing of definitive rather than preliminary material in those cases where preliminary material is required to be filed.

Paragraph (d) specifies the procedural requirements applicable to registrants that intend to omit security holder proposals from their proxy materials. The provision currently requires that the registrant notify the Commission and the proponent of its assertion that a proposal may be omitted at least 60 calendar days prior to the date of filing the preliminary proxy material. This time period is proposed to be changed to 80 calendar days prior to the date of filing definitive material. Similarly, Instruction 2 of Item 4 of Schedule 14C currently requires that, if the registrant intends to rule a security holder proposal out of order, it should so advise the Commission at the time it files preliminary copies of its information statement. A proposed amendment to the instruction would require that a registrant qualifying for the exclusion advise the Commission of its intention to rule a security holder proposal out of order 20 calendar days prior to the date that definitive copies of the information statement are to be filed.

In addition, the Commission proposes to amend paragraph (e), which currently requires that the registrant forward to a security holder proponent, not later than 10 calendar days before its preliminary proxy materials are filed with the Commission, a copy of any statement in opposition to the proponent's resolution that the registrant intends to include in the proxy statement. The proposal would change this time period to 30 calendar days prior to the filing of definitive material.

The last paragraph of Rule 14a–8(e) also is proposed to be amended to require that a proponent who believes that the registrant's statement in opposition is false and misleading, and so informs the Commission, should provide a copy of the statement in opposition to the Commission along with his letter.

3. Filing Fees

Current filing fee requirements in Rules 14a–6(j) [19] and 14c–5(g),[20] and in Rule 20a–1 under the Investment Company Act of 1940, only apply to the filing of preliminary material. The Commission is proposing amendments to these rules to require that a filing fee be paid when definitive material is filed, where preliminary material is not required to be filed.[21]

B. Proposals to Amend Rule 14a–8

1. Exclusion of Shareholder Proposal if Proponent Exceeds 25% Limitation With Regard to Delivery of Written Proxy Material

In 1983, the Commission adopted Rule 14a–8(a)(1)(ii), which provides that a proponent who delivers written proxy material to holders of more than 25% of a class of the registrant's outstanding securities entitled to vote with respect to the same meeting is ineligible to submit any security holder proposals for inclusion in the registrant's proxy soliciting material.[22] The proposing release noted that "[w]hen a security holder undertakes the cost of communicating with other security holders, it [is] unnecessary to impose on an issuer and its shareholders the additional costs associated with inclusion af the security holder proposal in the issuer's proxy material." [23]

The Commission now is considering whether proponents should have access to the corporate proxy machinery even when they also intend to conduct more widespread solicitations. The Commission notes that proponents may desire to include proposals in registrants' proxy materials and solicit support by sending letters to a limited number of large shareholders, who collectively hold more than 25% of a class entitled to vote, without incurring the expense of a proxy mailing to all shareholders. The current rule prohibits this alternative and requires the proponent either to forego such a solicitation of support from other shareholders or to incur the possibly substantial expense of printing and mailing a separate proxy statement. Accordingly, the Commission is proposing the deletion of Rule 14a–8(a)(1)(ii).

Comment is solicited on this proposal and on the benefits of permitting shareholders whose proposals are included in registrants' proxy material to solicit support for their proposals independently. In addition, comment is requested on whether any additional costs would be imposed on registrants as the result of rescinding or modifying Rule 14a–8(a)(1)(ii) and on the costs that are borne by shareholders whose proposals are excluded to present those proposals to other shareholders.

As an alternative to deleting Rule 14a–8(a)(1)(ii), the Commission is considering modifying the 25% limitation to allow inclusion of shareholder proposals in registrants' proxy material while proponents are conducting limited solicitations. One approach under consideration would exclude a shareholder proposal if the proponent delivers written proxy materials to more than 25%, or some higher percentage, of the holders of a class of the registrant's securities, thus basing the exclusion on the percentage of holders solicited, not the percentage of securities, as under the current rule. Comment is solicited on this possible modification and other approaches to modifying the 25% limitation to permit solicitations to be more widespread than currently permitted.

The second sentence of Rule 14a–8(a)(1)(ii) provides that a proponent who delivers written proxy material to holders of more than 25% of a class of securities may not include a proposal in the registrant's proxy material for the

[17] 17 CFR 240.14a–8(d).

[18] 17 CFR 240.14a–8(e).

[19] 17 CFR 240.14a–6(j).

[20] 17 CFR 240.14c–5(g).

[21] Minor conforming language revisions also are being proposed to Rule 14a–6(j) in order to eliminate a reference to "preliminary material" in introductory language and a reference to the solicitation of proxies for the "election of directors" with regard to preliminary material.

[22] Release No. 34–20091 (August 16, 1983) [48 FR 38218].

[23] Release No. 34–19135 (October 14, 1982) [47 F.R. 47420, 47424].

next two calendar years. It has come to the Commission's attention that some proponents mistakenly may believe that the two year prohibition is the sole consequence of exceeding the 25% limitation with respect to delivery of written proxy material.

If the 25% limitation is retained in its current or modified form rather than rescinded, the Commission proposes to amend Rule 14a–8(a)(1)(ii) to clarify that a proponent is not entitled to have its proposal included in the registrant's proxy material for the meeting at which the proposal is intended to be voted upon, where the proponent delivers written proxy materials to holders of more than 25% of a class of the registrant's securities.[24] The two year prohibition would be retained in its current form.

In addition to the clarifying language, the Commission is considering adding a note stating that where a proponent requests a copy of the registrant's security holder list in order to be able to limit appropriately his delivery of written proxy material to security holders and the registrant refuses to provide the list, Rule 14a–8(a)(1)(ii) will not bar the security holder proposal even if the proponent exceeds the limit contained in the rule. Thus, a registrant would not be able both to deny a proponent the information needed in order to limit his solicitation and exclude the proposal on the grounds that the permissible limitation was exceeded.

2. Requests for Documentary Support of Beneficial Ownership

Rules 14a–8(a) (1) and (2) set forth eligibility and other requirements for security holder proposals. At the time he submits a proposal, a proponent must be a record holder or beneficial owner of at least 1% or $1,000 in market value of securities entitled to be voted on the proposal at the meeting and have held the securities for at least one year.[25] At that time, the proponent also must provide the registrant in writing with his name, address, the number of the registrant's voting securities that he holds of record or beneficially, the dates upon which he acquired such securities, and documentary support for the claim of beneficial ownership.[26]

If the proponent fails initially to furnish documentary support for the claim of beneficial ownership, the registrant may request such support. Rule 14a–8(a)(1)(i) currently requires a proponent to furnish appropriate documentation within 14 calendar days after receiving such a request from the registrant.[27] The Commission is proposing to amend the rule to require that, if a registrant requests documentation of a proponent's beneficial ownership, the registrant must make that request promptly after receipt of the proposal. This amendment would prevent a registrant from delaying for a substantial time period its request for documentary support. Comment is solicited on this proposed amendment and whether, in the alternative, the amendment should require a registrant to make its request for documentary support within a specific time period after receipt of the proposal from the security holder, such as 10, 14 or 21 calendar days.

Further, the Commission is proposing an amendment to Rule 14a–8(a)(1)(i) that would change from 14 to 21 calendar days the time period within which a proponent must furnish appropriate documentation after being requested to do so by a registrant. This change would give proponents additional time in which to obtain and submit the documentary support. Comment is solicited on this proposed change and the practical effects of lengthening the time period.

Generally, a written representation by an independent third party, such as a depository, a record holder, or broker-dealer holding the securities in street name, of the proponent's holding of the registrant's securities for the relevant one year time period would be considered appropriate documentation for a proponent's beneficial ownership claim. Comment is solicited as to whether, for purposes of Rule 14a–8(a)(1)(i), filings with the Commission, such as Schedules 13D or 13G,[28] Form 13F,[29] Form 3[30] or Form 4,[31] covering dates during the relevant one year period, should be accepted either as sufficient documentation of a proponent's beneficial ownership claim for the requisite period or as sufficient documentation for the dates as of which they speak and a basis for further verification, by the proponent's affidavit or similar statement, for all other relevant dates, without the need for a written statement by a third party.

Finally, it has been brought to the Commission's attention that some registrants request documentation of ownership from record holders who submit shareholder proposals. Such requests are neither appropriate nor consistent with Rule 14a–8. A record holder's proposal may not be omitted from the registrant's proxy material on the grounds that the record holder failed to provide documentation of ownership.

III. Request for Comment

Any interested persons wishing to submit written comments on the proposed revisions to the rules, as well as on other matters that might have an impact on the proposals contained herein, are requested to do so. The Commission also requests comment on whether the proposed rules, if adopted, would have an adverse effect on competition or would impose a burden on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under section 23(a) of the Exchange Act.

IV. Cost-Benefit Analysis

To evaluate the benefits and costs associated with the proposed amendments to Exchange Act Rules 14a–6, 14a–8, 14c–5 and Schedule 14C and to Investment Company Act Rule 20a–1, the Commission requests commentators to provide views and data as to the costs and benefits associated with amending the filing requirements for proxy statements and information statements. The elimination of the requirements to file preliminary proxy statements and information statements in certain circumstances should reduce some costs for those registrants who meet the requirements of the amendments.

The Commission also requests commentators to provide views and data concerning the costs and benefits of amending the shareholder proposal rule and filing fee requirements. The deletion or modification of Rule 14a–8(a)(1)(ii) may impose some costs on registrants and reduce some costs for proponents of shareholder proposals. The other proposed amendments to the shareholder proposal rule, if adopted, should not significantly increase or decrease costs for registrants or proponents. Comments also are requested on the effects of the proposals on the costs of small entities.

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[24] The clarification could be made by adding the phrase "for that meeting" to the end of the first sentence of Rule 14a–8(a)(1)(ii).

[25] Rule 14a–8(a)(1)(i), 17 CFR 240.14a–8(a)(1)(i).

[26] Rule 14a–8(a)(2), 17 CFR 240.14a–8(a)(2).

[27] The second sentence of Rule 14a–8(a)(1)(i) currently refers to documentation of beneficial ownership of at least $1,000 in market value, and is proposed to be amended also to include the alternative 1% standard.

[28] 17 CFR 240.13d–102.

[29] 17 CFR 249.325.

[30] 17 CFR 249.103.

[31] 17 CFR 249.104.

V. Initial Regulatory Flexibility Act Analysis

This initial regulatory flexibility analysis concerns proposed amendments to Exchange Act Rules 14a–6, 14a–8, 14c–5 and Schedule 14C and to Investment Company Act Rule 20a–1. The analysis has been prepared by the Commission in accordance with 5 U.S.C. 603.

Reasons for, and Objectives of, the Proposals

Currently, all proxy statements pursuant to Rule 14a–6 and all information statements pursuant to Rule 14c–5 are required to be filed in preliminary form with the Commission. The proposed amendments to these rules, if adopted, would eliminate the filing of preliminary proxy and information statements under certain circumstances. The objective of the proposed amendments is to decrease burdens on registrants associated with the filing of preliminary proxy material that deals with ordinary matters and is unlikely to be reviewed by the staff. The proposed amendments also are intend to reduce administrative costs incurred by the Commission in processing this material.

Related amendments to Rules 14a–8 (d) and (e) and to instruction 2 of Item 4 of Schedule 14C would base timing requirements on the filing of definitive rather than preliminary proxy or information statements. The proposed amendments to the filing fee requirements in Rules 14a–6(j) and 14c–5(g) and Rule 20a–1 under the Investment Company Act of 1940 would require that filing fees be paid when definitive material is filed where preliminary material is not required to be filed. The objective of these amendments is to make timing and filing fee requirements consistent with the proposed amendments to eliminate filing requirements for preliminary proxy and information statements. An additional proposed amendment to the last paragraph of Rule 14a–8(e) would require that a proponent, who believes that the registrant's statement in opposition is false and misleading, and so informs the Commission, provide a copy of the statement in opposition to the Commission along with its letter. The objective of this amendment is to prevent delays in review where the Commission has not been furnished with the registrant's statement in opposition.

Other proposed changes to Rule 14a–8 would delete or modify existing Rule 14a–8(a)(1)(ii), which provides for the exclusion of a shareholder proposal if the proponent delivers written proxy materials to holders of more than 25% of a class of the registrant's securities. The objective of the deletion or modification is to give proponents access to the corporate proxy machinery even where they conduct more widespread solicitations. If the rule is retained in its current or modified form, an amendment is being considered to clarify the rule's applicability to the current meeting of shareholders as well as to the meetings held in the following two years.

A proposed amendment to Rule 14a–8(a)(1)(i) would require a registrant to make any request for documentary support of a proponent's beneficial ownership claim promptly after receipt of the shareholder proposal. The objective of this amendment is to prevent registrants from delaying for a substantial time period requests for documentary support. Another proposed amendment to Rule 14a–8(a)(1)(i) would change from 14 to 21 calendar days the time period within which a proponent must provide appropriate documentation after being requested to do so by the registrant. This amendment is intended to give proponents additional time in which to obtain and submit the documentary support.

Legal Basis

The proposed amendments would be promulgated pursuant to sections 14 and 23(a) of the Securities Exchange Act of 1934.

Small Entities Subject to the Rules

The proposed amendments would affect proxy filings and other requirements for registrants, including investment companies, and proponents. Rule 0–10[32] under the Exchange Act provides that "small business," for purposes of the Regulatory Flexibility Act, includes a registrant that, on the last day of its most recent fiscal year, had total assets of $5 million or less. The proposed amendments to the proxy rules would apply to proxy solicitations or information statements of registrants with securities either registered pursuant to section 12(g) of the Exchange Act or listed on a national securities exchange pursuant to section 12(b). While many small entities are exempt from registration pursuant to section 12(g), the Commission is aware that some of these exempt small entities that are publicly traded register their securities and are subject to the proxy rules. In addition, fewer than 50 small entities have securities listed on a national securities exchange. The Commission estimates that, in all, between 1,100 and 1,400 of the roughly 7,600 companies that are registered under section 12 and are subject to the proxy rules, have total assets not exceeding $5 million.

Rule 0–10 under the Investment Company Act of 1940 [33] defines a "small business" or "small organization" as an investment company with net assets of $50 million or less as of the end of its most recent fiscal year. The Commission estimates that the proposed amendments would apply to 2,485 registrants that are management investment companies of which 1,452 have net assets of $50 million or less.

Certain of the proposed amendments to Rule 14a–8 also would apply to security holder proponents that are small entities. Rule 0–10 under the Exchange Act provides that, for purposes of the Regulatory Flexibility Act, "small business" includes a person that has $5 million or less in total assets. The Commission does not have adequate data of the number of proponents to which the proposed amendments would apply. It is possible, however, that a substantial number of such proponents will be small entities.

Reporting, Recordkeeping and Other Compliance Requirements

The proposed amendments to Rules 14a–6, 14a–8(d) and (e), 14c–5 and Schedule 14C and to Investment Company Act Rule 20a–1 would not result in any significant increase in reporting, recordkeeping or compliance requirements. The proposed amendments to eliminate the filing requirements for preliminary proxy and information statements would result in a reduction of reporting and other compliance requirements for all entities that qualify for the exclusion.

The proposed amendments to delete or modify Rule 14a–8(a)(1)(ii) could result in the inclusion of a greater number of shareholder proposals in registrants' proxy materials, which are required to be filed with the Commission. The proposed amendments to Rule 14a–8(a)(1)(i) would not result in a significant increase or decrease in reporting, recordkeeping or compliance burdens.

Overlapping or Conflicting Federal Rules

The proposed rules would not duplicate or conflict with any existing rule provisions.

Significant Alternatives

The proposed amendments to Rules 14a–6, 14a–8(d) and (e), 14c–5 and

[32] 17 CFR 240.0–10.

[33] 17 CFR 270.0–10.

Schedule 14C and Investment Company Act Rule 20a–1 are expected to benefit all registrants subject to the proxy rules, regardless of size, by relieving filing burdens under certain circumstances. One significant alternative to the proposed amendments could be different or simplified compliance or reporting requirements for small entities. Such requirements for small entities could include the elimination of the filing requirements for small entities with respect to additional categories of preliminary proxy material. Alternatively, small entities could be exempted altogether from all requirements to file preliminary proxy materials. Such an elimination of filing requirements for small entities or exemption of small entities would not be consistent with the Commission's statutory mandate to require adequate disclosure to voting security holders. Another alternative could be the adoption of performance rather than design standards with respect to the preparation and filing of proxy materials by small entities. The adoption of such performance standards would not be consistent with the Commission's statutory mandate to require adequate disclosure to voting security holders.

The Commission has proposed various amendments to Rule 14a–8, the shareholder proposal rule. The rule serves the purpose of permitting the inclusion of certain shareholder proposals in registrants' proxy materials. In the Commission's view, according different treatment to shareholder proposals depending on the size of either the registrant or the proponent, by means of different compliance or reporting requirements or timetables for small entities or an exemption of small entities from the eligibility requirements altogether, would not be consistent with this purpose.

Solicitation of Comments

The Commission encourages the submission of written comments with respect to any aspect of this initial regulatory flexibility analysis. Such written comments will be considered in the preparation of the final regulatory flexibility analysis, if the propose? rule is adopted. Persons wishing to submit written comments should file them with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comment letters should refer to File No. S7–19–86. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

VI. Statutory Basis

The amendments to the proxy rules are being proposed by the Commission pursuant to Sections 14 and 23(a) of the Securities Exchange Act of 1934.

List of Subjects in CFR Parts 240 and 270

Reporting and recordkeeping requirements, securities.

Text of Proposals

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

Note.—Brackets indicate deletions and arrows indicate additions.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read, in part, as follows:

Authority: Sec. 23, 48 Stat. 901, as amended, 15 U.S.C. 78w * * *

2. By amending § 240.14a–6 by adding two sentences to paragraph (a), adding new notes 3 and 4 to the end of paragraph (a), revising the first phrase of the introductory text of paragraph (j), revising paragraphs (j) (1), (2) and (3) and adding new paragraph (j)(4) to read as follows:

§ 240.14a–6 Filing requirements.

* * * * *

(a) * * * ►A preliminary proxy statement fand form of proxy shall not be filed with the Commission if the solicitation relates to an annual (or special meeting in lieu of the annual) meeting of security holders at which the only matters to be acted upon are (1) the election of directors; (2) the election, approval or ratification of accountant(s); (3) a security holder proposal included pursuant to Rule 14a–8; (4) with respect to an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.)*, a proposal to continue, without change, any advisory or other contract or agreement that previously has been the subject of a proxy solicitation for which proxy material was filed with the Commission pursuant to this rule; and/or (5) with respect to an open-end investment company registered under the Investment Company Act of 1940, a proposal to increase the number of shares authorized to be issued. The exclusion does not apply, however, if a party has commenced a solicitation in opposition in connection with the forthcoming meeting or if the registrant has received notice of the intention of a party to commence such a solicitation, unless the solicitation is commenced or the notice is first received during the 45 calendar days prior to the registrant's scheduled meeting date and the registrant does not comment upon or refer to such solicitation in its proxy material.◄

Notes.—

►3. *Notice.* For purposes of the exclusion from filing preliminary proxy material, a registrant shall be deemed to have received notice of the intention of a party to commence a solicitation in opposition if a public filing is made with the Commission in which an intent to solicit is indicated; a written or oral communication indicating such an intent is furnished directly to the registrant by or on behalf of another party; and/or the registrant's proxy material addresses a solicitation in opposition.◄

►4. *Solicitation in Opposition.* For purposes of the exclusion from filing preliminary proxy material, a "solicitation in opposition" includes any solicitation opposing a proposal supported by the registrant or supporting a proposal that the registrant does not expressly support.◄

* * * * *

(j) *Fees.* At the time of filing the [preliminary] proxy solicitation material, * * *

(1) ►For definitive proxy material relating to a solicitation for which the registrant does nor file preliminary proxy material, a fee of $125;◄ (2) [For] ►for◄ preliminary proxy material which solicits proxies for [election of directors or other] business for which a stockholder vote is necessary, but apparently no controversy is involved, fee of $125; [2] ►(3)◄ for ►preliminary◄ proxy material where a contest as set forth in Rule 14a–11 is involved, a fee of $500 from each party to the controversy; and [3] ►(4)◄ for ►preliinary◄ proxy material involving acquisitions, mergers, spin-offs, consolidations or proposed sales or other dispositions of substantially all the assets of the company, a fee established in accordance with Rule 0–11, (§ 240.0–11 of this chapter), shall be paid. No refund shall be given.

* * * * *

3. By amending § 240.14a–8 by removing paragraph (a)(1)(ii) and the designation (i) in paragraph (a)(1) and by revising the second sentence of paragraph (a)(1), paragraph (d) introductory text, paragraph (e) and the concluding paragraph read as follows:

§ 240.14a–8 Proposals of security holders.

(a) * * *

(1) *Eligibility.* * * * If the registrant requests documentary support for a proponent's claim that he is the beneficial owner of at least ►1% or◄

$1000 in market value of such voting securities of the registrant or that he has been a beneficial owner of the securities for one or more years, ►the registrant shall make such request promptly and◄ the proponent shall furnish appropriate documentation within [14] ►21◄ calendar days after receiving the request. * * *

* * * * *

(d) Whenever the registrant asserts, for any reason, that a proposal and any statement in support thereof received from a proponent may properly be omitted from its proxy statement and form of proxy, it shall file with the Commission, not later than [60] ►80◄ calendar days prior to the date the [preliminary] ►definitive◄ copies of the proxy statement and form of proxy are filed pursuant to Rule 14a–6(a) (§ 240.14a–6(a) of this chapter), or such shorter period prior to such date as the Commission or its staff may permit, six copies of the following items:

* * * * *

(e) If the registrant intends to include in the proxy statement a statement in opposition to a proposal received from a proponent, it shall, not later than [ten] ►30◄ calendar days prior to the date the [preliminary] ►definitive◄ copies of the proxy statement and form of proxy are filed pursuant to Rule 14a–6(a), or, in the event that the proposal must be revised to be includable, not later than five calendar days after receipt by the registrant of the revised proposal promptly forward to the proponent a copy of the statement in opposition to the proposal.

In the event the proponent believes that the statement in opposition contains materially false or misleading statements within the meaning of Rule 14a–9 and the proponent wishes to bring this matter to the attention of the Commission, the proponent promptly should provide the staff with a letter setting forth the reasons for this view ►and a copy of the statement in opposition◄ and at the same time promptly provide the registrant with a copy of [such] ►his◄ letter.

4. By amending § 240.14c–5 by adding two sentences to paragraph (a) and new notes 3 and 4 to the end of paragraph (a) and revising paragraph (g) to read as follows:

§ 240.14c–5 Filing requirements.

* * * * *

(a) * * * ►A preliminary information statement shall not be filed with the Commission if it relates to an annual (or special meeting in lieu of the annual) meeting of security holders at which the only matters to be acted upon are (1) the election of directors; (2) the election, approval or ratification of accountant(s); and/or (3) a security holder proposal included pursuant to Rule 14a–8. The exclusion does not apply, however, if a party has commenced a solicitation in opposition in connection with the forthcoming meeting or if the registrant has received notice of the intention of a party to commence such a solicitation, unless the solicitation is commenced or the notice is first received during the 45 calendar days prior to the registrant's scheduled meeting date and the registrant does not comment upon or refer to such solicitation in its proxy material.◄

Notes.—* * *

►3. *Notice.* For purposes of the exclusion from filing a preliminary information statement, a registrant shall be deemed to have received notice of the intention of a party to commence a solicitation in opposition if a public filing is made with the Commission in which an intent to solicit is indicated; a written or oral communication indicating such an intent is furnished directly to the registrant by or on behalf of another party; and/or the registrant's information statement addresses a solicitation in opposition.◄

►4. *Solicitation in Opposition.* For purposes of the exclusion from filing a preliminary information statement, a "solicitation in opposition" includes any solicitation opposing a proposal supported by the registrant or supporting a proposal that the registrant does not expressly support.◄

* * * * *

(g) *Fees.* At the time of filing the preliminary information statement, ►or the definitive information statement if no preliminary information statement is filed,◄ the registrant shall pay to the Commission a fee of $125, no part of which shall be refunded, except, however, when filing a preliminary information statement regarding an acquisition, merger, spinoff, consolidation or proposed sale or other disposition of substantially all the assets of the company, the registrant shall pay the Commission a fee established in accordance with Rule 0–11 (§240.0–11 of this chapter).

5. Section 240.14c–101 is amended by revising Instruction 2 to Item 4 as follows:

§240.14c–101 Schedule 14c, information required in information statement.

* * * * *

Item 4. Proposals by Security Holders

* * * * *

Instructions * * *

2. If the registrant intends to rule a proposal out of order, the Commission shall be so advised [at the time preliminary copies] ►20 calendar days prior to the date the definitive copies◄ of the information statement are filed with the Commission, together with a statement of the reasons why the proposal is not deemed to be a proper subject for action by security holders.

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

6. The authority citation for Part 270 continues to read, in part, as follows:

Authority: Secs. 38, 40, 54 Stat. 841, 842, 15 U.S.C. 80a–37, 80c–89 * * *

7. By revising paragraph (c) of § 270.20a–1 to read as follows:

§ 270.20a–1 Solicitation of proxies, consents and authorizations.

* * * * *

(c) In lieu of the fees specified in Rule 14a–6 of the General Rules and Regulations under the Securities Exchange Act of 1934, at the time of filing the preliminary solicitation material ►or, if no preliminary solicitation material is filed, at the time of filing the definitive solicitation material, ◄ the person upon whose behalf the solicitation is made shall pay to the Commission a fee of $125, no part of which shall be refunded.

By the Commission.

June 4, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87–13255 Filed 6–10–87; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1240

[Docket No. 81N–204C]

Requirements Affecting Raw Milk for Human Consumption in Interstate Commerce

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing this notice of proposed rulemaking in response to a recent court decision

directing the agency to publish a proposed rule banning the interstate sale of all raw milk and raw milk products. In addition to proposing such a ban, the agency is requesting comments on alternative courses of action.

DATE: Written comments by July 13, 1987. See supplementary information for a full discussion about the comment period.

ADDRESS: Written comments are to be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert J. Lenahan, Center for Food Safety and Applied Nutrition (HFF–302), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0162.

SUPPLEMENTARY INFORMATION: FDA is issuing this notice of proposed rulemaking in response to a decision by the United States District Court ordering "that the Food and Drug Administration and the Secretary of Health and Human Services publish in the **Federal Register**, a proposed rule banning the interstate sale of all raw milk and raw milk products, both certified and non-certified, pursuant to the provisions of 5 U.S.C. section 553 and complete all rulemaking proceedings in accordance with this Court's opinion within one hundred eighty (180) days."

The agency is inviting public comment on this proposal. However, because of time constraints imposed upon the agency by the Court in ordering the completion of "all rulemaking proceedings" on raw milk within a limited time frame, the comment period is accordingly limited to 30 days. Because of the time constraints involved in this proceeding, the agency will be unable to accept requests for extension of the comment period.

I. Background

In the **Federal Register** of September 9, 1972 (37 FR 18392), FDA, under section 401 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 341), proposed to revise existing standards of identity and to establish new standards of identity for certain milk and cream products. This notice included an FDA proposal to require that each of the listed milk and cream products be pasteurized.

In the **Federal Register** of October 10, 1973 (38 FR 27924), FDA published a final rule which included the requirement that fluid milk products moving in interstate commerce be pasteurized. In deciding upon the pasteurization requirement, FDA reasoned that pasteurization was the only way to assure the destruction of pathogenic microorganisms that might be present.

Following publication of the final rule, FDA received one request for a hearing and an accompanying set of objections on the pasteurization requirement for certified raw milk. The procedures used in producing certified raw milk are significantly different from those used in producing raw milk in general in that they must comport with the methods and standards established by the American Association of Medical Milk Commissions, a private organization that provides to its members such guidelines for the production of certified raw milk (Ref. 17). Only dairies that employ the Association's techniques have the right to use the term "certified" on their products. The objections, which pertained only to certified raw milk, were based on two premises: (1) Certified raw milk is a safe product, and (2) section 401 of the act (21 U.S.C. 341) does not provide authority to establish a standard of identity solely for health reasons.

In the **Federal Register** of December 5, 1974 (39 FR 42351), FDA announced that the objections raised a substantial issue of fact with regard to whether pasteurization is needed for certified raw milk and that a hearing would be conducted. Accordingly, FDA stayed this requirement for certified raw milk. (That stay is still in effect.) The requirement for pasteurization for all other milk and milk products covered by the new standards of identity was made final in the December 5, 1974, final rule and, thus, any such milk or milk product that is in final package form for human consumption moving in interstate commerce, but that is not pasteurized, is misbranded. See section 403(g) of the act (21 U.S.C. 343(g)). Most milk and milk products in final package form for human consumption in intrastate commerce are also required by various State laws to be pasteurized.

A. Citizen Petition

On April 10, 1984, the Health Research Group (HRG) of Public Citizen, a citizens' organization, petitioned the Secretary of the Department of Health and Human Services (HHS) to "promulgate a regulation banning all sales, interstate and intrastate, of raw (unpasteurized) milk and raw milk products in the United States" (Ref. 12).

B. Public Hearing (October 11 and 12, 1984)

In the **Federal Register** of August 3, 1984 (49 FR 31065), FDA announced a public hearing to receive information on whether milk and milk products sold for human consumption should be pasteurized. The notice, published in part in response to the citizen petition, encouraged interested persons to present information, data, and views on the following issues:

1. Whether the consumption of raw milk, including certified raw milk and raw milk products, is of public health concern; and

2. If the answer to issue 1 is yes, whether requiring pasteurization of raw milk, including certified raw milk and raw milk products, is the most reasonable regulatory option.

The notice of hearing stressed that the purpose of the hearing was to develop an administrative record upon which sound agency action could be based.

Over 30 witnesses either submitted written testimony or testified at the October public hearing. Most of those testifying against any Federal regulation of raw milk and raw milk products acknowledged that associations between the consumption of raw milk and the onset of disease have been reported, but pointed out that many other foods, against which no similar Federal action is contemplated, also present sources of exposure to harmful microorganisms. Other witnesses asserted that the "relative risk" of contracting communicable disease from raw milk, in particular certified raw milk, is low when compared to other potential sources of infection.

Several witnesses testified that, in the absence of a definitive case-control study, there is no way to determine whether the apparent association between drinking raw milk and being infected by harmful microorganisms is causal, and encouraged HHS to sponsor such a study.

Other proponents of raw milk testified that unpasteurized milk offers nutritional benefits that are destroyed by pasteurization. These witnesses claimed that the heating of milk destroys enzymes that are responsible for the absorption of valuable vitamins and minerals and also destroys antibodies and immune factors that serve as natural protectors against harmful microorganisms.

Other witnesses testified in favor of some form of ban on raw milk. These witnesses argued that the risks associated with the consumption of raw milk, even certified raw milk, outweigh any benefits from its consumption. Representatives from the American Veterinary Medical Association, the American Academy of Pediatrics, the National Conference on Interstate Milk

Shipments, and the National Milk Producers Federation offered testimony in support of the pasteurization of raw milk.

C. Court Related Developments

On September 19, 1984, after FDA had announced the public hearing, but before the hearing was held, HRG filed suit in Federal district court to compel HHS to promulgate a regulation banning all sales, interstate and intrastate, of raw (unpasteurized) milk and raw milk products in the United States.

On January 14, 1985, in *Public Citizen v. Heckler*, 602 F. Supp. 611 (D.D.C. 1985), the court held that there had been unreasonable delay in deciding whether there should be additional Federal regulation of raw milk as requested in the April 10, 1984, HRG petition and ordered HHS to respond to the petition (Ref. 13).

By letter dated March 15, 1985, the Commissioner of Food and Drugs denied the petition, stating that the agency would not ban either interstate or intrastate sales of raw milk (Ref. 14). The letter acknowledged that "raw milk, including certified raw milk, is a vehicle for the transmission and spread of communicable diseases," but concluded that a Federal ban would not be the most effective or appropriate means of dealing with the health problems posed by unpasteurized milk and milk products, and would have minimal public health benefit, given the current patterns of distribution and sale of these products.

Following FDA's denial of its citizens' petition, HRG again filed suit in the Federal district court, this time seeking judicial review of the agency's action. HRG also challenged the failure to terminate the 1974 stay of the 1973 FDA regulation that revised the existing standards of identity for milk and milk products in interstate commerce, and in effect prohibited the sale of all unpasteurized milk in interstate commerce. HRG asked the Federal district court to compel HHS to (1) complete the pending rulemaking proceeding to require that all milk and milk products sold in interstate commerce be pasteurized, and (2) initiate a new rulemaking proceeding banning both interstate and intrastate sales of raw milk.

On December 31, 1986, the court ruled that the denial of the HRG petition constituted arbitrary and capricious agency action and ordered that a rule be promulgated banning the interstate sale of all raw milk and all raw milk products. The court ruled, however, that there was no indication that a rule banning the intrastate sale of raw milk would be necessary to effectuate an interstate ban. The court also held that there was no basis for relief with respect to the 1974 stay of the food standard revisions affecting certified raw milk.

FDA sought a clarification of the court's order, pointing out that the immediate issuance of a final rule in compliance with the order would circumvent notice and comment rulemaking procedures required by the Administrative Procedure Act. On February 10, 1987, the court amended its order to provide that a rule be proposed "banning the interstate sale of all raw milk and raw milk products, both certified and non-certified, pursuant to the provisions of 5 U.S.C. 553 and complete all rulemaking proceedings in accordance with this Court's opinion within ninety (90) days of the date of this Order" (Ref. 16). On March 11, 1987, the court again amended its order to provide the agency 180 days from February 10 to complete the rulemaking proceeding.

This proposed rule is being issued in response to the amended judgment and orders of the Federal district court.

II. Overview

Proposing to ban the interstate shipment of raw milk and raw milk products is supported by evidence in the administrative record of this proceeding that unpasteurized milk is the source of disease and that, in vulnerable groups—the old, the infirm, and the very young—this disease can be serious. FDA continues to question, however, whether a ban is necessary and reasonable in light of the small amount of raw milk and raw milk products in package form in interstate commerce. There is only one producer of "certified" raw milk and that firm testified at the public hearing that less than 3 percent of its business involves interstate shipment of certified raw milk products (Transcript of Public Hearing, p. 311). Should a ban be instituted, persons who purchase such milk might continue to buy raw milk produced intrastate. Most illnesses now associated with raw milk products are caused by products in intrastate commerce. Based on the facts available at this time, the health problems associated with raw milk and raw milk products appear to be most appropriately dealt with by State and local authorities. Under these circumstances, banning the interstate shipment of such products may result in an expenditure of Federal resources with very little concomitant public health benefit.

It has also been suggested that the required use of warnings on the labeling of raw milk and raw milk products shipped in interstate commerce may be an alternative to a ban. Carefully and accurately crafted warnings on these products could alert the consumer of the risks associated with the use of raw milk and raw milk products. Manufacturers of intrastate products might opt to use such warnings as well.

Because the consumption of raw milk and raw milk products is associated with health problems (see discussion below), the agency is proposing to ban the interstate shipment and sale of raw milk and raw milk products. The agency also, for the reasons noted in this section and discussed more fully below, is proposing that alternatives to a ban may exist and is calling for comments on those alternatives.

III. Discussion

A. The Association Between the Consumption of Raw Milk and the Outbreak of Disease

The administrative record compiled by the agency documents that there is an association between the consumption of raw milk and the outbreak of disease. The record also demonstrates an association between the consumption of certified raw milk and the outbreak of disease, particularly among consumers who are young, elderly, or infirm. In addition to the reports and information collected by FDA since 1974, the record, as a result of the hearing process, contains significant reports and information that further link the consumption of raw and certified raw milk and the outbreak of disease (Refs. 1 through 11).

A retrospective case review to assess risks associated with the consumption of certified raw milk conducted by the UCLA School of Public Health focuses on recent experience in California (Ref. 2). The authors observe that there appears that there is a consistent association of reported *Salmonella dublin* and certified raw milk use in California from 1980 to 1983, with the strength of this association being highest in 1983 (Ref. 2).

The findings of the UCLA study are consistent with the data and information submitted to the hearing record by the Infectious Disease Section of the California Department of Health Services (CDHS) concerning its retrospective surveillance over 15 years of cases of milk-borne diseases in California. During this period, two bacterial diseases have commonly occurred in consumers of certified raw milk: salmonellosis and campylobacteriosis (Refs. 3, 6, and 11).

Other information and data also help document the association between the consumption of raw milk and raw milk products and the outbreak of disease (Refs. 1, 2, 3, 7, 8, and 10; see references listed in the August 3, 1984, notice of public hearing).

In his October 12, 1984, testimony on behalf of proponents of raw milk, Dr. Joseph Fleiss, a biostatistician, reviewed data concerning the relative risk of developing an *S. dublin* infection as a consequence of drinking certified raw milk. Dr. Fleiss summed up his views on the UCLA, CDHS, and related studies as follows:

> Odds ratios of the magnitudes reported, assuming that they hold up under scrutiny, from a low of 18 to a high of 43, suggest in my opinion, a cause-effect relation and not just an association.

(Transcript of Public Hearing, p. 235)

Added support for the proposition that there is an association between the consumption of raw milk, including certified raw milk, and the outbreak of disease may be found in a recent (October 1984) survey, conducted by the Centers for Disease Control (CDC), of available information and data (Ref. 4). CDC concluded that the role of unpasteurized dairy products, including raw and certified raw milk, in the transmission of infectious disease has been established "repeatedly."

Finally, the administrative record compiled by the agency documents that there is no unequivocal, scientifically confirmed significant health benefit established for the consumption of raw milk, including certified raw milk. There may be, of course, other consumer benefits, such as the preference of some persons for the taste of milk that has not been pasteurized.

B. The Agency's Proposal to Ban Raw Milk and Raw Milk Products in Interstate Commerce

In light of the available scientific evidence that pasteurization reliably destroys microorganisms which can be found in raw milk, including certified raw milk, and which can be harmful to susceptible individuals, and in response to the February 10, 1987, order of the district court, the agency is proposing this action.

The proposed regulation would require that all milk and milk products in final package form, in interstate commerce, and intended for human consumption be pasteurized, except where alternative procedures are provided by regulation (such as in 21 CFR Part 133, which pertains to the curing of certain varieties of cheese). The regulation would not apply to raw milk and raw milk products shipped in interstate commerce that are intended for subsequent processing and pasteurization. The proposed regulation provides that milk and milk products intended for human consumption be continuously held to one of a number of specified temperature/time combinations effective for the destruction of microorganisms of public health significance. The proposed regulation is initiated under the communicable disease provisions of the Public Health Service Act (42 U.S.C. 264).

C. Alternatives to a Ban

A Federal ban may not be the most effective or appropriate means of dealing with the health problems posed by unpasteurized milk and milk products. FDA questions the effectiveness of an interstate ban for the following reasons: (1) Most unpasteurized milk and milk products are marketed exclusively in intrastate commerce; (2) most illnesses associated with unpasteurized milk and milk products are caused by products marketed in intrastate commerce; (3) there is no reason to believe that unpasteurized milk marketed in interstate commerce represents a greater source of risk than unpasteurized milk marketed in intrastate commerce; (4) neither FDA nor HHS has adequate legal authority, based on the facts available at this time, to prohibit the intrastate marketing of unpasteurized milk and milk products; and (5) even assuming that FDA and HHS have such authority, the problems created by unpasteurized milk and milk products are most appropriately dealt with at the State and local level. Because interstate sales of raw milk and raw milk products (primarily certified raw milk and raw milk products) constitute a very small proportion of all raw milk sales, a ban would, in FDA's view, have a minimal effect on the public health problem attributable to unpasteurized milk. Moreover, the promulgation and enforcement of such a ban would require the expenditure of Federal resources. As noted, the public health effect of such an expenditure would be minimal, and consumers of raw milk may continue to purchase it from intrastate sources. The practical effect would be only to prevent the interstate shipment of a small amount of raw milk and raw milk products. It is not clear whether this would be an efficient and appropriate way to use Federal resources. Moreover, the regulation of the fluid milk industry has historically been a matter in which States have exercised primary responsibility. Thus, there already exists a pervasive system of State regulation. Accordingly, FDA solicits comments on the propriety of not proceeding to ban the interstate shipment and sale of raw milk and raw milk products, and any additional information available on the amount of raw milk and raw milk products in interstate commerce and the numbers of people likely to be exposed to a risk of infection through interstate sale of such products.

The standards of identity currently in effect for milk and milk products marketed in interstate commerce require that all standardized products other than certified raw (and other than certain cheese products that are aged rather than pasteurized) be pasteurized. Conversely, those standards do not apply to milk and milk products marketed only in intrastate commerce. According to information available to the agency, 26 States and the District of Columbia prohibit the intrastate sale of unpasteurized milk and milk products (Ref. 18). The marketing of unpasteurized milk and milk products in the remaining States is unaffected by current Federal pasteurization requirements. Those States, however, are in no way inhibited by Federal law from taking measures to prohibit the sale of unpasteurized products. In fact, the National Conference on Interstate Milk Shipments, whose members consist of the milk regulatory agencies of the 50 States and the District of Columbia, has adopted a model ordinance that would require the pasteurization of all grade A milk and milk products. In response to that action, in each State and in the District of Columbia, there is either a law or a regulation that requires that milk and milk products must be pasteurized before they can be classified as grade A. Because most milk and milk products in both interstate and intrastate commerce are classified as grade A, most milk products are pasteurized, even in States that do not require that all milk and milk products be pasteurized.

In sum, pervasive Federal and State regulatory controls already exist that impose a pasteurization requirement on most milk and milk products. With respect to the interstate market, all standardized products other than certified raw milk, and certain cheese products discussed earlier, must be pasteurized. With respect to the intrastate market, the majority of States require all milk products to be pasteurized, all require grade A products to be pasteurized, and any State is free to prohibit completely the sale of unpasteurized products.

The agency has already assembled a substantial administrative record on this general issue. That administrative record as well as references cited in this document have been placed on display in the Dockets Management Branch (address above).

Several witnesses at the public hearing suggested that labeling would be an appropriate alternative to a ban. FDA recognizes that there are arguments both for and against the use of labeling to address the public health problems associated with consuming raw milk and raw milk products. The risk of infection presented from consuming raw milk and raw milk products does not arise from the misuse or abuse of the product but rather from its customary food use, and those who prefer raw milk and raw milk products may ignore such warnings because they have never knowingly experienced an infection. Furthermore, promulgation and enforcement of a labeling requirement would require the expenditure of Federal resources. Nevertheless, labeling could be an effective means to ensure that consumers who voluntarily choose to consume raw milk are informed as to the risks inherent in that choice. Moreover, such labeling may limit the number of new users In high risk groups.

FDA traditionally tries to tailor the warning on a label to the likelihood of harm involved. Because of the potential risks presented by the consumption of raw milk, FDA recognizes that any warning language, if adopted, would have to be carefully crafted. The agency notes, however, that although the potential risks to the young, elderly, and the infirm appear to be very high, the risks presented to the majority of people who voluntarily consume raw milk are lower than the risks posed by other voluntarily undertaken activities.

In light of the uncertainties surrounding the use of labeling to address problems associated with raw milk, FDA encourages interested individuals to submit information and comments on the use of labeling as an alternative.

The agency is also aware that progress is being made in the development and application of new laboratory methods that permit more rapid detection of harmful bacteria in milk or in cows used to produce milk. Such methods, if perfected, could be used to reduce the occurrence of potentially harmful bacteria in certified raw milk. Using a system of screening in conjunction with labeling may be an alternative to labeling alone. Given the short shelf life of raw milk, however, and the existence of multiple organisms that may pose human health concerns, it may be difficult to develop practical and adequate testing protocols.

Therefore, the agency seeks comments from qualified experts on the practicability, economic feasibility, reliability, and degree of risk reduction that may be obtained through the application of additional laboratory testing of certified raw milk and/or the herd used to produce such milk.

IV. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Morrison, F.R., Department of Health Services, Health and Welfare Agency, State of California, letter to Paul M. Fleiss, July 7, 1983, Re: "Attack Rates for *S. dublin* Infection and Raw Milk Use."

2. Richwald, G.A., et al., UCLA School of Public Health, "An Assessment of Risks Associated with Raw Milk Consumption in California," March 31, 1986.

3. Lyman, D.O., Chief, Health Protection Division, Department of Health Services, Health and Welfare Agency, State of California, letter and report to FDA, August 30, 1984, Re: "Disease in California Associated with Certified Raw Milk."

4. Potter, M.E., et al., "Unpasteurized Milk, The Hazards of a Health Fetish," *Journal of the American Medical Association*, 252 (15):2048–2052, October 19, 1984.

5. Chin, J., "Raw Milk: A Continuing Vehicle for the Transmission of Infectious Disease Agents in the United States," *Journal of Infectious Diseases*, 146 (3):440–441, September 1982.

6. Morbidity and Mortality Weekly Report, "Salmonella Dublin and Raw Milk Consumption—California," April 13, 1984, Centers for Disease Control, HHS/PHS.

7. Werner, S.B., et al., "Association Between Raw Milk and Human Salmonella Dublin Infection," *British Medical Journal*, July 26, 1979.

8. Fierer, J., "Invasive Salmonella Dublin Infections Associated with Drinking Raw Milk," *Western Journal of Medicine*, 138 (5):665–669, May 1983.

9. Potter, M. E., Veterinary Epidemiologist, Center for Infectious Diseases, Centers for Disease Control, HHS/PHS, Presentation on the Adverse Health Effects of Consuming Raw or Unpasteurized Milk, September 1984.

10. Foege, W. H., Assistant Surgeon General, Director, Centers for Disease Control, HHS/PHS, letter to J. C. Bolton, May 27, 1983, Re: "The Safety of Raw Milk and Its Association With Human Diseases."

11. Werner, S. B., Infectious Disease Section, Department of Health Services, Health and Welfare Agency, State of California, letter to J. Bolton, July 12, 1983, Re: "Statistics on How the Risk of Contracting *S. dublin* Infections in Association With Raw Milk Exposure Compares With that in Persons Not Using Raw Milk."

12. Citizens' Petition for Health Research Group of Public Citizen to the Secretary of the Department of Health and Human Services, dated April 10, 1984.

13. Opinion and order, *Public Citizen* v. *Heckler*, 602 F. Supp. 611 (D.D.C. 1985), dated January 14, 1985.

14. Letter from the Commissioner of Food and Drugs to Sidney M. Wolfe, Director of Health Research Group, dated March 15, 1985.

15. Opinion and order, *Public Citizen* v. *Heckler*, ___ F. Supp. ___ (D.D.C. 1986), dated December 31, 1986.

16. Order and amended judgment, *Public Citizen* v. *Heckler*, ___ F. Supp. ___ (D.D.C. 1986), dated February 10, 1987.

17. "Methods and Standards for the Production of Certified Milk," The American Association of Medical Milk Commissions, Inc. (Revised edition, 1976).

18. FDA Memorandum to the File dated February 24, 1987, from L. C. Seabron.

V. Environmental Impact

This action is not specifically designated in 21 CFR 25.22(a) and does not fall within the scope of the general provision of 21 CFR 25.22(a)(19) because the action could not significantly affect the quality of the human environment. Since the action is not covered under 21 CFR 25.22(a), the preparation of an environmental assessment and consideration by the agency of the need for preparing an environmental impact statement are not required.

VI. Economic Impact

In accordance with the Regulatory Flexibility Act (Pub. L. 96–354) and Executive Order 12291, the agency has analyzed the economic effects of this proposal. The agency is aware of only one domestic producer of certified raw milk and raw milk products in package form intended for human consumption. This producer also manufactures pasteurized milk and other milk products. Raw milk and raw milk products account for approximately 12 percent of the firm's total production volume. If a decision to ban the interstate sale of these products is enacted, the cost of this regulation to the producer would be the incremental cost of diverting all raw milk and raw milk products to intrastate commerce or the additional cost associated with pasteurizing the raw milk along with the cost of appropriate label changes. If a labeling requirement is promulgated, the cost of labeling changes would be incurred. Available information suggests that a very small amount of raw milk enters interstate commerce. These costs are therefore expected to be small.

Therefore, in accordance with section 605(b) of the Regulatory Flexibility Act, the agency has determined that no

significant impact on a substantial number of small entities will derive from this action. Further, in accordance with Executive Order 12291, FDA has determined that the economic effects of this proposal do not constitute a major rule as defined by that Order.

Comments

Interested persons may, on or before July 13, 1987, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 1240

Communicable diseases, Public health, Travel restrictions, Water supply.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and the Public Health Service Act, it is proposed that Part 1240 be amended as follows:

PART 1240—CONTROL OF COMMUNICABLE DISEASES

1. The authority citation for 21 CFR Part 1240 is revised to read as follows:

Authority: Secs. 215, 311, 361, 368, 58 Stat. 690, 693, 703 as amended, 706 (42 U.S.C. 216, 243, 264, 271); 21 CFR 5.10, 5.11.

2. By adding new § 1240.61 to read as follows:

§ 1240.61 Mandatory pasteurization for all milk and milk products in final package form intended for direct human consumption.

(a) No person shall cause to be delivered into interstate commerce or shall sell, otherwise distribute, or hold for sale or other distribution after shipment in interstate commerce any milk or milk product in final package form for direct human consumption that has not been pasteurized except where alternative procedures are provided by regulation, such as Part 133 of this chapter for curing of certain cheese varieties.

(b) Except as provided in paragraphs (c) and (d) of this section, the terms "pasteurization," "pasteurized," and similar terms shall mean the process of heating every particle of milk and milk product in properly designed and operated equipment to one of the temperatures given in the following table and held continuously at or above that temperature for at least the corresponding specified time:

Temperature	Time
145 °F (63 °C) [1]	30 minutes.
161 °F (72 °C) [1]	15 seconds.
191 °F (89 °C)	1 second.
194 °F (90 °C)	0.5 second.
201 °F (94 °C)	0.1 second.
204 °F (96 °C)	0.05 second.
212 °F (100 °C)	0.01 second.

(c) Eggnog shall be heated to at least the following temperature and time specification:

Temperature	Time
155 °F (69 °C)	30 minutes.
175 °F (80 °C)	25 seconds.
180 °F (83 °C)	15 seconds.

[1] If the fat content of the milk product is 10 percent or more, or if it contains added sweeteners, the specified temperature shall be increased by 5 °F (3 °C).

(d) Neither paragraph (b) nor (c) of this section shall be construed as barring any other pasteurization process that has been recognized by the Food and Drug Administration to be equally efficient in the destruction of microbial organisms of public health significance.

Frank E. Young,

Commissioner of Food and Drugs.

Dated: *May 27, 1987.*

Otis R. Bowen,

Secretary of Health and Human Services.

[FR Doc. 87-13280 Filed 6-10-87; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-99-86]

Employees of Earned Income Credit; Cross-Reference to Temporary Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary income tax regulations relating to the procedures necessary to implement the statutory requirement that employers notify certain employees whose wages are not subject to income tax withholding that they may be eligible for the refundable earned income credit. The text of those temporary regulations serves as the comment document for this proposed rulemaking.

Dates for Comments and Requests for a Public Hearing

Written comments and requests for a public hearing must be delivered or mailed by August 10, 1987.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-99-86), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Robert H. Ginsburgh of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T) (202-566-3297, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR Part 1) under section 32 of the Internal Revenue Code.

For the text of the temporary regulations, see FR Doc. 87-13364 (T.D. 8142) published in the Rules and Regulations section of this issue of the **Federal Register.**

Regulatory Flexibility Act and Executive Order 12291

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. The Internal Revenue Service has concluded that the regulations proposed herein will not have a significant impact on a substantial number of small entities. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Comments and Requests for a Public Hearing

Before adopting these proosed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request of any person who has submitted written comments. If a public

hearing is held, notice of the time and place will be published in the **Federal Register.**

Drafting Information

The principal author of these proposed regulations is Robert H. Ginsburgh of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

James I. Owens,

Acting Commissioner of Internal Revenue.

[FR Doc. 87-13365 Filed 6-10-87; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Permanent State Regulatory Program of Indiana

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

ACTION: Proposed amendment to State code.

SUMMARY: OSMRE is announcing procedures for the public comment period and for a public hearing on the substantive adequacy of a proposed program amendment to the Indiana Permanent Regulatory Program (hereinafter referred to as the Indiana program) received by OSMRE pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The proposed amendment submitted by the State on May 6, 1987, would amend the Indiana Surface Mining Law concerning: (a) Exempting hearing under the state surface mining law from the limitations imposed by IC 4-21.5-3-25(b); (b) establishing application and permit fees by statute instead of by regulation and raising permit fees from $100 for each acre described in the application to $125 for each acre described; (c) establishing a post-1977 abandoned mine reclamation fund; (d) providing that all civil penalties collected under the law be deposited in the newly-established post-1977 fund; (e) providing that any money remaining in a pre-SMCRA State surface mining law fund be withdrawn and deposited in the post-1977 fund; and, (f) the amendment taking effect immediately upon passage by the State Legislature (April 30, 1987).

This document sets forth the times and locations that the Indiana program and proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment and information pertinent to the public hearing.

DATES: Written comments relating to Indiana's proposed modification of its program not received on or before 4:00 p.m. July 13, 1987, will not necessarily be considered.

If requested, a public hearing will be held on July 6, 1987, beginning at 10:00 a.m. at the location shown below under **"ADDRESSES."**

ADDRESSES: Written comments should be mailed or hand-delivered to Mr. Richard D. Rieke, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204; Telephone: (317) 269-2609.

If a public hearing is held, its location will be at: OSMRE Indianapolis Field Office, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana; Telephone: (317) 269-2609.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. Rieke, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204; Telephone: (317) 269-2609.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Availability of Copies

Copies of the Indiana program, the proposed amendment, and a listing of any scheduled public meeting and all written comments received in response to this notice will be available for review at the OSMRE offices and the Office of the State Regulatory Authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays. Each requester may receive, free of charge, one single copy of the proposed amendment by contacting the Indianapolis Field Office listed below.

Office of Surface Mining Reclamation and Enforcement, Room 5315A, 1100 L Street NW., Washington, DC 20240

Office of Surface Mining Reclamation and Enforcement, Eastern Field Operations, Program Analysis Division, 10 Parkway Center, 2nd Floor, Pittsburgh, PA 15220

Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204

Indiana Department of Natural Resources, 608 State Office Building, Indianapolis, Indiana 46204

Written Comments

Written comments should be specific, pertain only to the issues proposed in this amendment and include an explanation in support of the commenter's recommendations. Comments not received by July 13, 1987, or received at a location other than the OSMRE Indianapolis Field Office, will not necessarily be considered.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by the close of business June 26, 1987. If no one requests to comment at the public hearing, the hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing may be held and the results of the meeting included in the Administrative Record.

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

Submission of written statements in advance of the hearing will allow OSMRE officials to prepare 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 wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons in the audience who wish to comment have been heard.

Public Meeting

Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting at the OSMRE office listed in **"ADDRESSES"** by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."**

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

II. Discussion of the Proposed Amendment

Information regarding the general background on the Indiana State Program, including the Secretary's Findings, the disposition of comments and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 16, 1982 **Federal Register** (47 FR 32071–32108).

By letter dated May 6, 1987 (Administrative Record No. IND–0483), the Indiana Department of Natural Resources submitted to OSMRE pursuant to 30 CFR 732.17, a proposed State program amendment for approval. The amendment would modify the Indiana Surface Mining Law at Indiana Code 13–4.1. The amendment is comprised of six separate sections. Section 1 adds to the law new Section IC 13–4.1–1–8 which exempts hearings under the State surface mining law from the limitations imposed by IC 4–21.5–3–25(d) (one of the new provisions of the Administrative Adjudication Act enacted by the 1966 Indiana General Assembly and objected to by OSMRE, see 51 **Federal Register** 44926, December 15, 1987). Section 2 amends IC 13–4.1–3–2 and establishes application and permit fees by statute instead of by regulation, as had previously been the case; the permit fee is raised from one hundred dollars ($100) to one hundred twenty-five dollars ($125) for each acre described in the application. Section 3 amends IC 13–4.1–6–8 by establishing a post-1977 abandoned mine reclamation fund and providing that interest in the fund remains in the fund. Section 4 adds IC 13–4.1–12–6 to provide that all civil penalties collected under the Indiana Surface Mining Law shall be deposited in the newly established post-1977 fund. Section 5 provides that any money remaining in a fund created by the "pre-SMCRA" State surface mining law, IC 13–4–6–5, shall be withdrawn and deposited in the post-1977 abandoned mine reclamation fund. Section 6 provides that Senate Enrolled Act No. 42 take effect immediately upon passage (April 30, 1987).

Pursuant to 30 CFR 732.15 and 732.17, the Director requests public comment on the adequacy of the above modifications. If the Director determines that the proposed modifications are in accordance with SMCRA, and consistent with the Federal regulation, the amendment will be incorporated as part of the approved Indiana program.

Procedural Matters

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Regulatory Impact Analysis and regulatory review by OMB. The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 60 et seq.). This rule would not impose any new requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act: This rule does not contain information collections requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 914

Coal mining, Intergovernment relations, Surface mining, Underground mining.

Dated: June 2, 1987.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 87–12969 Filed 6–10–87; 8:45 am]

[BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09–87–14]

Special Local Regulations; East River Classic, Niagara River, North Tonawanda, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a proposal to establish Special Local Regulations for the East River Classic to be held on the Nicagara River. This event will be held on 13 September 1987. The regulations are needed to provide for the safety of life on navigable waters during the event.

DATES: Comments must be received on or before July 17, 1987.

ADDRESSES: Comments should be mailed to Commander (inc), Ninth Coast Guard District, 1240 East 9th Street, Cleveland, OH 44199. The comments will be available for inspection and copying at the Ice Navigation Center, Room 2007A, 1240 East 9th Street, Cleveland, OH. Normal office hours are between 7:30 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered.

FOR FURTHER INFORMATION CONTACT: CWO Gerald M. Trackim, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522–3982.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD 09–87–14) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed. The rules may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken in this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this regulation are CWO Gerald M. Trackim, project officer, Office of Search and Rescue and LCDR C.V. Mosebach, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The East River Classic will be conducted on the Niagara River on 13 September 1987. This event will have an estimated 50 power boats which could pose hazards to navigation in the area. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (U.S. Coast Guard Station Buffalo, NY).

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the

area for the duration of the event. This should have a favorable impact on commercial facilities providing services to the spectators. Any impact on commercial traffic in the area will be negligible.

Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Proposed Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended to add a temporary § 100.35–0914 to read as follows:

§ 100.35–0914 East River Classic—Niagara River.

(a) *Regulated Area:* That portion of the east branch of the Niagara River, from the South Grand Island Bridge to an east-west line from the south entrance of the Niagara River Yacht Club, including the waters surrounding Tonawanda Island.

(b) *Special Local Regulations:* (1) The above area will be closed to navigation or anchorage from 10:00 A.M. (local time) until 1:30 P.M. on 13 September 1987.

(2) Vessels desiring to transit the restricted area may do so only with prior approval of the Patrol Commander (U.S. Coast Guard Station, Buffalo, NY) and when so directed by that officer. The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. These rules shall not apply to participants in the event or vessels of the patrol, in the performance of their assigned duties.

(3) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) Effective Dates: These regulations will become effective and terminate on 13 September 1987.

Dated: June 4, 1987.

A. M. Danielson,

RADM, U.S. Coast Guard Commander, Ninth Coast Guard District.

[FR Doc. 87–13358 Filed 6–10–87; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 211

Public Appeal Procedures of Management Decisions; Request for Comments

AGENCY: Forest Service, USDA.

ACTION: Review of existing regulations; request for public comment.

SUMMARY: The rules at 36 CFR 211.18 establish the process and procedures by which the public may appeal a National Forest System management decision. As noted in the Unified Regulatory Agenda of April 27, 1987, (52 FR 14144), the Forest Service is beginning a review of the rules as required by E. O. 12291. The Service is interested in hearing from individuals, organizations, and other public agencies about the appeals process and its conduct. The Agency is particularly interested in how well the process meets current needs and is likely to meet future needs and what the public likes and dislikes about it.

DATE: Comments must be received by July 13, 1987.

ADDRESSES: Send written comments to Appeal Regulation Review Team (1570), Forest Service, USDA, P. O. Box 96090 (Rm. 4211–S), Washington, DC 20090–6090.

FOR FURTHER INFORMATION CONTACT: Larry Hill, Staff Assistant, National Forest System, 382–9349.

Dated: June 8, 1987.

George M. Leonard,

Associate Chief.

[FR Doc. 87–13395 Filed 6–10–87; 8:45 am]

BILLING CODE 3410–11–M

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36 CFR Part 223

Return of National Forest System Timber

AGENCY: Forest Service, USDA.

ACTION: Proposed rule.

SUMMARY: On June 27, 1985, the Forest Service published the final rule (50 FR 26660) implementing those provisions of the Federal Timber Contract Payment Modification Act (FTCPMA) that allow holders of certain Forest Service timber sale contracts to buy out of all or a portion of those contracts. Members of the timber industry have challenged certain parts of that rule as arbitrary, capricious, and an abuse of discretion by the Forest Service. In response the Forest Service is reconsidering one of the requirements for release of a purchaser from further obligations under a contract selected for return to the Government (36 CFR 223.178(b)(4)). In addition, the Forest Service proposes a deadline for fulfilling all of the requirements for completion of the buy-out process authorized in 1984 by the FTCPMA.

DATE: Comments must be received by July 13, 1987.

ADDRESSES: Send written comments to F. Dale Robertson, Chief (2400), Forest Service, USDA, P. O. Box 96090, Washington, DC 20013.

The public may inspect comments received on this proposed rule in the Office of the Director, Timber Management Staff, Room 3207, South Building, 14th and Independence SW., Washington, DC, between the hours of 8:30 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: David M. Spores, Timber Management Staff, (202) 447–4051.

SUPPLEMENTARY INFORMATION: Following the June 27, 1985, publication (50 FR 26660) of the final rule implementing the buy-out provisions of the Federal Timber Contract Payment Modification Act (FTCPMA), lawsuits were filed challenging certain portions of that rule. One of the sections challenged was 36 CFR 223.178(b)(4), which requires the purchaser to release any claims it may have arising from a returned contract prior to the Government releasing the purchaser from its obligations to cut, remove, and pay for timber under that contract. The rule at issue provides, in part:

(b) Release from further obligations. The Forest Service shall by contract closure, release a purchaser from further obligations to cut, remove, and pay for timber under a returned contract upon: * * *

(4) Release of the Government from all claims arising from the returned contract.

The process established by the Forest Service also provides that the Government signs a release of any claim under the contract it may have against the purchaser which is not preserved by

the FTCPMA and its implementing regulations.

Judge Conti, in *Sierra Pacific Industries, et al.* v. *John Block et al.*, 643 F. Supp 1256 (ND Cal. 1986) held that this regulation was valid in that it was consistent with the purposes of the Federal Timber Contract Payment Modification Act and within the authority of the Secretary of Agriculture. Judge Frye, in *Big Flat Timber Company et al.* v. *Richard Lyng et al.*, No. 85–1501–FR (D. Or March 3, 1987), concurred but set aside this particular requirement as unlawful because, prior to its promulgation as a final rule adequate notice was not given the public as required by the Administrative Procedures Act. Accordingly, the agency is requesting specific comments on this requirement in the rule. After full consideration of those comments, the agency will determine if any change in the rule is needed and will publish any change in this provision along with the other changes to the rule proposed in this rule-making.

The Forest Service believe that the claim release requirement not only reflects Congressional intent but also conforms to the statutory scheme set-forth in the Federal Timber Contract Payment Modification Act. The statute clearly contemplates closure and termination of contracts once a "buy out" is completed. It also evisions prompt resale of the timber returned to the Government pursuant to the FTCPMA. Congress specifically addressed the treatment of outstanding contract claims and chose to preserve only certain Government claims. Congress made no mention of a purchaser's contract claims, if any, against the Government.

In promulgating the requirement that a purchaser release its claims under a contract requested to be returned to the Government, the Forest Service recognized that this requriement would result in purchasers waiving not just future claims on a surrendered contract but also claims at varying stages of consideration, including active litigation. Consideration of any contract claims against the Government was viewed as one of many factors a purchaser must weigh in selecting which, if any, of its eligible contracts it wishes to request for buy-out; for example, the purchaser must weigh the costs of performing the contract versus the cost of buying it out. Using limited resources to litigate purchasers' claims on contracts returned to the Government pursuant to the FTCPMA was viewed as inconsistent with Congressional intent, the statute, and sound policy.

In addition to Congressional intent with regard to claims, section 2(a)(5)(A) of the Federal Timber Contract Payment Modification Act states that timber from returned or defaulted contracts shall be given preference for resale in the Forest Service timber sale program, and that such timber shall be offered for resale in an orderly fashion. To meet this Congressional intent to reoffer the returned sales in a timely manner requires a timely closure of the original contracts.

It is almost two years since the final buy-out rule was published. Most of the contracts bought out have been closed and, in accordance with Congressional intent, resale of this timber has proceeded on a priority basis. However, some timber sale purchasers have not executed the contract closure agreements. This delay thwarts the intent of Congress and obstructs the orderly management of national forest resources. The claims release provision of § 223.178(b)(4) is necessary to ensure closure of these returned sales and to proceed with the resale of the returned timber.

In order to expedite the timely reoffering of returned contracts and to conclude the buy-out program established by the FTCPMA, the Forest Service, in addition to requesting comment on existing § 223.178(b)(4), proposes that new paragraphs (5) and (6) be added to 36 CFR 223.178(b). Paragraph (5) would establish a deadline by which all of the necessary paperwork to buy-out and close a contract must be submitted to the Forest Service. The FTCPMA established a one-time opportunity to "buy out" of certain timber sale contracts. Sufficient time has lapsed whereby necessary paperwork by the Forest Service has been submitted to the purchasers and the program should be terminated in order for limited resources to be expended on resale and other matters. Paragraph (6) would provide that failure to comply with the requirements in subsection (b) of 36 CFR 223.178 in a timely manner would result in rejection of the applicable contracts.

Regulatory Impact

This action has been submitted to the Office of Management and Budget for review pursuant to Executive Order 12291. The Assistant Secretary for Natural Resources and Environment has determined that this regulation is not a major rule. It implements those portions of the Federal Timber Contract Payment Modification Act that allow a purchaser of Forest Service timber sale contracts to return certain of these contracts to the Secretary of Agriculture upon satisfaction of specified conditions and payments. The Federal Timber Contract Payment Modification Act is intended to prevent a large number of isolvencies among purchasers of federal timber, to preserve the employment generated by the forest products industry, and to avoid financial disruption to communities economically dependent upon the industry.

The only discretion available to the Secretary is in establishing administrative procedures to implement the buy-out provisions of the act. The implementing procedures in these rules are designed to minimize further cost to both the Government and purchasers by:

1. Limiting procedures to those set-forth in the act as much as possible;

2. Following standard Forest Service contracting practices and procedures whenever possible;

3. Providing cost effective methods for administering the buy-out provisions; and,

4. Minimizing delay and disruption to the ongoing timber management program and to purchasers of timber sales.

Separate from the provisions of the act, the procedures implemented by this rule will not have an annual effect on the economy of $100 million or more, will not result in major increases in costs for consumers, individual industries, Federal, State, or local Government agencies or geographic regions, and will not have significant adverse effects on the ability of United States-based industries to complete with foreign-based enterprises in domestic or export markets.

The Assistant Secretary of Agriculture for Natural Resources and Environment has also determined that this rule, in and of itself, will not have significant economic impact on a substantial number of small entities. The act applies equally to small and large entities and establishes the qualifications and the calculation of the amount to be paid or arrangements to be made in order to buy out a Federal timber contract.

Based on environmental analysis, the proposed rule would not significantly affect the environment. An environment impact statement is not required under the National Environmental Policy Act of 1969 (42 U.S.C. 4223(2)(c)). Furthermore, the proposed rule will not result in additional procedures or paperwork not already required by law. Therefore, the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) are not applicable.

List of Subjects in 36 CFR Part 223

Exports, Government contracts, National Forest, Reporting and recordkeeping requirements, Timber.

PART 223—[AMENDED]

In addition to requesting comment on existing § 223.178(b)(4) it is also proposed to amend Part 223 of Chapter II of Title 36 of the Code of Federal Regulations as follows:

1. The authority citation for Part 223 to read as follows:

Authority: Sec. 14, Pub. L. 94–588.90 Stat. 2958, 16 U.S.C. 427a, unless otherwise noted. Secs. 223.49 and 223.50 also issued under Sec. 2, Pub. L. 98–478, 98 Stat. 2213, 16 U.S.C. 618.

2. Revise § 223.178(b) to read as follows:

§ 223.178 Return of contracts.

* * * * *

(b) *Release from further obligations.* The Forest Service shall, by contract closure, release a purchaser from further obligations to cut, remove, and pay for timber under a returned contract upon:

(1) Timely payment or arrangement for payment (§ 223.181) of the applicable but-out cost; and,

(2)(i) Timely fulfillment of any Government claims that arose under the contract (other than damages due to a purchaser's failure to cut under contract provisions B9.4, BT9.4, or 16) which has been asserted by the contracting officer prior to the Forest Service release from further obligations; or

(ii) Agreement to retain payment and performance guarantees under the contract pending resolution of the Government's claim.

(3) Timely completion of the conditions prescribed by the Regional Forester if the contract is a conditionally returned contract (§ 223.177); and

(4) Release of the Government from all claims arising from the return contract.

(5) Purchaser's return of the executed closure papers within 30 calendar days of receipt of the closure agreement from the Contracting Officer or within 90 calendar days of the effective date of this provision, whichever date is later.

(6) Failure to fulfill any of the requirements set forth in paragraph (b) (1) through (5) of this section will result in rejection of the applicable contract(s) from this buy-out program unless the Regional Forester determines the delay was caused by the purchaser being physically incapable of timely satisfying these requirements. However, rejection of contracts for failure to fulfill any of the requirements set forth in paragraph (b) (1)–(5) of this section in a timely manner is not the basis for an amended application for contract buy-out.

Dated: May 11, 1987.

Douglas W. MacCleery,

Deputy Assistant Secretary for Natural Resources and Environment.

[FR Doc. 87–13385 Filed 6–10–87; 8:45 am]

BILLING CODE 3410–11–M

VETERANS ADMINISTRATION

38 CFR Part 8

National Service Life Insurance

AGENCY: Veterans Administration.

ACTION: Proposed Regulatory Amendment.

SUMMARY: The Veterans Administration (VA) is amending its National Service Life Insurance (NSLI) policy loan regulation to provide that the rate of interest on all loans applied for on and after the effective date of this regulation may be periodically adjusted. This is a change from the VA's existing policy of issuing loans with interest rates which are fixed for the term of the loan. The variable loan rate will be based on the level of an economic indicator, and after October 1, 1988, may not be adjusted more frequently than once a year. Notice of the prevailing variable loan rate will be provided at the time a policyholder applies for a loan. Notice of changes to the loan rate will be published in the **Federal Register**, and notice of increases will be provided directly to existing variable loan borrowers. The variable loan rate established as of the effective date of this regulation is 8 percent. The interest rates on United States Government Life Insurance (USGLI) policy loans and existing fixed rate NSLI policy loans will not be changed by this amendment. Policyholders with existing 11 percent fixed rate loans will be offered the opportunity to exchange their 11 percent loans for variable rate loans.

DATE: Comments must be received on or before July 13, 1987. The effective date of this regulatory amendment is proposed to be the first Monday 30 days after the date of final publication.

ADDRESS: Interested persons are invited to submit written comments, suggestions, or objections regarding this proposed regulatory amendment to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, Room 132, of the above address, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays) until July 24, 1987.

FOR FURTHER INFORMATION CONTACT: Paul F. Koons, Assistant Director for Insurance, Veterans Administration Regional Office and Insurance Center, P.O. Box 8079, Philadelphia, PA 19101 (215) 951–5360.

SUPPLEMENTARY INFORMATION: Under this proposal, the interest rate on all NSLI policy loans applied for or exchanged on or after the effective date of this regulation will be adjustable. The initial variable loan rate will be set at 8 percent based on the yield of an economic indicator (U.S. Treasury Securities, 10-year Constant Maturities) for the month of May 1987. This rate will remain in effect until at least October 1, 1988, at which time the rate will be subject to change. Each year, beginning in 1988, the Veterans Administration will make a determination whether a rate change is needed, based on the yield on an economic indicator (U.S. Treasury Securities, 10-year Constant Maturities) for the month of June of that year.

A rate change will be triggered by movement of the economic indicator to a level which is higher or lower than the existing rate. If a rate change is necessary, it will be made effective on the first of October following a determination that a rate change is required. The new rate will be set at the level of the economic indicator rounded down to the next whole number, unless this would result in a rate which is above 12 percent or below 5 percent. In that event, the rate would be set at the closest whole percentage within the permitted range—either 12 or 5 percent—depending on the level of the indicator. The upper and lower level rate limits are provided to protect borrowers from potentially high interest rates, while at the same time ensuring the financial integrity of the NSLI program. By tracking an economic indicator which reflects current economic conditions, the loan rate will remain consistent with other new NSLI trust fund interest earnings, thereby avoiding any significant impact on dividends to policyholders. After October 1, 1988, rate changes may not be made more frequently than once a year.

The Administrator hereby certifies that this proposed regulatory amendment, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612.

Pursuant to 5 U.S.C. 605(b), this proposed regulatory amendment is, therefore, exempt from the initial and final regulatory flexibility analyses requirements of § § 603 and 604. The reason for this certification is that this rule will affect only certain NSLI policyholders. It will, therefore, have no significant direct impact on small entities in terms of compliance costs, paperwork requirements or effects on competition.

The Agency has also determined that this proposed regulatory amendment is nonmajor in accordance with Executive Order 12291, Federal Regulation. The regulation will not have a large effect on the economy, will not cause an increase in costs or prices, and will not otherwise have any significant adverse economic effects.

List of Subjects in 38 CFR Part 8

Life insurance, Veterans.

(Catalog of Federal Domestic Assistance Program Number is 64.103)

Approved: February 3, 1987.

Thomas K. Turnage,

Administrator.

PART 8—[AMENDED]

In 38 CFR Part 8, United States National Service Life Insurance, § 8.28 is proposed to be revised to read as follows:

§ 8.28 Policy loans.

(a) At any time after the premiums for the first policy year have been paid and earned and before default in payment of any subsequent premium, and upon the execution of a loan agreement satisfactory to the Administrator, the United States will lend to the insured on the security of his or her National Service Life Insurance policy, any amount which will not exceed 94 percent of the reserve, and any indebtedness on the policy shall be deducted from the amount advanced on such loan. At any time before default in the payment of the premium, the loan may be repaid in full or in amounts of $5 or more. Failure to pay either the amount of the loan or the interest thereon shall not make the policy voidable unless the total indebtedness shall equal or exceed the cash value. When the amount of the indebtedness equals or exceeds the cash value, the policy shall become voidable. On loans applied for before the effective date of this regulation (the first Monday at least 30 days after the date of final publication in the **Federal Register**), and not exchanged pursuant to paragraph (b) of this section, the policy loan interest rate in effect when the loan was applied for shall not be increased for the term of the loan.

(b) Loans applied for or exchanged on and after the effective date of this regulation (the first Monday at least 30 days after the date of final publication in the **Federal Register**), shall bear interest at a rate which may be varied during the term of the loan, not more frequently than once a year, as provided by paragraphs (c) and (d) of this section. After October 1, 1988, the policy loan rate shall not be varied more frequently than once a year. Notification of the initial rate of interest on new loans will be forwarded at the time the loan is made. Policyholders with existing variable rate loans will be forwarded reasonable advance notice of any increase in the rate. Reasonably advance notice of any change in the variable loan rate will be published in the **Federal Register.** A notice pertaining to variable loans which is sent to the policyholder's last address of record will constitute sufficient evidence of notice.

(c) Subject to the provisions of paragraph (d) of this section, loan rates established pursuant to paragraph (b) of this section shall equal the yield on the Ten-Year Constant Maturities Index for U.S. Treasury Securities for the month of June of the year of calculation rounded down to the next whole percentage. Such loan rate shall be effective on the first day of October following a determination that a rate change is required, and after October 1, 1988, shall remain in effect for not less than one year after the date of establishment. The prevailing variable loan rate shall apply to all loans granted under paragraph (b) of this section.

(d) The variable loan rate is established at the rate of 8 percent per annum as of the effective date of this regulation. This rate is subject to adjustment on and after October 1, 1988, under the provisions of paragraph (b) of this section. Notwithstanding any other provisions of this section, the variable loan rate shall not exceed 12 percent or be lower than 5 percent per annum.

(38 U.S.C. 706)

[FR Doc. 87-13345 Filed 6-10-87; 8:45 am]

BILLING CODE 8320-01-M

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38 CFR Part 17

Use of Community Nursing Home Care Facilities

AGENCY: Veterans Administration.

ACTION: Proposed regulation.

SUMMARY: The Veterans Administration (VA) is proposing to amend its medical regulations (38 CFR Part 17) to clarify those provisions under which an extension of nursing home care may be granted. This amendment will further explain a benefit already available to eligible veterans.

DATE: Comments must be received by July 10, 1987.

ADDRESS: Interested persons are invited to submit written comments, suggestions, or objections regarding this proposed amendment to: Administrator of Veterans Affairs (271A), 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public viewing only in the Veterans Services Unit, Room 132, of the above address between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until July 24, 1987.

FOR FURTHER INFORMATION CONTACT: James R. Kelly, Office of Geriatrics and Extended Care, Department of Medicine and Surgery, (202) 233-3692.

SUPPLEMENTARY INFORMATION: Section 17.51a of title 38, Code of Federal Regulations, does not clearly describe the reasons for granting extension beyond the normal six-month limit on nursing home care nor does it impose a limit on nonservice-connected veteran extensions. This proposed amendment adds more information for determining whether an extension should be granted, places a 45-day cap on nonservice-connected veteran extensions beyond six months, and retains the unlimited extension provision for service-connected veterans as set forth in 38 U.S.C. 620(a).

This proposed amendment to 38 CFR is considered nonmajor under the criteria of Executive Order 12291, Federal Regulation. It will not have an annual effect on the economy of $100 million or more; result in major increases in costs for consumers, individual industries, Federal, State or local government agencies, or geographic regions; have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator has certified that this proposed amendment, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. This proposed amendment concerns the criteria by which the placement of a veteran in a public or private nursing home care facility at VA expense may be extended

beyond six months. Such extensions are the exception, not the norm, and concern only the eligibility of individual veterans. This proposed amendment imposes no economic, regulatory, or administrative burdens on small entities. One effect of this proposed amendment will be to expedite arrangements for alternative third-party reimbursement for continued placement, generally through Medicare or Medicaid.

(Catalog of Federal Domestic Assistance Numbers: 64.009 and 64.011.)

List of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grants programs—health, Health care, Health facilities, Health professions, Incorporation by reference, Medical devices, Medical research, Mental health programs, Nursing homes, Veterans.

Approved: June 1, 1987.

Thomas K. Turnage,

Administrator.

PART 17—[AMENDED]

38 CFR Part 17, Medical, is proposed to be amended by revising § 17.51a to read as follows:

§ 17.51a Extensions of community nursing home care beyond six months.

Directors of health care facilities may authorize, for any veteran whose hospitalization was not primarily for a service-connected disability, an extension of nursing care in a public or private nursing home care facility at VA expense beyond six months when the need for nursing care continues to exist, and

(a) Arrangements for payment of such care through a public assistance program (such as Medicaid) for which the veteran has applied, have been delayed due to unforeseen eligibility problems which can reasonably be expected to be resolved within the extension period, or

(b) The veteran has made specific arrangements for private payment for such care, and

(1) Such arrangements cannot be effectuated as planned because of unforeseen, unavoidable difficulties, such as a temporary obstacle to liquidation of property, and

(2) Such difficulties can reasonably be expected to be resolved within the extension period; or

(c) The veteran is terminally ill and life expectancy has been medically determined to be less than six months.

(d) In no case may an extension under paragraph (a) or (b) of this section exceed 45 days. (38 U.S.C. 210(c)(1); 620(a)).

[FR Doc. 87-13270 Filed 6-10-87; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL 3215-8]

Ocean Dumping; Proposed Designation of Sites

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to designate four existing dredged material disposal sites ("the Sabine-Neches sites") located in the Gulf of Mexico offshore of Texas Point and Louisiana Point for the continued disposal of dredged material removed from the Sabine-Neches Waterway. This proposed site designation is for an indefinite period of time. This action is necessary to provide acceptable ocean dumping sites for the current and future disposal of this material.

DATE: Comments must be received on or before July 27, 1987.

ADDRESSES: Send comments to: Norm Thomas, Chief, Federal Activities Branch (6E-F), U.S. EPA, 1445 Ross Avenue, Dallas, Texas 72505-2733.

Information supporting this proposed designation is available for public inspection at the following locations: EPA, Region VI (E-FF), 1445 Ross Avenue, 10th Floor, Dallas, Texas 75202-2733, Corps of Engineers, Galveston District, 444 Barracuda Avenue, Galveston, Texas 77550.

FOR FURTHER INFORMATION CONTACT: Norm Thomas, 214/655-2260.

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 of EPA the authority to designate sites where ocean dumping may be permitted. On December 23, 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 proposed site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, Section 228.4) state that ocean dumping sites will be designated by publication in Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 *et seq.*) and was extended on August 19, 1985 (50 FR 33338). That list established the four Sabine-Neches sites as interim sites and extended the sites' period of use until July 31, 1988, or until final rulemaking is completed. Interested persons may participate in this proposed rulemaking by submitting written comments within 45 days of the date of this publication to the EPA Region VI address given above.

B. EIS Development

Section 102(2)(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 major Federal actions significantly affecting the quality of the human environment. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EISs in connection with ocean dumping site designations such as this (39 FR 16186, May 7, 1974).

EPA has prepared a Draft and Final Environmental Impact Statement entitled "Environmental Impact Statement (EIS) for the Sabine-Neches, Texas Dredged Material Ocean Disposal Site Designation." On August 20, 1982, a notice of availability of the Draft EIS for public review and comment was published in the **Federal Register** (47 FR 36468). The public comment period on this Draft EIS closed October 4, 1982. The Agency received 11 comments on the Draft EIS and responded to them in the Final EIS. Editorial or factual corrections required by the comments were incorporated in the text and noted in the Agency's response. Comments which could not be appropriately treated as text changes were addressed point by point in the Final EIS, following the letters of comment. On April 1, 1983, a notice of availability of the Final EIS for public review and comment was published in the **Federal Register** (48 FR 14037). The public comment period on the Final EIS closed on May 9, 1983. One comment was received on the Final EIS which favored final designation of the existing sites. The EIS is available for review at the addresses given above.

The proposed action discussed in the EIS is designation for continuing use of ocean disposal sites for dredged material. The purpose of the designation is to provide an environmentally acceptable location for ocean disposal. 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 EIS discussed the need for the action and examined ocean disposal sites and alternatives to the proposed action. Land based disposal alternatives were examined in a previously published EIS and the analysis was updated in a memorandum to the Record (March 18, 1987) by the Corps of Engineers. The nearest available land disposal area is 600 acres in size and is located 6 miles away from the shoreward end of the project and over 23 miles from the seaward end. Because of the high cost of transport as well as the limited capacity of the area, this alternative is not feasible. Also since the surrounding land areas are wetlands, development and use of a suitably sized replacement area would result in a significant loss of quality wetlands.

Three ocean disposal alternatives—a shallow water area (including the proposed sites), a mid-shelf area and a deepwater area—were evaluated. The mid-shelf area contained numerous fixed structures (e.g., oil platforms) presenting navigational hazards to the hopper dredge used and increasing the possibility of collisions and oil spills. Both the mid-shelf and deepwater areas involved increased transportation costs. Because of safety and economic disadvantages and due to a lack of environmental benefit, the mid-shelf area and the deepwater area were eliminated from further consideration.

The EIS evaluates the suitability of ocean disposal areas for final designation and is based on a disposal site environmental study. The study and final designation process are being conducted in accordance with the Act, the Ocean Dumping Regulations, and other applicable Federal environmental legislation.

EPA is coordinating with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service in accordance with the requirements of Section 7 of the Endangered Species Act. EPA is also coordinating with the State of Louisiana under requirements of the Coastal Zone Management Act; the State of Texas does not have a Coastal Zone Management Plan.

C. Proposed Site Designation

All four sites are located along the west side of the Sabine Bank Channel and fairway in depths ranging from five to 13 meters. These sites receive dredged material from the channel, and the dredged material is dumped at the site closest to the point of dredging. All dredging is done by hopper dredge. Four sites are used in order to minimize the length of time the dredges are present in the shipping channel and the potential hazard to navigation.

Site 1 is located approximately 16 nautical miles from shore, is triangular in shape and occupies an area of approximately 2.4 square nautical miles. Water depths within the area average 12 meters. The corner coordinates are as follows:

29d 28'03" N., 93d 41'14" W.;
29d 26'11" N., 93d 41'14" W.;
29d 26'11" N., 93d 44'11" W.

Site 2 is located approximately 11.8 nautical miles from shore, is trapezoidal in shape and occupies an area of approximately 4.2 square nautical miles. Water depths within the area range from 9 to 13 meters. The corner coordinates are as follows:

29d 30'41" N., 93d 43'49" W.;
29d 28'42" N., 93d 41'33" W.;
29d 28'42" N., 93d 44'49" W.;
29d 30'08" N., 93d 46'27" W.

Site 3 is located approximately 6.8 nautical miles from shore, is pentagonal in shape and occupies an area of approximately 4.7 square nautical miles. Water depths within the area average 10 meters. The corner coordinates are as follows:

29d 34'24" N., 93d 48'13" W.;
29d 32'47" N., 93d 46'16" W.;
29d 32'06" N., 93d 46'29" W.;
29d 31'42" N., 93d 48'16" W.;
29d 32'59" N., 93d 49'48" W.

Site 4 is located approximately 2.7 nautical miles from shore, is hexagonal in shape and occupies an area of about 4.2 square nautical miles. Water depths within the area range from 5 to 9 meters. The corner coordinates are as follows:

29d 38'09" N., 93d 49'23" W.;
29d 35'53" N., 93d 48'18" W.;
29d 35'06" N., 93d 50'24" W.;
29d 36'37" N., 93d 51'09" W.;
29d 37'00" N., 93d 50'06" W.;
29d 37'46" N., 93d 50'26" W.

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, further use of the site may be terminated or limitations placed on the use of the site to reduce the impacts to acceptable levels. The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations; § 228.6 lists eleven specific factors used in evaluating a proposed disposal site to assure that the general criteria are met.

EPA has determined, based on the completed EIS process, that the four existing sites are acceptable under the five general criteria. The Continental Shelf location is not feasible and no environmental benefit would be obtained by selecting such a site. Historical use of the existing four sites has not resulted in substantial adverse effects to living resources of the ocean or to other uses of the marine environment.

The characteristics of the proposed sites 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).]

Geographical positions, average water depths, and distance from the coast for each existing site are given above. Bottom topography within each existing site is flat with no unique features or relief. Each site varies only in distance from shore and depth.

2. *Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases.* [40 CFR 228.6(a)(2).]

The sites are between the shrimp spawning grounds of the mid-shelf and the important nursery area of Sabine Lake and therefore could be passageways of commercially valuable species. However, the sites represent only a minor portion of the entire range of shrimp along the Gulf Coast and thus would affect only a small percentage of the existing population. Many commercially and recreationally important species of fish also occur in this region. However, most recognized breeding and spawning grounds occur in the productive marshes and estuaries of the coastal region or in the mid-water areas of the Gulf.

Studies summarized in the EIS have found that free-swimming animals (nekton) are generally not affected by the disposal of dredged material. Abundances of nekton, including shrimp, are only temporarily displaced after disposal operations, but abundances appeared to return to normal within one month. Some nekton indigenous to areas in the vicinity of the disposal site, includig fish, may actually be attracted to the turbid waters which result from disposal activities to seek food or protection from predators. Fishery resources have not been shown to be advesely affected. Catch statistics

indicate that the area around the sitres contribute to the fishery.

3. *Location in relation to beaches and other amenity areas.* [40 CFR 228.6(a)(3).]

Activities in the vicinity of the sites include fishing and boating. Disposal of dredged material has not adversely affected these activities because effects were limited to a turbidity plume at the site which disperses through the settlement of the majority of particles within a few hours after disposal.

Of the four disposal sites, Site 4 (located closest to shore) is 2.7 nautical miles south of the nearest land (Texas Point) and thus would have the highest potential to affect beaches. However, the beaches there have been adversely affected by disposal activities because a prevailing southwesterly current carries material away from shore.

4. *Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the wastes, if any.* [40 CFR 228.6(a)(4).]

Dredged material released at approved dredged material disposal sites must conform to the EPA criteria in the Ocean Dumping regulations (40 CFR Part 227). Sediments to be dumped at the sites result from the dredging of the Sabine-Neches entrance channels. Materials dredged from the entrance channels are dumped at the sites closest to the area of dredging. Existing Site 4 has been in use since 1931 for the disposal of dredged material. Prior to 1960 dredging did not occur seaward of Existing Site 1 and the other three sites wer not used prior to that time. The average annual amount dumped at all four sites from 1960 to 1979 was 4.5 million cubic yards.

Dredged sediments from the Sabine-Neches entrance channels are the only materials presently dumped at the four sites. The dredged materials are primarily silts and clays, which are suitable for ocean disposal. Although the natural sediment texture within and beyond the sites exhibits seasonal changes, it is similar to that of the dredged material disposed at the four sites. A hopper dredge has been used for the dredging of the Sabine-Neches entrance channels. The unpacked dredged material is released when the bottom doors on the hoppers are opened.

5. *Feasibility of surveillance and monitoring.* [40 CFR 228.6(a)(5).]

Survelliance and monitoring at the existing sites appears feasible considering transportation costs to and from the sites as well as costs associated with acquiring samples from the shallow water-depths. A monitoring program, if deemed necessary, could include baseline or trend assessment surveys or bioaccumulation tests by EPA, other Federal agencies, or contractors, special studies by permittees and the analysis and interpretation of data from remote or automatic sampling and/or sensing devices. EPA will request the full participation of permittees and encourage the full participation of other federal and state and local agencies in the development and implementation of disposal site monitoring programs.

6. *Dispersal, horizontal transport and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any.* [40 CFR 228.6(a)(6).]

In shallow-water areas of the existing disposal sites, most dredged material falls to the bottom immediately after dumping and only a small portion of the finer fraction is lost from the main settling surge. This small portion disperses as individual particles. Bottom currents measured 6.5 nautical miles (nmi) off Texas Point average 0.23 knots and flow in a south-southwesterly direction. These currents are capable of transporting the dispersed dredged material over a wide area; thus, no major sediment accumulation is expected.

Bottom currents become quite strong during storms, when powerful rip currents redistribute coarse sediments along the Texas-Louisiana coast. Periodically, hurricanes also produce currents strong enough to prevent any significant shoaling due to the accumulation of dredged material. Evidence of this is the lack of shoaling at any of the sites despte the approximately 88 million cubic yards of material that have been dumped in the past 50 years.

7. *Existence and effects of current and previous discharges and dumping in the area (including cumulative effects).* [40 CFR 228.6(a)(7).]

No major changes in benthic diversity have occurred in the sites off Texas Point based on a comparison of 1974, 1979, and 1980 samples with samples taken from 1951 to 1954. However, minor reductions in abundances of benthic infauna are apparent. Studies have shown that the reduced populations are capable of recolonization within a few months. In addition, trawl data indicated that populations of free-swimming animals in the disposal area did not differ from animals occurring in adjacent unimpacted areas upcurrent of the disposal sites.

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 22.6(a)(8).]

Sites 2, 3, and 4 partially extend into the navigational safety fairway; however, they do not present hazards to shipping. Sediments dredged from the channel are dumped within site boundaries but outside the safety fairway. Fairways were "established to control the erection of structures therein to provide safe approaches through oil fields in the Gulf of Mexico to entrances to the major ports along the Gulf Coast." (33 CFR 209.135.)

Sites 1 and 2 are near Sabine Bank, a major commercial and recreational fishery area. Prevailing bottom currents may carry dumped material at Site 2 toward Sabine Bank, but the rise at the bottom edge of the Bank will cause the material to be transported along rather than over the central portion of the Bank.

Sites 1, 2, and 3 are in an area of important commercial shrimping (Grid Zone 17), which extends 60 nmi along the Texas-Louisiana coast, and from the shoreline to about 90 nmi offshore. The disposal sites are in waters 10 to 13 meters deep, a primary shrimping area of this zone. A 1977 study reported in the EIS showed that 25 percent of the catch effort for shrimp in zone 17 resulted in a catch of approximately 24 percent of the total shrimp catch for zone 17, an amount closely proportional to the catch effort. Thus, it does not appear that dredged material disposal operations at these sites during preceding years (1960–1976) significantly interfered with or altered the shrimping activities studied.

Oil and gas exploration and production could potentially be affected by disposal activities. Sites 2 and 3 are presently being leased for oil and gas exploration and already contain oil production platforms and pipelines. As long as the density of the platforms and pipelines and associated marine traffic in these areas remains low, no major conflict between the two uses of the disposal area should occur. No areas of special scientific importance, aquaculture, or desalination activities are known to occur or are known to be planned in the vicinity of the existing sites.

9. *The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys.* [40 CFR 228.6(a)(9).]

Phytoplankton and zooplankton studies conducted southwest of the sites revealed seasonal differences in species composition. Diatoms dominate the phytoplankton community and copepods

dominate the zooplankton community. Fish and shrimp dominate the nekton community of the sites, and species are typical of those reported from western Gulf coastal waters. Several of these species are commercially and/or recreationally important, including croaker, spotted sea trout, menhaden, redfish, flounder, and brown shrimp. The benthic community of the sites is characteristic of sand and mud habitats and is dominated by worms, the most abundant of which are acorn and proboscis worms. Chemical constituents in the water at the sites are below EPA water quality criteria. Concentrations of all measured constituents in the water (except dissolved ammonia, nitrate, and organic nitrogen) are below analytical detection limits. These three exceptions occurred in relatively low concentrations; however, no appropriate water quality criteria apply to these constituents.

10. *Potentiality for the development of recruitment or nuisance species in the disposal site.* [40 CFR 228.6(a)(10).]

No long-term changes in species composition at the site have resulted from disposal operations. Trawl and benthic data also indicated that the disposal area at the time of sampling did not differ from other adjacent unimpacted areas upcurrent of the disposal sites. Disposal of dredged material has contributed little to changing the character of the faunal communities in the vicinity of Sabine Pass. Previous surveys at the site did not detect the development or recruitment of nuisance species, and the similarity of the dredged material with the existing sediments suggests that the development or recruitment of nuisance species is unlikely.

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).]

Neither the Texas Historical Commission nor the Louisiana Division of Archaeology and Historic Preservation Office has found evidence of natural or cultural features of historic importance in the area, but they noted that unknown sunken prehistoric sites may exist. Sunken vessels which exist in or near the offshore disposal area should not be permanently affected by disposal operations.

E. Proposed Action

Based on the completed EIS process and available data, EPA proposes to designate the four Sabine-Neches sites for continuing use for the ocean disposal of dredged material. The existing sites are compatible with the general criteria and specific factors used for site evaluation.

Before ocean dumping of dredged material at the site may occur, the Corps of Engineers must evaluate a permit application according to EPA's ocean dumping criteria. EPA has the authority to approve or to disapprove or to propose conditions upon dredged material permits for ocean dumping. While the Corps does not administratively issue itself a permit, the requirements that must be met before dredged material derived from Federal projects can be discharged into ocean waters are the same as where a permit would be required.

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 of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This Proposed Rule does not contain any information collection requirements subject to the 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: June 2, 1987.

Robert E. Layton, Jr.,

Regional Administrator of Region VI.

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is proposed to be 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 and reserving paragraph (a)(1)(ii)(D) and by adding paragraphs (b)(32),(33),(34) and (35) to read as follows:

§ 228.12 Delegation of management authority for ocean dumping sites.

* * * * *

(b) * * *

(32) Sabine-Neches Dredged Material Site 1 – Region VI.

Location: 29d 28'03" N, 93d 41'14" W; 29d 26'11" N, 93d 41'14" W; 29d 26'11" N, 93d 44'11" W.

Size: 2.4 square nautical miles.

Depth: Ranges from 11–13 meters.

Primary Use: Dredged material.

Period of Use: Continuing Use.

Restriction: Disposal shall be limited to dredged material from the Sabine-Neches area.

(33) Sabine-Neches Dredged Material Site 2 –Region VI.

Location: 29d 30'41" N, 93d 43'49" W; 29d 28'42" N, 93d 41'33" W; 29d 28'42" N, 93d 44'49" W; 29d 30'08" N, 93d 46'27" W.

Size: 4.2 square nautical miles.

Depth: Ranges from 9–13 meters.

Primary Use: Dredged material.

Period of Use: Continuing Use.

Restriction: Disposal shall be limited to dredged material from the Sabine-Neches area.

(34) Sabine-Neches Dredged Material Site 3 – Region VI.

Location: 29d 34'24" N., 93d 48'13" W.; 29d 32'47" N., 93d 46'16" W.; 29d 32'06" N., 93d 46'29" W.; 29d 31'42" N., 93d 48'16" W.; 29d 32'59" N., 93d 49'48" W.

Size: 4.7 square nautical miles.

Depth: 10 meters.

Primary Use: Dredged material.

Period of Use: Continuing Use.

Restriction: Disposal shall be limited to dredged material from the Sabine-Neches area.

(35) Sabine-Neches Dredged Material Site 4 – Region VI.

Location: 29d 38'09" N., 93d 49'23" W.; 29d 35'53" N., 93d 48'18" W.; 29d 35'06" N., 93d 50'24" W.; 29d 36'37" N., 93d 51'09" W.; 29d 37'00" N., 93d 50'06" W.; 29d 37'46" N., 93d 50'26" W.

Size: 4.2 square nautical miles.

Depth: Ranges from 5–9 meters.

Primary Use: Dredged material.

Period of Use: Continuing Use.

Restriction: Disposal shall be limited to dredged material from the Sabine-Neches area.

[FR Doc. 87-13336 Filed 6-10-87; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 268

[SWH-FRL-3216-3]

Hazardous Waste Management System; Land Disposal Restrictions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability and request for comment.

SUMMARY: On December 11, 1986 (51 FR 44714), EPA proposed a rule that would implement the "California list" land disposal prohibitions contained in section 3004(d) of RCRA. The Agency is seeking further comment on the issue of whether the liquid hazardous wastes prohibited under section 3004(d) of RCRA are determined to be liquids nonliquids at the point of disposal or at the point of generation or common aggregation. EPA is also using this notice to clarify certain interpretative questions relating to determinations that are to be made at the point of generation or common aggregation. This notice also requests comment on whether the existing exemption in 40 CFR 262.51 for a farmer land disposing pesticides on his farm remains applicable. In addition, the Agency is making data available which suggest that certain proposed nationwide capacity variances for the California list polychlorinated biphenyl (PCB) wastes are unnecessary, and is requesting comment on this as well as other tentative capacity determinations.

DATE: Comments on this notice of data availability and request for comment must be received on or before June 22, 1987.

ADDRESSES: The public must send an original and two copies of their comments to EPA RCRA Docket (S-212), Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Place the Docket Number F-87-LDR4a-FFFF on your comments.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact the RCRA Hotline, Office of Solid Waste (WH-562) U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (800) 424-9346 (toll free) or (202) 382-3000 in the Washington, DC metropolitan area.

For information on specific aspects of this notice, contact: Gary A. Jonesi, Jacqueline W. Sales, or Stephen R. Weil, Office of Solid Waste (SH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4770.

SUPPLEMENTARY INFORMATION:

I. Point at Which Wastes Are Considered Prohibited

On December 11, 1986 (51 FR 44714), RPA proposed rules that codify and implement the so-called "California list" land disposal prohibitions contained in section 3004(d) of RCRA. Among the issues raised in the proposal was the question of at what point a California list waste becomes prohibited. 51 FR 44718. EPA indicated that for purposes of determining whether a waste was a liquid, the determination was to be made at the point of disposal. 51 FR 44714. The Agency proposed elsewhere (51 FR 44727), however, to strengthen the prohibitions against use of dilution to evade a prohibition effective date (and to modify certain generator recordkeeping and certification requirements as a result, 51 FR 44720), and to require use of particular technologies as the treatment standard for certain California list wastes.

Several commenters pointed out the potential contradication inherent in these proposals if a waste is not considered to be prohibited until the point of disposal, then (by definition) it is not subject to any of the land disposal restriction standards prior to that time. This was clearly not the Agency's intent, given the express prohibition on dilution, the language in existing § 268.42(a) which mandates treatment by a particular technology where the treatment standard is expressed as a specified method, and the November 7, 1986 final rule which indicates (as clarified in the correction notice published on June 4, 1987 that prohibited wastes—a determination made by a waste's initial generator—must ordinarily be treated to the specified performance levels and so would not be eligible for a nationwide capacity variance even if treated to an intermediate level (i.e., less than one percent total F001-F005 solvent constituents.)

The Agency is using this notice to seek further comment on questions related to these issues and to clarify the Agency's intended approach. The Agency intends that wastes generated in an enclosed system, both California list wastes and other hazardous wastes, be considered "prohibited" at a point of common aggregation preceding on-site centralized treatment or substantial pretreatment (for example, where liquid wastes generated in pipes are piped to a common holding tank before centralized treatment or where solid wastes are collected for treatment). For wastewaters in pipes, this would normally be the headworks preceding centralized teatment. For solids, it would be the point at which wastes are collected for treatment (or other management). This type of aggregation is normally necessary of facilitate treatment. 51 FR at 40592. Where wastes are taken off-site, the common aggregation point at which they would be considered prohibited would never be later than the last aggregation point before off-site shipment. Where the wastes are not generated in an enclosed system and there is no normally-occurring aggregation of waste streams, wastes would be prohibited at the point where the waste is initially generated. For example, wastes not aggregated for treatment or for management to facilitate treatment would be prohibited at the point where the waste leaves the manufacturing or other process that generates the waste.

Determinations as to whether a waste meets the California list tests of being a liquid and exceeding the applicable concentrations of hazardous constituents thus would be made at this point. The generator notification and certification requirements in § 268.7(a) likewise would apply at this point. Although these wastes could not permissibly be diluted to avoid a prohibition, treatment that renders the wastes nonliquid would not be considered dilution. 51 FR 44718.

This principle has several ramifications in determining how to treat prohibited wastes, and to what levels such wastes must be treated. With respect to those wastes for which the treatment standard is specified as a method, the wastes would be considered prohibited at the same points specified above, with the further consequence that they would require treatment using the specified method. For example, a liquid hazardous waste containing greater than or equal to 50 ppm PCB would still be prohibited if rendered nonliquid; it would have to be treated by the method specified in § 268.42(a) (or an alternative method approved by the Administrator pursuant to § 268.42(b)) before it could be land disposed. This approach gives meaningful effect to the language of § 268.42 (wastes "must be treated using the identified technology or technologies"), as well as the Agency's explicit preamble statements that where treatment standards are specified as a method, the prohibited wastes must be treated by that method. 51 FR at 40598, 40632. (California list wastes for which EPA has not established treatment standards, e.g., as proposed for the liquid metal and cyanide wastes, could, however, be treated and rendered nonliquid and would no longer be prohibited.)

The same principle would apply where EPA has established performance levels as the treatment standard. (See the correction notice published in the June 4, 1987 **Federal Register**.) Thus, prohibited solvent and dioxin-containing wastes (i.e. solvent and dioxin-containing wastes prohibited at the point described above) would have to be treated to the levels specified in § 268.41. Prohibited solvent or dioxin-containing wastes treated to the one percent level specified in the § 268.30(a)(3) national capacity variance would continue to require treatment to the specified levels. For example, if a prohibited solvent distillation residue (a still bottom) is incinerated and the incinerator residue does not meet the treatment standard but contains less than one percent total F001–F005 solvent constituents, further treatment would be required.

There is, however, one exception to the principle that treatment residues from prohibited wastes must continue to be treated until they meet the treatment standard. This is where treatment results in a residue that belongs to a different treatability group than the initial waste [1] and the Agency has already determined that there is inadequate nationwide capacity to treat the wastes belonging to that group. For example, if an incinerator was to burn an F001–F005 spent solvent containing greater than or equal to one percent total F001–F005 solvent constitutents and generate a scrubber water containing less than one percent total organic carbon (TOC), this scrubber water belongs to a different treatability group, i.e. the wastewater treatability group. If the scrubber water contains F001–F005 solvent constituents in concentrations less than one percent but greater than the applicable treatment standards, further treatment of the scrubber water would not be required until November 8, 1988 because the Agency has already determined that there is not adequate nationwide capacity to treat liquids containing less than one percent total F001–F005 solvent constituents.

Another example would be where a wastewater is decanted from organic liquid solvent wastes that are prohibited as of November 8, 1986 (i.e., spent solvents containing greater than or equal to one percent TOC and greater than or equal to one percent total F001–F005 solvent constituents) and the decanted water contains less than one percent TOC while containing F001–F005 solvent constituents in concentrations greater than the applicable treatment standards. Treatment of such water likewise would not be required until November 8, 1988.

This distinction comes directly from the Agency's own estimates of available treatment capacity. These estimates included capacity for further treatment of solid (or slurry) solvent treatment residues which did not meet the treatment standards. See Background Document, *Solvent Waste Volumes and Characteristics, Required Treatment and Recycling Capacity, and Available Treatment and Recycling Capacity* (November 1986), pp. 63–64 (additional incinerator capacity allocated for all still bottoms from reclamation of prohibited solvent wastes). The estimates did not include capacity for wastewaters resulting from treatment of these wastes.

The discussion above covers situations where wastes are determined by their initial generator to be presently prohibited (i.e. not subject to any variance). The Agency is clarifying that where the waste as initially generated is subject to a national capacity or other variance, any residue from treating the waste remains subject to the variance. This point follows directly from the principle reiterated most recently in the Agency's June 4, 1987 correction notice that the initial generator determines whether his waste is presently prohibited from land disposal (see § 268.30(a)(3), as amended).

Thus, using F001–F005 solvent wastes as examples, residues from treating small quantity generator wastes (either 1–100 kg/month, or 100–1,000 kg/month), CERCLA response action or RCRA corrective action wastes, or an initial generator's solvent waste containing less than one percent total F001–F005 solvent constituents, would remain exempt regardless of solvent concentration in the residue (or regardless of whether the residues met the treatment standards) since the waste's status has already been determined by the initial generator. The policy rationale for this is that any other result creates a disincentive for treatment. Such a result is contrary to the overall objectives of RCRA (see section 1003). If a waste could be land disposed as generated but residues from treatment were not exempt, generators of exempt wastes would clearly be less inclined to seek out treatment alternatives. (This discussion assumes that the treatment residues derive solely from treating exempted wastes. If both exempt and regulated waste are commingled and treated, residues would not automatically be exempt.)

EPA adds one caveat. As noted in the November 7, 1986 final rule, where a waste generated before a land disposal prohibition effective date is later removed from storage or disposal, it then becomes subject to the land disposal prohibitions (assuming that at the time of removal the waste is ineligible for one of the several variances or does not already meet the applicable treatment standards). 51 FR 40577. By the same logic, residues generated from such wastes, such as leachate or contaminated groundwater containing F001–F005 solvent wastes disposed prior to November 8, 1986, would be viewed as newly generated wastes. Their eligibility for the national capacity variance (or the statutory variance for certain CERCLA response action and RCRA corrective action wastes) would consequently be determined *de novo* upon removal, and not by reference to the composition of the waste prior to the prohibition effective date.

II. Existing Exemption for Farmers

The Agency notes that it omitted to cross-reference an existing regulatory exemption in proposing the California list rules. This is the exemption in 40 CFR 262.51 for a farmer disposing of waste pesticides from his own use on his own farm in accordance with the disposal instructions on the pesticide label. There is no suggestion in RCRA or the legislative history that this practice, which can be similar to lawful application of pesticide product, was intended to be subject to the land disposal prohibitions.

III. HOC Wastes

On December 11, 1986, EPA proposed that liquid hazardous wastes that are primarily water but which contain halogenated organic compounds (HOCs) in concentrations greater than or equal to 1,000 mg/l and less than either 10,000 mg/l HOCs or one percent TOC ("dilute HOC wastewaters") be prohibited effective July 8, 1987. EPA did not consider proposing a 2-year nationwide

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[1] In the November 7, 1986 final rule (51 FR 40572), the Agency established three separate treatability groups:

(1) F001–F005 solvent-water mixtures that are primarily water and contain less than one percent total organic carbon or less than one percent total F001–F005 constituents (dilute solvent wastewaters);

(2) Solvent-water mixtures that are primarily water and which contain less than one percent total organic carbon (also dilute wastewaters) and which contain methylene chloride generated by the pharmaceutical industry; and

(3) All other wastes (i.e. wastewaters containing greater than or equal to one percent total F001–F005 constituents, other liquid wastes, solids, sludges, and soils).

The Agency granted national capacity variances for the first two treatability groups above. 51 FR 40641.

variance from the July 8, 1987 prohibition effective date, in part, because the Agency believed it was legally precluded from granting capacity variances where treatment standards are not specified. For all other California list HOC wastes, EPA proposed incineration as the required treatment method and proposed to grant a 2-year nationwide variance from the July 8, 1987 prohibition effective date due to a lack of incineration capacity. For those wastes, EPA stated that incineration capacity was already exhausted as a result of the land disposal prohibitions for solvent-containing hazardous wastes.

Several commenters suggested that there was available thermal treatment capacity for liquid HOC wastes. Other commenters questioned whether the Agency was in fact legally precluded from granting capacity variances where it did not establish treatment standards. Additional commenters noted that the Agency had already found that there is inadequate capacity to treat dilute solvent wastewaters, which are a subset of dilute HOC wastewaters, and noted the incongruity of not granting a corresponding variance for the HOC wastewaters.

The Agency has reexamined these issues in light of the comments received and in light of new information. EPA's tentative findings are set out below, organized in terms of waste treatability groups.

A. HOC Wastewaters

1. Legal Constraints on Granting National Capacity Variances

The threshold issue here is whether the Agency is barred as a matter of law from granting capacity variances where it does not specify treatment standards. Upon reexamination, EPA believes there is no absolute legal constraint. The statute itself contemplates that such variances can be granted. Section 3004(h)(2) indicates that the Agency may grant a national capacity variances in either of two cases: (1) With respect to wastes prohibited when the Agency promulgates regulations pursuant to section 32004(d)–(g); or (2) with respect to hazardous wastes "subject to a prohibition" under those same subsections. In this letter case, the prohibition would take effect by operation of law (i.e., the so-called statutory hammer would fall), and no treatment standards would be established. Yet the clear sense of the statute is that the Agency remains authorized to grant national capacity variances. The Agency could grant case-by-case extensions of the effective date under section 3004(h)(3) as well, since (h)(3) authorizes extensions to effective "dates which would otherwise apply" under subsections (d)-(g) or subsections (h)(2). These effective dates, as just explained, can take effect whether or not the Agency promulgates treatment standards.

In addition, the statutory standard that authorizes EPA to grant capacity variances is not identical to the language in section 3004(m) authorizing the establish of waste treatment standards. The Agency construes this to mean that it need not consider precisely identical factors. Section 3004(h)(2) requires the Agency's determination to be based on availability of "adequate alternative treatment, recovery, or disposal capacity which protects human health and the environment . . ." This can be either broader or narrower, under different circumstances, than treatment satisfying the section 3004(m) standards. 51 FR 40600. The key point here, however, is that the existence of the different statutory standards for granting capacity variances and establishing treatment standards confirms that the two determinations are not inextricably linked.

This is not to say that it will be easy to assemble the necessary facts to warrant granting capacity variances where there are no treatment standards. Certainly, the Agency would at least need to pinpoint the types of protective technologies available to treat, recover, or dispose of the wastes, and know the availability of that protective capacity. Such facts, however, could exist under certain circumstances.

2. Tentative Determination Not to Grant National Capacity Variances for Dilute HOC Wastewaters

Although part of the Agency's rationale at proposal for not granting national capacity variances for dilute nonsolvent HOC wastewaters (i.e., hazardous wastes that are primarily water and contain greater than or equal to 1,000 mg/l HOCs and less than either 10,000 mg/l HOCx or one percent TOC) would no longer apply, the Agency does not believe such a variance is warranted. The Agency's estimates are that these wastes are generated in low volumes, and most of these wastes are believed to contain less than the statutory HOC prohibited level. In addition, there is some available commercial capacity to treat these wastes (51 FR at 40614). (See Memorandum to the Record on these points.)

Commenters to the proposed rule did not document any shortage of available treatment capacity; however, several suggested that the Agency's determination in the November 7, 1986 rule that there is inadequate treatment capacity for certain dilute solvent wastewaters [some of which are also HOCs) in inconsistent with the proposed approach not to grant a nationwide variance for the dilute HOC wastewaters. EPA believes that not granting a nationwide variance for the HOC wastewaters is not inconsistence with the November 7, 1986 solvents rule (even though some solvents, e.g., F001 and F002, are a type of HOC and EPA determined that there was inadequate treatment capacity for certain dilute solvent wastewaters) because the solvent wastewaters granted a national capacity variance in the November 7, 1986 rule are not limited to wastes containing 1,000 mg/l. Rather, many of those wastes contain less than 1,000 mg/l and, therefore, are not subject to the capacity demands imposed by the California list prohibitions.

The Agency notes, however, that the national capacity variance for F001–F005 solvent-containing wastewaters would continue to apply (even if the solvent wastes also contain over 1,000 mg/l HOCs) as long as the wastewater is regulated as hazardous because of the F001–F005 solvent constituents. This is because EPA has already addressed these specific types of HOC wastes on November 7, 1986 and has indicated in the California list proposal (51 FR 44725) that such waste stream specific determinations supersede the California list determinations. However, if the solvent-HOC wastewater is not regulated as hazardous by virtue of being an F001–F005 solvent, it does not meet the definition of those wastes addressed in the November 7, 1987 rule and, therefore, it is subject to the prohibition effective date promulgated for the dilute HOC wastewaters. As a result, the wastes would be prohibited effective July 8, 1987 despite the fact that it may contain solvent constitutents identical to those specified in the F001–F005 listings. The Agency solicits comments on these points and the underlying data.

B. HOC Liquids Containing Greater Than One Percent HOCs and HOC Solids

For all other HOC wastes not discussed above, EPA intends to promulgate the treatment standards and prohibition effective dates as proposed. However, the Agency will revise its determinations periodically as new technologies or new data emerge. For example, EPA recently proposed to regulate the burning of hazardous

wastes in boilers and industrial furnaces and specify numerious operating conditions for conducting such treatment. 52 FR 17021, May 6, 1987. In that proposal, the Agency indicated that, if finalized, these controlled methods could form the basis for a revision of the HOC treatment standards. Should EPA revise the treatment standards, new capacity determinations would be required in order to justify continued application of a nationwide variance. Similarly, new capacity data in the absence of any revisions to the treatment standard could also result in the revocation of a national capacity variance.

IV. PCB-Containing Wastes

On December 11, 1986, EPA proposed treatment standards for the California list liquid hazardous wastes containing PCBs in concentration greater than or equal to 50 ppm. In proposing these treatment standards (i.e., thermal treatment in accordance with existing technical requirements set forth in the TSCA regulations at 40 CFR Part 761), EPA also proposed to grant a 2-year nationwide variance based on a perceived lack of such thermal treatment capacity. New volume and incineration capacity data appear to indicate, however, that there is not a nationwide shortage of capacity to manage the small volumes of these wastes that are currently land disposed. Therefore, the Agency does not anticipate that a nationwide capacity variance will be granted. As with the HOC wastes discussed above, any individual demonstrations of capacity shortfalls may warrant a case-by-case extension provided the requirements of § 268.5 are met.

V. Metals, Cyanides, and Corrosives

The Agency does not believe it is necessary to grant a national capacity variance for the California list metal, cyanide, and corrosive wastes, given the relative ease with which treatment can be conducted and unregulated tank capacity can be installed. See 51 FR at 44732. The Agency is concerned, however, that certain large volume flows might pose a capacity problem, and has placed data on possible size distributions in the administrative record. The Agency solicits on these possible distribution cutoffs.

The Agency solicits comments on these points, all comments to be received by June 22, 1987. Comments on unrelated issues will not be considered.

Dated: June 5, 1987.

J. Winston Porter,

Assistance Administrator.

[FR Doc. 87-13335 Filed 6-10-87; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 412

[BERC-403-CN]

Capital Payments Under the Inpatient Hospital Prospective Payment System

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule; correction.

SUMMARY: In the May 19, 1987 issue of the **Federal Register** (FR Doc. 87-11425), beginning on page 18840, we proposed to amend the Medicare regulations governing the inpatient hospital prospective payment system to incorporate capital-related costs into that system. This notice corrects inadvertent errors we made in the preamble and Appendix A (Federal Capital-Related Rates), Appendix B (Construction Cost Indexes), and Appendix D (Impact Analysis) of that document.

FOR FURTHER INFORMATION CONTACT: Linda Magno, (301) 594-9343.

SUPPLEMENTARY INFORMATION: We are making the following corrections to the May 19, 1987 document:

On page 18849, in the first column, in the first line from the bottom of the page, the factor "1.0382" is corrected to read "1.0396".

2. On page 18858, in the second and third columns, Tables 1 and 2 of Appendix A are corrected to read as follows (note that the footnotes remain unchanged):

Appendix A—Federal Capital-Related Rates [1]

TABLE 1—FIFTY STATES AND DISTRICT OF COLUMBIA

Plant/fixed equipment		Moveable equipment	
Urban	Rural	Urban	Rural
192.26	173.43	121.10	93.22

TABLE 2—PUERTO RICO [2]

	Plant/fixed equipment		Moveable equipment	
	Urban	Rural	Urban	Rural
Puerto Rico	137.57	139.90	46.99	7.73
National	187.47		114.00	

Appendix B—[Corrected]

3. Also on page 18858, in appendix B, in the third column, in the twenty-third line from the bottom of the page, the title "Anaheim-Santa Ana-Garden Grove, CA" is corrected to read "Anaheim-Santa Ana, CA". In the tenth line from the bottom of the page, the title "Appleton-Oshkosh, WI" is corrected to read "Appleton-Oshkosh-Neenah, WI".

4. On page 18859, in the first column, in the sixteenth line from the bottom of the page, the title "Beaumont-Port Arthur-Orange, TX" is corrected to read "Beaumont-Port Arthur, TX."

5. Also on page 18859, in the second column, in the third line from the top of the page, the title "Binghamton, NY-PA" is corrected to read "Binghamton, NY". In the twenty-first line from the top of the page, the title "Boston, MA" is corrected to read "Boston-Lawrence-Salem-Lowell-Brockton, MA". In the thirty-fifth line from the top of the page, the title "Bridgeport, CT," is corrected to read "Bridgeport-Stamford-Norwalk-Danbury, CT". In the thirty-seventh line from the top of the page, the title "Brownsville-Harlingen-San Benito, TX." is corrected to read "Brownsville-Harlingen, TX". In the fifty-seventh line from the top of the page, the title "Charleston-North Charleston, SC", is corrected to read "Charleston, SC". In the sixty-fourth line from the top of the page, the title "Charlotte-Gastonia, NC" is corrected to read "Charlotte-Gastonia-Rock Hill, NC-SC".

6. Also on page 18859, in the third column, in the seventh line from the bottom of the page, the title "Dallas-Fort-Worth, TX" is corrected to read "Dallas, TX."

7. On page 18860, in the first column, in the ninth line from the top of the page, the title "Dayton, OH" is corrected to read "Dayton-Springfield, OH". In the eighteenth line from the top of the page, the title "Denver-Boulder, CO" is corrected to read "Denver, CO". In the

forty-first line from the top of the page, the title "Duluth-Superior, MN–WI" is corrected to read "Duluth, MN–WI". In the forty-ninth line from the top of the page, the title "Elkhart, IN" is corrected to read "Elkhart-Goshen, IN".

8. Also on page 18860, in the second column, in the ninth line from the top of the page, the title "Fort Collins, CO" is corrected to read "Fort Collins-Loveland, CO". In the eleventh line from the top of the page, the title "Fort Lauderdale-Hollywood, FL" is corrected to read "Fort Lauderdale-Hollywood-Pompano Beach, FL". In the thirteenth line from the top of the page, the title "Fort Myers, FL" is corrected to read "Fort Myers-Cape Coral, FL". In the forty-first line from the top of the page, the title "Gary Hammond-East Chicago, IN" is corrected to read "Gary-Hammond, IN". In the forty-seventh line from the top of the page, the title Grand Forks, ND–MN" is corrected to read "Grand Forks, ND".

9. Also on page 18860, in the third column, in the fifth line from the top of the page, the title "Harrisburg, PA" is corrected to read "Harrisburg-Lebanon-Carlisle, PA". In the tenth line from the top of the page, the title "Hartford, CT" is corrected to read "Hartford-Middletown-New Britain-Bristol, CT". Also, add "Litchfield, CT" to the list of urban areas between "Hartford, CT" (eleventh line) and Middlesex, CT" (twelfth line).

10. On page 18861, in the second column, in the thirteenth line from the bottom of the page, add "Merrimack, NH" to the list of urban areas after "Hillsborough, NH".

11. On page 18862, in the second column, in the thirty-first line from the top of the page, add "Sagadahoc, ME" and "York, ME" to the list of urban areas after "Cumberland, ME". Add "Newport, RI" to the list of urban areas between "Kent, RI" (forty-fifth line) and "Providence, RI" (forty-sixth line).

12. On page 18876, in the third column, Table IV is corrected to read as follows:

	Nonstandardized rates		Standardized rates	
	Urban	Rural	Urban	Rural
Plant/Fixed Equipment.....	$203.70	$173.21	$192.26	$173.43
Moveable Equipment.....	$129.57	$93.22	$121.10	$93.22

13. Also on page 18876, in the third column, in the fifteenth line from the bottom of the page, the phrase "$171.83 to $181.89 (a 5.9 percent" is corrected to read "$192.26 to $203.70 (a 6.0 percent". In the eleventh and twelfth lines from the bottom of the page, the phrase "$108.53 to $115.99 (a 6.9 percent" is corrected to read "$121.10 to $129.57 (a 7.0 percent". In the fourth line from the bottom of the page, the phrase "$160.59 to $160.35" is corrected to read "$173.43 to $173.21". In the second line from the bottom of the page, the word "virtually" is removed. In the first line from the bottom of the page, the phrase "going from $87.11 to $87.09" is removed.

(Secs. 1102, 1122, 1871, and 1886 of the Social Security Act, as amended; 42 U.S.C. 1302, 1320a–1, 1395hh, and 1395ww; 42 CFR 412.65 through 412.67)

(Catalog of Federal Domestic Assistance Programs No. 13. 773, Medicare—Hospital Insurance Program)

Dated: June 5, 1987.

James V. Oberthaler,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 87–13362 Filed 6–10–87; 8:45 am]

BILLING CODE 4120–03–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR PART 65

[Docket No. FEMA–6911]

Proposed Flood Elevation Determinations; Arizona et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed modified base flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

DATES: The period for comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

ADDRESS: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC. 20472, (202) 646–2768.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinance that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 USC 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinance, which, if adopted by a local community, will govern future construction within the floodplain area. The elevation determinations, however, impose no restrictions unless and until the local community voluntarily adopts floodplain ordinance in accord with these elevations. Even if ordinance are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67
Flood Insurance, Floodplains.

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed modified base flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Arizona	Town of Thatcher, Graham County	Spring Canyon	Approximately 1,300 feet downstream of the confluence of Frye Creek.	None	*3,002
			At corporate limits approximately 850 feet downstream of the confluence of Frye Creek.	None	*3,006
		Frye Creek	At Frye Creek Road approximately 150 feet upstream of corporate limits.	*3,074	*3,073
			At Frye Creek Road approximately 770 feet upstream of corporate limits.	*3,082	*3,080
			At upstream corporate limits	*3,088	*3,086
		Frye Creek Tributary	Approximately 270 feet upstream of corporate limits	*3,076	*3,074
			At Valley View Road (upstream corporate limits)	*3,089	*3,088
Maps are available for inspection at the Town Hall, 230 College Avenue, Thatcher, Arizona.					
Send comments to Mayor Ladd Mullenaux, Box 684, Thatcher, Arizona 85552.					
California	Alameda County (Unincorporated Area).	San Leandro Line A (Zone 2)	Area bounded by Dermody Avenue, Wagner Avenue, Vassar Avenue, and Doane Street.	#1	None
Maps available for inspection at the Alameda County Public Works Agency, 399 Elmhurst Street, Hayward, California 94544.					
Send comments to Mr. Edward R. Campbell, Chairman, Alameda County Board of Supervisors, 1221 Oak Street, Room 536, Oakland, California 94612.					
California	City of Sacramento, Sacramento County.	Lower Magpie Creek	Bell Avenue	*28	*25
			Taylor Street	*28	*26
			Jessie Avenue	*25	*24
Maps are available for inspection at the Department of Public Works, City Hall, 915 I Street, Room 207, Sacramento, California.					
Send comments to Mayor Ann Rudin, Mayor and Council Offices, 915 I Street, Room 205, Sacramento, California 95814.					
Florida	City of Palm Beach Gardens, Palm Beach County.	C18 canal	Within Community	None	*18
Maps available for inspection at the City Manager's Office, 10500 North Military Trail, Palm Beach Gardens, Florida.					
Send Comments to The Honorable John L. Orr, Jr., City Manager, City of Palm Beach Gardens, 10500 North Military Trail, Palm Beach Gardens, Florida, 33410.					
Georgia	City of Roswell, Fulton County	For Killer Creek	Just upstream of Old Roswell Road	None	*974
			About 0.9 miles upstream of Old Roswell Road	*997	*997
Maps available for inspection at the City of Roswell Engineering Department, 105 Dobbs Drive, Roswell, Georgia.					
Send comments to The Honorable W. L. Mabry, Mayor, City of Roswell, 105 Dobbs Drive, Roswell, Georgia 30075.					
Illinois	Unincorporated Areas of Alexander County.	Shallow (from rainfall)	Goose Pond Pumping Station	None	*307
Maps available for inspection at 2000 Washington Avenue, Cairo, Illinois.					
Send comments to The Honorable C. Eugene Farris, Chairman, Alexander County Board, 2000 Washington Avenue, Cairo, Illinois 62914.					
Indiana	City of Mishawaka, St. Joseph County	Judy Creek	About 200 feet downstream of footbridge at end of Driftwood Circle.	*735	*736
			About 1100 feet upstream of Grape Road	None	*742
Maps available for inspection at the City of South Bend, Engineering Department, Room 1316, 227 W. Jefferson Boulevard, South Bend, Indiana.					
Send comments to The Honorable Robert C. Beutter, Mayor, City of Mishawaka, City Hall, 600 East Third, Mushawaka, Indiana 46544.					
Indiana	City of South Bend St. Joseph County	Judy Creek	About 600 feet upstream of the confluecne with the St. Joseph River.	*666	*666
			About 100 feet upstream of the Issac Walton League Dam.	*None	*678
			About 0.8 mile upstream of the Issac Walton League Dam.	*None	*701
Maps available for inspection at the City of South Bend Engineering Department, 227 West Jefferson Boulevard, Room 1316, South Bend, Indiana.					
Send comments to The Honorable Roger O. Parent, Mayor, City of South Bend, 227 West Jefferson Boulevard, 14th floor, South Bend, Indiana 46601.					
Indiana	Unincorporated Areas of St. Joseph County.	Judy Creek	About 2900 feet downstream of Kenilworth Road	* 698	* 690
			About 4000 feet upstream of Bittersweet Road	None	* 773
Maps available for inspection at the City of South Bend Engineering Department, City/County Building, Room 1316, 227 W. Jefferson Boulevard, South Bend, Indiana.					
Send comments to The Honorable Richard L. Larrison, President, Board of County Commissioners, City/County Building, 227 W. Jefferson Boulevard, 7th Floor, South Bend, Indiana 46601.					
Louisiana	Tangipahoa Parish	Natalbany River	Approximately 400 feet upstream of the Illinois Central Gulf Railroad.	* 34	* 35
			Approximately 1,400 feet upstream of the Illinois Central Gulf Railroad.	* 35	* 36
Maps available for inspection at the Tangipahoa Parish Courthouse, Amite, Louisiana.					
Send comments to The Honorable Troy Davis, President of the Tangipahoa Parish Police Jury, P.O. Box 215, Amite, Louisiana 70422.					
Maryland	Baltimore County	Roland Run	Approximately 100 feet upstream of Business Entrance.	* 260	* 259
			Approximately 90 feet downstream of Essex Farm Road.	* 268	* 266
			Approximately 850 feet upstream of Essex Farm Road	* 276	* 275

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Baltimore County Department of Public Works, Towson, Maryland. Send comments to The Honorable Donald P. Hutchinson, Baltimore County Executive, Executive Office, Old Court House, Towson, Maryland 21204.					
Maryland	Calvert County	Chesapeake Bay	At Park Drive	None	*5
			At Hemlock Drive	None	*5
Maps available for inspection at the County Courthouse, Prince Frederick, Maryland. Send comments to The Honorable John M. Gott, Sr., President of the Calvert County Board of Commissioners, County Courthouse, Prince Frederick, Maryland 20678.					
Maryland	Ocean City, Town, Worcester County	Atlantic Ocean	Intersection of North 15th Street and Baltimore Avenue.	None	#1
			Approximately 200 feet east of boardwalk at Talbot Street.	*9	*11
Maps available for inspection at the Town Hall, Ocean City, Maryland. Send comments to the Honorable Roland Powell, Mayor of the Town of Ocean City, Worcester County, P.O. Box 158, Ocean City, Maryland 21842.					
New Jersey	Dunellen, Borough, Middlesex County	Green Brook	Upstream side of Madison Avenue	*51	*52
			Downstream side of North Washington Avenue	*52	*53
Maps available for inspection at the Office of the Borough Clerk, 355 North Avenue, Dunellen, New Jersey. Send comments to The Honorable Lawrence Anzovino, Mayor of the Borough of Dunellen, 355 North Avenue, Dunellen, New Jersey 08812.					
New Jersey	East Orange, City, Essex County	Second River Tributary	Downstream corporate limits	*125	*126
			Upstream side of Dodd Street Culvert	*132	*133
			Downstream side of Brighton Avenue	*143	*145
			Upstream corporate limits	*146	*149
		Nishuane Brook	At confluence of Second River Tributary	*145	*148
			Upstream side of Hayward Street	*150	*151
			At centerline of Orange Road	*160	*163
Maps available for inspection at 44 City Hall Plaza, East Orange, New Jersey. Send comments to The Honorable John Hatcher, Mayor of the City of East Orange, Essex County, 44 City Hall Plaza, East Orange, New Jersey 07019.					
New Jersey	Green Brook, Township, Somerset County.	Green Brook	Downstream corporate limits	*38	*40
			Downstream side of Green Brook Road	*39	*41
			Upstream side of Green Brook Road	*39	*42
			Upstream side of Madison Avenue	*51	*52
			Upstream corporate limits	*56	*57
		Municipal Brook	At confluence with Green Brook	*52	*53
Maps available for inspection at the Township Clerk's Office, Municipal Building, 111 Greenbrook Road, Green Brook, New Jersey. Send comments to The Honorable J. George Kadesh, Mayor of the Township of Green Brook, Somerset County, 111 Greenbrook Road, Green Brook, New Jersey 08812.					
New Jersey	Mahwah, Township, Bergen County	Hohokus Brook	Approximately 150 feet upstream of Wyckoff Avenue	None	*312
			Upstream of most upstream dam	None	*324
			At upstream corporate limits	None	*330
Maps available for inspection at the Township Administrator's Office, Municipal Building, Mahwah, New Jersey. Send comments to The Honorable Frank P. Kraus, Mayor of the Township of Mahwah, Bergen County, 211 Franklin Turnpike, Mahwah, New Jersey 07430.					
New Jersey	Millburn, Township, Essex County	Van Winkles Brook	Approximately 480 feet downstream of the downstream corporate limits.	None	*97
			Approximately 365 feet downstream of Short Hills Avenue.	None	*116
			At Millburn Avenue	None	*136
		Canoe Brook Tributary No. 1	At downstream corporate limits	None	*228
			Approximately 600 feet upstream of the most upstream corporate limits.	None	*252
Maps available for inspection at the Township Hall, Millburn, New Jersey. Send comments to The Honorable Frank W. Long, Mayor of the Township of Millburn, Essex County, Millburn Township Hall, Millburn, New Jersey 07041.					
New Jersey	Old Bridge, Township, Middlesex County.	South River	Upstream of Bordentown Avenue	*12	*10
			Upstream of State Route 18	*12	*11
		Deep Run	Upstream of Bordentown Avenue	*12	*10
			Approximately 0.6 mile upstream of Waterworks Road	*12	*11
		Tennents Brook	Upstream of CONRAIL	*12	*10
			Downstream side of Perth Amboy Reservoir Dam	*12	*11
Maps available for inspection at the Department of Engineering and Planning, One Old Bridge Plaza, Old Bridge, New Jersey. Send comments to The Honorable Russell J. Azzarello, Mayor of the Township of Old Bridge, Middlesex County, One Old Bridge Plaza, Old Bridge, New Jersey 08857.					
New York	Hilton, Village, Monroe County	Salmon Creek	Most downstream corporate limits	*259	*261
			Approximately 100 feet upstream of CONRAIL	*261	*264
			Approximately 100 feet upstream of State Route 18 and 259/South Avenue.	*266	*267
			At upstream corporate limits	*268	*270
Maps available for inspection at the Village of Hilton Offices, 59 Henry Street, Hilton, New York. Send comments to The Honorable Larry Gursslin, Mayor of the Village of Hilton, Monroe County, 59 Henry Street, Hilton, New York 14468.					
Ohio	City of Hilliard, Franklin County	Clover Groff Ditch	About 1.35 miles downstream of Scioto Darby Creek Road.	*937	*938
			About 500 feet upstream of Scioto Darby Creek Road	None	*941
		Hayden Run	Just upstream of Avery Road	*909	*911
			About 1,350 feet upstream of Avery Road	*912	*916

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
		Scioto river	Within community	None	*772

Maps available for inspection at the City Hall, 3800 Municipal Square, Hilliard, Ohio.

Send comments to The Honorable Roger A. Reynolds, Mayor, City of Hilliard, City Hall, 3800 Municipal Square, Hilliard, Ohio 43026.

Ohio	City of Springfield, Clark County	Buck Creek	Just upstream of U.S. Route 40	*907	*907
			Just upstream of Plum Street	*920	*917
			About 500 feet upstream of CONRAIL (0.45 mile upstream of Belmont Ave.)	*954	*952

Maps available for inspection at the City Building, 76 East High Street, Springfield, Ohio.

Send comments to The Honorable W. Gregg LaMar, City Manager, City of Springfield, City Building, 76 East High Street, Springfield, Ohio 45502.

Oklahoma	Shawnee, City, Pottawatomie County	Tributary #1	Approximately 60 feet downstream of Wallace Street	None	*1,026
2			Approximately 740 feet upsteam of Wallace Street	None	*1,037
			Approximately 0.5 mile upstream of Bannock Avenue	None	*1,047
		Rosedale Park Tributary	At confluence with Tributary #1	None	*1,030
			Approximately 1,050 feet upstream of the confluence with Tributary #1.	None	*1,038

Maps available for inspection at the City Engineer's Office, Shawnee, Oklahoma.

Send comments to The Honorable Pierre F. Taron, Mayor of the City of Shawnee, Pottawatomie County, P.O. Box 1488, Shawnee, Oklahoma 74801.

Texas	City of Haltom, Tarrant County	Big Fossil Creek	Downsteam corporate limits	*506	*505
			Upstream side of State Route 183	*513	*511
			Upstream side of Glenview Drive	*534	*533
			Upstream side of I-820	*549	*545
			Approximately 200 feet downstream of upstream corporate limits.	*577	*576
		Stream BFC-1	Downstream corporate limits	None	*580
			Approximately 1,650 feet upstream of corporate limits	None	*590
			Approximately 150 feet upstream of Watauga Road	None	*599
		Little Fossil Creek	Approximately 1,400 feet downstream of Chicago Rock Island and Pacific Railroad.	*506	*505
			Upstream side of Midway Road	*522	*522
			Upstream side of Fincher Road	*541	*543
			Upstream corporate limits	*563	*559

Maps available for inspection at the Haltom City Building and Zoning Department, 5024 Broadway Avenue, Haltom City, Texas.

Send comments to The Honorable Jack O. Lewis, Mayor of the City of Haltom City, Tarrant County, 5024 Broadway Avenue, P.O. Box 14246, Haltom City, Texas 76117.

Texas	Harris County	Spring Gully (K131-00-00)	Approximately 2,200 feet upstream of Spring Creek Oak Drive.	*118	*119
			Approximately 400 feet downstream of Spring-Cypress Road.	*133	*132
		Tributary 2.1 to Spring Gully (K131-03-00).	Upstream side of drop structure located approximately 0.6 mile upstream of confluence with Spring Gully.	*122	*120
			Approximately 0.9 mile upstream of Spring-Cypress Road.	*135	*134

Maps available for inspection at the Harris County Engineering Department, Sweeny Building, 301 Main Street, Houston, Texas.

Send comments to The Honorable Jon Lindsay, Harris County Judge, Harris County Administration Building, 1001 Preston, Houston, Texas 77002.

Texas	Sugar Land, City Fort Bend County	Brazos River	Approximately 4.2 miles downstream of U.S. Rourt 59	*70	*69
			Downstream side of U.S. Route 59	*75	*74
			Approximately 1.3 miles upstream of U.S. Route 59	*77	*76
		Oyster Creek	Upstream side of Oyster Creed	*74	*73
			At Southern Pacific Railroad	*75	*74
			Approximately 0.7 mile upstream of Southern Pacific Railroad.	*76	*75
			Approximately 2.8 miles upstream of Harmon Road	None	*77

Maps available for inspection at the Department of Public Works, City Hall, 200 Matlage Way, Sugar Land, Texas.

Send comments to The Honorable Walter S. McMeans, Mayor of the City of Sugar Land, Fort Bend County, 200 Matlage Way, P.O. Box 110, Sugar Land, Texas 77487-0110.

Wisconsin	City of Fond du Lac, Fond du Lac County.	De Neveu Creek	At mouth	*750	*750
			Just upstream of Fourth Street	*772	*771
			About 1.26 miles upstream of County Highway V	*806	*806
		McDermott Creek	At confluence with De Neveu Creek	*756	*755
			About 850 feet upstream of Morningside Drive	None	*772

Maps available for inspection at the Engineering Department, P.O. Box 150, Fond du Lac, Wisconsin.

Send comments to The Honorable Daniel R. Thompson, City Manager, City of Fond du Lac, P.O. Box 150, Fond du Lac, Wisconsin 54935-0150.

Wisconsin	City of Milwaukee, Milwaukee County	Kinnickinnic River	Just upstream of Kinnickinnic Avenue	*584	*584
			About 300 feet downstream South 20th Street	*625	*626
			Just upstream of South 20th Street	*630	*633
			Just downstream of South 29th Street	*632	*634
			Just upstream of State Highway 24	*639	*639

Map available for inspection at the Department of City Development, 809 North Broadway, Milwaukee, Wisconsin.

Send comments to The Honorable W. Maier, Mayor, City of Milwaukee, City Hall, Room 201, 200 East Wells Street, Milwaukee, Wisconsin 53202.

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Wisconsin	City of Sheboygan Sheboygan County	Fisherman's Creek	Just upstream of South 12th Street	None	*594
			About 420 feet upstream of Washington Avenue	None	*639
		Pigeon River	About 400 feet downstream of Mill Road	None	*592
			About 0.86 mile upstream of Calumet Drive	None	*610

Maps available for inspection at the Planning Department, City Hall, 828 Center Avenue, Sheboygan, Wisconsin.

Send comments to The Honorable Richard Schneider, Mayor, City of Sheboygan, City Hall, 828 Center Avenue, Sheboygan, Wisconsin 53081.

Issued: May 22, 1987.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 87-13320 Filed 6-10-87; 8:45 am]

BILLING CODE 6718-03-M

Notices

Federal Register
Vol. 52, No. 112
Thursday, June 11, 1987

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.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation will meet on Monday and Tuesday, June 22–23, ,1987. The meeting will be held on June 22 at the Old Post Office Building, 1100 Pennsylvania Ave., NW., Room M09, Washington, DC. June 23rd the meeting will convene at the State House in Annapolis, MD.

The Council was established by the National Historic Preservation Act of 1966 (16 U.S.C. 470) to advise the President and the Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of the Capitol; the Secretaries of the Interior, Agriculture, Housing and Urban Development, Treasury, and Transportation; the Director, Office of Administration; the Chairman of the National Trust for Historic Preservation; the Chairman of the National Conference of State Historic Preservation Officers; a Governor, a Mayor; and eight non–Federal members appointed by the President.

The agenda for the meeting includes the following:

I. Chairman's Report
II. Introduction of new Executive Director
III. Task Force Reports.
  A. Section 106 Guidance
  B. Awards
  C. Council Operations
IV. Consideration of Revised Operating Procedures
V. Executive Director's Report
  A. Section 106 Cases
  B. Training
VI. "Anticipatory Demolition" Discussion
VII. Legislation
VIII. New Business
IX. Protection of Historic Shipwrecks
X. Adjourn

DATE: The meeting will begin at 9:00 a.m., Monday, June 22 in Washington, DC and Tuesday, June 23rd at 9:00 a.m. in Annapolis, MD.

Note—The meetings of the Council are open to the public.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meeting is available from the Acting Executive Director, Advisroy Council on Historic Preservation, 100 Pennsylvania Ave., NW. #809, Washington, DC 20004.

Dated: June 4, 1987.

John M. Fowler,

Acting Executive Director.

[FR Doc. 87–13289 Filed 6–10–87; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Availability; Supplement No. 1, Bell City Watershed, LA

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of availability of a record of decision.

SUMMARY: Horace J. Austin, responsible Federal official for projects administered under the provisions of Pub. L. 83–566, 16 U.S.C. 1001–1008, in the state of Louisiana, is hereby providing notification that a record of decision to proceed with the installation of the Supplement No. 1 to the Bell City project is available. Single copies of this record of decision may be obtained from Horace J. Austin at the address shown below.

FOR FURTHER INFORMATION CONTACT: Horace J. Austin, State Conservationist, Soil Conservation Service, 3737 Government Street, Alexandria, Louisiana 71302, telephone (318) 478–7751, FTS–493–7751.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

Dated: May 6, 1987.

Horace J. Austin,

State Conservationist.

[FR Doc. 87–13371 Filed 6–10–87; 8:45 am]

BILLING CODE 3410–16–M

Soil Convervation Service

Environmental Impact Statement; Village of Cassopolis, South Side Park Critical Area Treatment Measure; Michigan

AGENCY: Soil Convervation Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines, (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Village of Cassopolis, South Side Park RC&D Measure, Cass County, Michigan.

FOR FURTHER INFORMATION CONTACT: Mr. Homer R. Hilner, State Conservationist, Soil Conservation Service, 1405 South Harrrison Road, East Lansing, Michigan 48823, telephone 517–337–6702.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. A contact has been made with the State Historical Preservation Officer and concludes that it will have no effect on any cultural resources either eligible for or listed on the National Register of Historic Places. The State Archaeologist will be contacted if any land disturbance associated with this project and archaeological sites, features, or materials are encountered during actual construction. As a result of these findings, Mr. Homer R. Hilner, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

This measure concerns a plan for the installation of measures for critical area treatment. The planned works of improvement include the following items: 400 feet of diversion, two grade stabilization structures, and 0.1 acre of critical area planting. Total construction cost is estimated to be $5,300, of which RC&D funds will pay $3,450 and local funds $1,850.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Homer R. Hilner. The FONSI has been sent to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until July 13, 1987.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901 – Resource Conservation and Development – and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

Dated: June 3, 1987.

Jerry L. Keller,

Deputy State Conservationist

[FR Doc. 87–13201 Filed 6–10–87; 8:45 am]

BILLING CODE 3410–16–M

COMMISSION ON CIVIL RIGHTS

Florida Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Florida Advisory Committee to the Commission will convene at 2:00 p.m. and adjourn at 6:00 p.m. on June 26, 1987 at the Sheraton River House, 3900 N.W. 21st Street, Miami, Florida. The purpose of the meeting is to discuss the status of the agency, current committee activities for the coming year, including police community relations issues in Tampa and Miami.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Vice Chairperson Michael J. Moorhead (904/392-2211) or John I. Binkley, Director of the Eastern Regional Division (202-523-5264; TDD 202/376-8117). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 3, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87–13282 Filed 6–10–87; 8:45 am]

BILLING CODE 6335–01–M

Indiana Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Indiana Advisory Committee to the Commission will convene at 12:00 p.m. and adjourn at 6:00 p.m., on June 25, 1987, at the Federal Building, 46 East Ohio Street, Room 402, Indianapolis, Indiana. The purpose of the meeting is to develop program plans and to hold a community forum to obtain information on the status of civil rights in the State.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, James Nuechterlein, or Melvin Jenkins, Director of the Central Regional Division (816) 374–5253, (TDD 816/374–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 29, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87–13283 Filed 6–10–87; 8:45 am]

BILLING CODE 6335–01–M

Iowa Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Iowa Advisory Committee to the Comission will convene at 10:00 am. and adjourn at 4:00 p.m., on June 30, 1987, at the Hotel Fort Des Moines, 10th and Walnut Streets, Des Moines, Iowa. The purpose of the meeting is to develop program plans, hold community forum to obtain information on the status of civil rights in the State and collect information on aspects of racially and religiously motivated violence and intimidation in the State.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Ralph S. Scott, Jr., or Melvin Jenkins, Director of the Central Regional Division (816) 374–5253, (TDD 816/374–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 29, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87–13284 Filed 6–10–87; 8:45 am]

BILLING CODE 6335–01–M

Kentucky Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Kentucky Advisory Committee to the Commission will convene at 8:30 a.m. and adjourn at 3:30 p.m., on June 26, 1987, at the Campbell House Inn, 1375 Harrodsburg, Lexington, Kentucky. The purpose of the meeting is to develop program plans and to hold a community forum to obtain information on the status of civil rights in the State.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Porter G. Peeples, Sr., or Melvin Jenkins, Director of the Central Regional Division (816) 374–5253, (TDD 816/374–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 29, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87–13285 Filed 6–10–87; 8:45am]

BILLING CODE 6335–01–n

Wisconsin Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations

of the U.S. Commission on Civil Rights, that a meeting of the Wisconsin Advisory Committee to the Commission will convene at 10:30 a.m. and adjourn at 6:00 p.m., on July 1, 1987, at the Marc Plaza Hotel, 509 West Wisconsin Avenue, Milwaukee, Wisconsin. The purpose of the meeting is to develop program plans and to hold a community forum to obtain information on the status of civil rights in the State.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Kwame S. Salter, or Melvin Jenkins, Director of the Central Regional Division (816) 374–5253, (TDD 816/374–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 5, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87–13286 Filed 6–10–87; 8:45am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Social and Economic Surveys of Fisheries.

Form number: Agency—N/A; OMB—N/A.

Type of request: New Collection.

Burden: 125 respondents; 41 burden hours.

Needs and uses: Selected mackerel fishermen in the southeast will be asked to provide data on their costs and revenues. The information will be used in estimating the economic effects of quotas. In addition the information will be used to determine how much fishing effort is being transferred to supplementary fisheries. Fishery management decisions will be made based on the results of the data collected.

Affected public: Individuals.

Frequency: One-time only.

Respondent's obligation: Voluntary.

OMB desk officer: John Griffen, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6228, 14th and Constitution Avenue NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3228, New Executive Office Building, Washington, DC 20503.

Dated: June 3, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87–13310 Filed 6–10–87; 8:45 am]

BILLING CODE 3510–CW–M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis

Title: Annual Survey of U.S. Direct Investment Abroad

Form Number: Agency—BE–11 A, B, C; OMB—0606–0053

Type of Request: Revision of a currently approved collection

Burden: 1,220 respondents; 80,500 reporting hours

Needs and Uses: This survey will be used to secure data on current operations of U.S. parent companies and their foreign affiliates, including balance sheets, income statements, trade, and employment, with emphasis on services. The collected data are required for the preparation and analysis of U.S. international investment, for use in representing the U.S. in international fora, and in bilateral negotiations with foreign countries, and to otherwise assist in the development and conduct of U.S. international trade and investment policy

Affected Public: Businesses or other for profit institutions

Frequency: Annually

Respondent's Obligation: Mandatory

OMB Desk Officer: Don Arbuckle, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3228, New Executive Office Building, Washington, DC 20503.

Dated: June 5, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87–13376 Filed 6–10–87; 8:45 am]

BILLING CODE 3510–CW–M

International Trade Administration

[A–401–603]

Postponement of Final Antidumping Duty Determination; Certain Stainless Steel Hollow Products From Sweden

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

ACTION: Notice.

SUMMARY: This notice informs the public that we are postponing our final determination as to whether sales of certain stainless steel hollow products from Sweden have occurred at less than fair value until not later than October 5, 1987. We are also postponing our public hearing from June 29, 1987, until September 9, 1987.

EFFECTIVE DATE: June 11, 1987.

FOR FURTHER INFORMATION CONTACT: Gregory G. Borden (202–377–3003) or Mary S. Clapp (202–377–1769), Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On May 22, 1987, we published a preliminary determination of sales at less than fair value with respect to this merchandise (52 FR 19369). The notice stated that if the investigation proceeded normally, we would make our final determination by July 29, 1987.

On May 27, 1987, Sandvik AB, a respondent in this investigation, requested a postponement of the final determination until not later than the 135th day after publication of our preliminary determination, pursuant to section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)). Respondent accounts for a significant proportion of exports of the subject merchandise to the United States. If exporters who account for a significant proportion of exports of the

merchandise under investigation request an extension after an affirmative preliminary determination, we are required, absent compelling reasons to the contrary, to grant the request. Accordingly, we are postponing the date of the final determination until not later than October 5, 1987.

The public hearing is also being postponed until 1:30 p.m. on September 9, 1987, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Accordingly, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by September 2, 1987.

This notice is published prusuant to section 735(d) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

June 5, 1987.

[FR Doc. 87-13378 Filed 6-10-87; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the certificate should be issued.

FOR FURTHER INFORMATION CONTACT: George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a certificate should be issued. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 87-00009." A summary of the application follows.

Applicant: California Cherry Export Association of San Joaquin County (CCEA), 48 East Oak Street, Lodi, California 95240

Contact: Jack Johal, legal counsel, 209-948-8200

Application #: 87-00009

Date Deemed Submitted: May 29, 1987

Members (in addition to applicant): Reynolds Packing Company, Lodi, CA; O-G Packing, Lodi, CA; Chinchiolo Fruit Company, Stockton, CA; Sunniland Fruit, Inc., Stockton, CA; Delta Packing Co. of Lodi, Inc., Lodi, CA; Linden Associated Growers, Linden, CA; Blossom Farms, Linden, CA; Sunworld, Inc., Lodi, CA; J & B Farms, Linden, CA; and A. Sambado & Sons, Inc., Linden, CA.

Summary of the Application:

A. *Export Trade:*
Fresh sweet cherries.

B. *Export Markets:*
Japan.

C. *Export Trade Activities and Methods of Operation:*
CCEA seeks certification to:

1. On behalf of and with the advice of its Members, advise and cooperate with the U.S. Government in establishing procedures regulating the export of sweet cherries.

2. On behalf of and with the advice of its Members, participate in negotiations and enter into agreements with foreign governments and foreign persons regarding:

a. Fumigating, packing, and other quality control procedures to be followed in the export of sweet cherries; and

b. The quantities, time periods, prices, and terms and conditions upon which the Members shall export sweet cherries.

3. On behalf of and with the advice of its Members, establish and operate fumigation facilities for use in the export of sweet cherries.

4. On behalf of and with the advice of its Members, establish export prices and quotas for and allocate export quotas among its Members.

5. Enter into processing agreements with its Members for the processing, including fumigation and packing, of their sweet cherries for export to Japan. Such agreements are not assignable by the Member without the prior written consent of the CCEA.

6. Enter into a Corporate Redemption and Cross Purchase Agreement with each Member which restricts the sale or transfer of each Member's stock in the CCEA, except when the sale or transfer is made to:

a. Any partnership, corporation, or other entity in which the Member holds an eighty percent controlling interest;

b. Any other Member; or

c. The individual owner(s) of a Member upon liquidation or dissolution of that Member who is an entity such as a corporation or partnership.

The Corporate Redemption and Cross Purchase Agreement gives the CCEA and its remaining Members a right of first refusal to buy a departing Member's stock in the CCEA.

Dated: June 8, 1987.

George Muller,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 87-13377 Filed 6-10-87; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

Listing Endangered and Threatened Species and Designating Critical Habitat: Petition To Adopt a Special Rule

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

ACTION: Notice of receipt of petition.

SUMMARY: NMFS has received a petition to issue an emergency rule which would prohibit commercial whale watching on Atlantic right whales (*Eubalaena glacialis*).

FOR FURTHER INFORMATION CONTACT: Robert C. Ziobro, Protected Species Management Division, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC. 20235 (202/673-5348).

SUPPLEMENTARY INFORMATION: On May 13, 1987, NMFS received a petition from GreenWorld to adopt an emergency rule which would prohibit commercial whale

watching on Atlantic right whales. In accordance with the provisions of the Endangered Species Act of 1973 (ESA) and the Administrative Procedure Act (5 U.S.C. 553(e)), the Assistant Administrator for Fisheries has determined that the petition presents substantial information indicating that the action may be warranted. As required by the ESA, the Service will review available information on the right whale and whale watching to determine if the petitioned action is warranted.

Dated: June 5, 1987.

William E. Evans

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 87-13387 Filed 6-10-87; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intent To Grant Exclusive Patent License; Bionix Corp.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Bionix Corporation having a place of business in Potomac, MD an exclusive right in the United States to manufacture, use, and sell products embodied in the invention entitled "Intra-Urethral Prosthetic Sphincter Valve," U.S. Patent Application Serial Number 6-550,040, U.S. Patent No. 4,553,533. The patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7 The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 87-13287 Filed 6-10-87; 8:45 a.m.]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

June 9, 1987.

The Chairman of the Committee for the implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on June 12, 1987. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, DC (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 566-6828. For information on embargoes and quota re-openings, please call (202) 377-3715.

Summary

A recent correction in 1986 import charges made to the 1986 restraint limit for Category 335 resulted in a substantial overshipment of that limit. When those overshipments were charged to the 1987 limit, an immediate embargo resulted. In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the previously established restraint limits for Categories 335 and 639. The 1987 limit for Category 335 will re-open.

Background

A CITA directive dated December 24, 1985 (50 FR 53182) established import restraint limits for cotton and wool textile products in Categories 335, 336, 444 and 447, among others, produced or manufactured in China and exported during the twelve-month period which began on January 1, 1986 and extended through December 31, 1986. Import restraint limits were established in the CITA directive dated February 26, 1987 (51 FR 7313) for wool and man-made fiber textile products in Categories 434 and 651, produced or manufactured in China and exported during the same twelve-month period.

A further CITA directive dated April 27, 1987 established import limits for certain cotton, wool and man-made fiber textile products, including Category 360, produced or manufactured in China and exported during the period Jnauary 1, 1986 through December 31, 1986.

In addition, a CITA directive dated December 23, 1986 was published in the **Federal Register** (51 FR 47041) which established import restraint limits for certain cotton, wool and man-made fiber textile products, including Categories 335, 359-V and 639, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

A CITA directive dated February 24, 1987 (52 FR 6057) established a limit for man-made fiber textile products in Category 659-I for the same twelve-month period.

In accordance with the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended, and at the request of the Government of People's Republic of China, the 1986 limit for Category 335, is being adjusted for swing. The 1986 limits for Categories 336, 360, 434, 444, 447, and 651 are being reduced to account for the swing being applied to Category 335.

In addition, the 1987 limits for Categories 335 and 639 are also being adjusted for swing. The 1987 limits for Categories 359-V and 659-I are being reduced to account for the swing being applied to Categories 335 and 639.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

This letter 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.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

June 9, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directives issued to you on December 24, 1985, February

26, 1986 and April 27, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton and wool textile products in Categories 335, 336, 444 and 447 (December 24, 1985); 434 and 651 (February 26, 1986); and 360 (April 27, 1987), produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1986 and extended through December 31, 1986. This directive also amends, but does not cancel, the directives issued to you on December 23, 1986 and February 24, 1987 concerning textile products in Categories 335, 359–V and 636 (December 23, 1986); and 659–I (February 24, 1987), produced or manufactured in China and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Effective on June 12, 1987, the directives of December 24, 1985, February 26, 1986, December 23, 1986 February 24, 1987 and April 27, 1987 are hereby amended to include adjustments to the previously established restraint limits for cotton and man-made fiber textile products in the following categories, as provided under the terms of the bilateral agreement of August 19, 1983, as amended [1]

Category:	*Adjusted 12-mo restraint limit [1] (Jan. 1, 1986–Dec. 31, 1986)*
335	319,299 dozen.
336	95,104 dozen.
360	5,095,000 numbers.
434	8,817 dozen.
444	5,402 dozen.
447	67,613 dozen.
651	491,000 dozen.

[1] The limits have not been adjusted to account for any imports exported after Dec. 31, 1985.

Category:	*Adjusted 12-mo restraint limit [1] (Jan. 1, 1987–Dec. 31, 1987)*
335	330,474 dozen.
359–V [2]	861,408 pounds.
639	1,008,121 dozen.
659–I [3]	1,565,267 pounds.

[1] The limits have not been adjusted to account for any imports exported after Dec. 31, 1986.

[2] In Category 359, only TSUSA numbers 381.0258, 381.0554, 381.3949, 381.5800, 381.5920, 384.0648, 384.0650, 384.0651, 384.3449, 384.3450, 384.4300, 384.4422 and 384.0451.

[3] In Category 659, only TSUSA numbers 384.2105, 384.2115, 384.2120, 384.2125, 384.2646, 384.2647, 384.2648, 384.2649, 384.2652, 384.8651, 384.8652, 384.8653, 384.8654, 384.9356, 384.9357, 384.935, 384.9359 and 384.9365.

Also effective on June 12, 1987, you are directed to deduct charges for goods exported in 1986, amounting to 78,985 dozen, from the import restraint limit established for Category 335 for the period which began January 1, 1987 and extends through December 31, 1987. This same amount is to be charged to the import restraint limit established for Category 335 in 1986.

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 to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–13485 Filed 6–10–87; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Army

Intent to Prepare an Environmental Impact Statement for Construction/Operation of Research Department Explosive (RDX) Facilities

AGENCY: U.S. Army, Office of Military Deputy to the Assistant Secretary of the Army (Research, Development and Acquisition).

ACTION: Notice of Intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: An Environmental Impact Statement will be prepared to analyze the Army's proposal to expand the production facilities, in the event of a need to increase production capacity to meet essential RDX requirements, at Iowa Army Ammunition Plant, Middletown, Iowa, Joliet Army Ammunition Plant, Joliet, Illinois, and Indiana Army Ammunition Plant, Charlestown, Indiana. The proposed action for which an EIS will be prepared includes construction of an RDX manufacturing plant as well as water and wastewater treatment facilities, explosive waste disposal, explosive storage igloos, and a steam generating facility. Alternatives to be evaluated include:

a. No action. (Continue RDX Production at Holston Army Ammunition Plant)
b. Construct RDX facilities at multiple (Iowa, Joliet, and Indiana Army Ammunition Plants) government owned, contractor operated plant sites.
c. Contract with commercial sources.

2. Scoping Process: Government agencies will be consulted as to the EIS Scope by means of planned meetings and by continuing communication. The general public will be asked for input by means of public scoping meetings to be held in municipalities located ajacent to the proposed sites. These meetings will be held approximately 30 days after publication of this notice; specific meeting times and places will be published in the local newspapers.

3. Potential Significant Issues So Far Identified inlcudes: safety, sanitary and industrial wastewater disposal, air pollution, socioeconomic effects, archaeological and historic resources, control of hazardous waste, wildlife concerns and land use.

4. The Draft Environmental Impact Statement is expected to be available to the public in late November 1987.

5. Comments and questions regarding the environmental documents may be addressed to: Dr. Sam Sang, U.S. Army Corps of Engineers, Huntsville District, P.O. Box 1600, Huntsville, Alabama 38057–4301, telephone (205) 895–5190.

Lewis D. Walker,

Deputy for Environment, Safety and Occupational Health OASA (I&L).

[FR Doc. 87–13330 Filed 6–10–87; 8:45 am]

BILLING CODE 3710-08-M

[1] The agreement provides, in part, that: (1) with the exception of Category 315, any specific limit may be exceeded by not more than 5 percent of its square yards equivalent total, provided that the amount of the increase is compensated for by an equivalent square yard decrease in one or more other specific limit in that agreement year; (2) the specific limits for certain categories may be increased for carryforward; (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

Army Science Board; Partially Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 7, 8 and 9 July 1987.

Time of Meeting: 0900—1700 hours, 7 and 8 July (Open); 1100—1200 hours, 9 July (Closed).

Place: The Pentagon, Washington, DC.

Agenda: The Army Science Board Ad-Hoc Panel on Army Information Management Concepts and Architecture will meet for its breifing and final report writing session. On 7 and 8 July 1987, the panel will review meeting minutes and facts documented during previous briefings and discussions. During this two-day session, the panel will be dedicated to outlining, drafting, and finalizing their breifings and written report. On 9 July 1987 the panel will outbrief their findings. Due to the in-depth discussion of proprietary information, this portion of the meeting will be closed to the public. The open portion of the meeting is open to the public. Any person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The closed portion of the meeting is closed to the public in accordance with section 552(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695-3039 or 695–7046.

Sally A. Warner,

Administrative Office Army Science Board.

[FR Doc. 87–13370 Filed 6–10–87; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

[CDFA No. 84.177]

Notice Inviting Applications for New Awards Under the Independent Living Services for Older Blind Individuals Program for Fiscal Year 1987

Purpose: Provides grants to State vocational rehabilitation agencies to support independent living services for older blind individuals to help them adjust to blindness and live more independently in the home and community.

Deadline for Transmittal of Applications: July 21, 1987.

Applications Available: June 12, 1987.

Available Funds: $5,290,000.

Estimated Average Size of Awards: $200,000.

Estimated Number of Awards: 26.

Project Period: 12 months.

Applicable Regulations: Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

Weighting for Selection Criteria: Education Department General Administrative Regulations at 34 CFR 75.210 (c) authorize the Secretary to distribute an additional 15 points among the selection criteria in 34 CFR 75.210 to bring the total possible points to a maximum of 100 points. For the purpose of this competition, the Secretary will distribute the additional points as follows:

Quality of Key Personnel: (§ 75.210 (b)(4)). Three (3) additional points will be added for a possible total of 10 points for this criterion.

Budget and Cost Effectiveness: (§ 75.210 (b)(5)). Five (5) additional points will be added for a possible total of 10 points for this criterion.

Evaluation Plan: (§ 75.210 (b)(6)). Five (5) additional points will be added for a possible total of 10 points for this criterion.

Adequacy of Resources: (§ 75.210 (b)(7)). Two (2) additional points will be added for a possible total of 5 points for this criterion.

For Applications or Information Contact: Judith Miller Tynes, Office of Developmental Programs, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3326 Mary E. Switzer Building, MS 2312, Washington, DC 20202. Telephone: 202–732–1346.

Program Authority: 29 U.S.C. 796F.

Dated: June 5, 1987

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 87–13355 Filed 6–10–87; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP87–376–000 et al.]

Northern Natural Gas Company Division of Enron Corp., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP87–376–000]

June 2, 1987.

Take notice that on June 1, 1987, Northern Natural Gas Company, Division of Enron Corp. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP87–376–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon in place approximately 3,960 feet of the Clarion, Iowa, 3-inch Branchline, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern states that the Iowa Department of Transportation is planning to reconstruct a section of Highway No. 3 near Northern's Clarion Town Border Station (TBS). It is stated that the TBS is utilized as a delivery point to Iowa Public Service Company (IPSC) in order to provide natural gas service to residential and commercial consumers in Clarion, Iowa. Northern's Clarion TBS is presently served by parallel (looped) 3-inch and 4-inch branchlines. It is also stated that the construction requires relocation of approximately three-quarters of a mile of the 3 mile Clarion 3-inch Branchline.

Northern has determined that the existing Clarion 4-inch Branchline can more adequately serve the current and future needs of the TBS. As a result, Northern proposes to abandon in place approximately three-quarters of a mile of the Clarion 3-inch Branchline. It is stated that the remaining 2¼ miles of the 3-inch branchline would be kept in service in order to continue service to 7 existing right-of-way (ROW) grantors. In addition, it is stated, 3 ROW grantors currently being served from the 3-inch branchline proposed herein to be abandoned, would continue to be served by relocating the associated service facilities to the remaining 3-inch branchline. Northern estimates the cost of abandoning such facilities in place to be $100.

Comment date: June 17, 1987, in accordance with Standard Paragraph F at the end of this notice.

2. Gas Gathering Corporation

[Docket No. CP87–362–000]

June 4, 1987.

Take notice that on May 26, 1987, Gas Gathering Corporation (GGC), P.O. Box 519, Hammond, Louisiana 70404, filed its application in Docket No. CP87–362–000 pursuant to section 7(b) of the Natural Gas Act and Part 157 of the Commission's Rules and Regulations thereunder, for authorization to completely abandon its sales for resale to Transcontinental Gas Pipe Line Corporation (Transco), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

GGC states that in July 1985, Transco informed GGC that it would no longer purchase gas under the August 22, 1959, gas purchase agreement, as amended. Consequently, GGC indicates it filed

applications, as amended, to abandon the Transco transaction in Docket Nos. CP85–616–000 and CP85–616–001. GGC then alleges that based on GGC's applications, as amended, and the filing by certain producer suppliers for abandonment authorization, the Commission issued orders in *Chevron USA, Inc., et al.*, Docket Nos. CI85–502–000, *et al.*, dated October 24, 1985, and in *Cities Service Oil and Gas Corporation (Operator), et al.*, Docket Nos. CI86–125–000, *et al.*, dated February 21, 1986, granting GGC abandonment authorization.

GGC further states that at the time it filed its applications to abandon, as amended, it believed that it had identified all of those producers who were making certificated jurisdictional sales of gas to GGC, which purchases formed a part of the gas sold for resale to Transco.

GGC indicates that subsequent to the issuance of the above-described orders, it became aware that it had not requested abandonment authorization in regard to a gas purchase agreement, dated November 6, 1970 between Amoco Production Company and GGC. GGC states that it had not purchased gas under that agreement since May, 1981, due to the depletion of the St. Martin No. 11 well, the only supply source under the agreement.

Finally, GGC submits that, since no gas has flowed under the 1970 Amoco agreement since 1981, and GGC is no longer making sales of gas to Transco, the abandonment authorization sought is in the public interest.

Comment date: June 25, 1987, in accordance with Standard Paragraph F at the end of this notice.

3. Tennessee Gas Pipeline Company, a Division of Tennecol Inc.

[Docket No. CP86–396–001]

June 4, 1987.

Take notice that on May 26, 1987, Tennessee Gas Pipeline Company, a division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP86–396–001 a petition to amend the order issued July 22, 1986, in Docket No. CP86–396–000, pursuant to section 7(c) of the Natural Gas Act so as to authorize an extension in the term of the transportation service, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Tennessee states that it was authorized in Docket No. CP86–396–000 to transport up to 3,500 MMBtu per day on an interruptible basis for HNG Internorth Gas Marketing, Inc. (HIGM) on behalf of the National Railroad Passenger Corporation (AMTRAK). It is further stated that although Tennessee requested a term of 15 years for the service, the Commission, reflecting its concern about the potential for undue discrimination, limited the term of the certificate to one-year from the July 22, 1986, order date. Tennessee indicated that it commenced service under the above referenced certificate on November 1, 1986, and asserts that no party has alleged any discriminatory behavior on Tennessee's part with respect to this service.

Tennessee states that Enron Gas Marketing, Inc. (formerly HIGM) seeks to have the transportation service continue beyond the July 22, 1987, certificate expiration date. Therefore, Tennessee proposes to extend the term of its certificate to be consistent with the full term of the underlying February 4, 1986, transportation agreement between Tennessee and HIGM. The term of that agreement, it is explained, is 15 years and year-to-year thereafter until terminated by either party. Tennessee maintains that limiting the term of the service to a period less than the full contract term is not appropriate for pipelines such as Tennessee who are rendering transportation on a nondiscriminatory basis under Order No. 436. Tennessee does not propose any other changes in the existing certificate.

Comment date: June 25, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. Equitable Gas Company, a division of Equitable Resources, Inc.

[Docket No. CP87–367–000]

June 4, 1987.

Take notice that on May 27, 1987, Equitable Gas Company, a division of Equitable Resources, Inc. (Equitable) 420 Boulevard of the Allies, Pittsburgh, Pennsylvania 15219, filed in Docket No. CP87–367–000 an application pursuant to section 7(c) of the Natural Gas Act and Part 157 of the Commission's Regulations for a certificate of public convenience and necessity authorizing the construction and operation a tap and related facilities for the direct sale of natural gas to the United States Army, Corps of Engineers (Corps of Engineers) at its Stonewall Jackson Lake, Roanoke Bay Maintenance Complex near Weston, Lewis County, West Virginia, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Equitable proposes to construct and operate a tap and related facilities on its Line F–931 in Lewis County, West Virginia to sell up to 56 Mcf of natural gas per day pursuant to its tariff on file with the Public Service Commission of West Virginia.

Equitable states the proposed tap will have a maximum capacity of 670 Mcf of natural gas per day in the event that additional markets are developed in the area. Equitable estimates the cost of constructing the proposed tap will be $9,000.

Comment date: June 25, 1987, in accordance with Standard Paragraph F at the end of this notice.

5. K N Energy, Inc.

[Docket No. CP87–356–000]

June 4, 1987.

Take notice that on May 20, 1987, K N Energy, Inc. (Applicant), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP87–356–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that Applicant be allowed to construct and operate sales taps for the delivery of gas to end-users under authorization issued in Docket Nos. CP83–140–000, CP83–140–001 and CP83–140–002 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicant proposes the construction and operation of sales taps to various end-users (see appendix to filing) located along its jurisdictional pipelines. Applicant states that the proposed sales taps are not prohibited by any of its existing tariffs and that the additional taps would have no significant impact on K N's peak day and annual deliveries. It is further stated that gas delivered and sold by K N to the various end-users would be priced in accordance with the currently filed rate schedules authorized by the applicable state or local regulatory body having jurisdiction.

Comment date: July 20, 1987, in accordance with Standard Paragraph G at the end of this notice.

6. United Gas Pipe Line Company

[Docket No. CP87–364–000]

June 4, 1987.

Take notice that on May 27, 1987, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP87–364–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a direct

industrial sale service to Columbian Chemicals Company (Columbian Chemical), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United states that by letter dated August 14, 1986, Columbian Chemicals advised United that its present firm sales contract terminated August 1, 1986. United further states that continuation of the present service is not in the public interest and it requests that the Commission permit the termination of direct sales service to the extent required.

United is not requesting abandonment authority of any facilities. United states that the subject delivery facilities would be left in place to accommodate either future transportation service or new sales service if appropriate contractual arrangements can be made. United states that if such new arrangements are not made, it will file to abandon such facilities.

Comment date: June 25, 1987, in accordance with Standard Paragraph F at the end of this notice.

7. United Gas Pipe Line Company

[Docket No. CP87-366-000]

June 4, 1987.

Take notice that on May 27, 1987, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP87-366-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a direct industrial sale service to Stauffer Chemical Company (Stauffer Chemical), near Mobile, Alabama, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United states that it notified this customer by letter dated June 30, 1986, that its present firm sales contract would terminate January 1, 1987. United further states that continuation of the present service is not in the public interest and it requests that the Commission permit the termination of direct sale service to the extent required.

United is not requesting abandonment authority of any facilities. United states that the subject delivery facilities would be left in place to accommodate either future transportation service or new sales service if appropriate contractual arrangements can be made. United states that if such new arrangements are not made, it will file to abandon such facilities.

Comment date: June 25, 1987, in accordance with Standard Paragraph F at the end of this notice.

8. United Gas Pipe Line Company

[Docket No. CP87-359-000]

June 4, 1987.

Take notice that on May 22, 1987, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP87-359-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a direct industrial sale service to GATX Terminals Corporation (GATX) in St. Charles Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United states that it was notified by GATX in a letter dated July 10, 1986, that its present firm sales contract would be cancelled effective August 10, 1986. United further states that continuation of the present service is not in the public interest and it requests that the Commission permit the termination of direct sale service to the extent required.

United is not requesting abandonment authority of any facilities. United states that the subject delivery facilities would be left in place to accommodate either future transportation service or new sales service if appropriate contractual arrangements can be made. United states that if such new arrangements are not made, it will file to abandon such facilities.

Comment date: June 25, 1987, in accordance with Standard Paragraph F at the end of this notice.

9. United Gas Pipe Line Company

[Docket No. CP87-360-000]

June 4, 1987.

Take notice that on May 22, 1987, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP87-360-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a direct industrial sale service to St. Martin Sugar Cooperative, Inc. (St. Martin Sugar) of up to 3,500 Mcf of natural gas per day, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United states that it notified this customer by letter dated August 4, 1986, that its present firm sales contract would terminate January 1, 1987. United further states that continuation of the present service is not in the public interest and it requests that the Commission permit the termination of direct sale service to the extent required.

United is not requesting abandonment authority of any facilities. United states that the subject delivery facilities would be left in place to accommodate either future transportation service or new sales service if appropriate contractual arrangements can be made. United states that if such new arrangements are not made, it will file to abandon such facilities.

Comment date: June 25, 1987, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jursidiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of

the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-13347 Filed 6-10-87; 8:45 am]

BILLING CODE 6717-010-M

[Docket No. RP86-168-011]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 5, 1987.

Take notice that Columbia Gas Transmission Corporation (Columbia), on May 29, 1987, tendered for filing proposed changes to its FERC Gas Tariff, Original Volume No. 1, to be effective April 1, 1987 and May 11, 1987:

Second Substitute One hundred and fifteenth Revised Sheet No. 16
Substitute One hundred and seventeenth Revised Sheet No. 16
Substitute Eight Revised Sheet No. 16A2
First Revised Sheet Nos. 89-89F

Columbia states that these changes are being filed in accordance with ordering paragraph (C)(1) of the Federal Energy Regulatory Commission's (Commission) March 31, 1987 Order Granting Rehearing in Part and Rejecting Rehearing as Moot in the proceeding.

First Revised Sheet Nos. 89-89F set forth the renominated Seasonal Entitlements (SEs) of Columbia's wholesale customers consistent with the procedures established in the said March 31, 1987 order.

Second Substitute One hundred and fifteenth Revised Sheet No. 16 and Substitute Eighth Revised Sheet No. 16A2 reflect the impact of the renominated SEs on rates in effect on April 1, 1987 and, Substitute One hundred and seventeenth Revised Sheet No. 16 reflects the impact on the rates effective on May 11, 1987.

Columbia also submitted schedules supporting the derivation of the above referenced rate levels.

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 Procedures. All such motions or protests should be filed on or before June 12, 1987. 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 Columbia's filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-13348 Filed 6-10-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-22-001]

High Island Offshore System; Proposed Changes in FERC Gas Tariff

June 5, 1987.

Take notice that on June 1, 1987, High Island Offshore System ("HIOS") tendered for filing, pursuant to section 4 of the Natural Gas Act, Seventeenth Revised Sheet No. 4 to its FERC Gas Tariff, Original Volume No. 1.

Seventeenth Revised Sheet No. 4 would decrease annual revenues from jurisdictional transportation services by approximately $2.4 million. The proposed change in rates is designed to reflect the reduction in the Federal Corporate income tax rate to 34% effective July 1, 1987.

HIOS requests the Seventeenth Revised Sheet No. 4 be made effective on July 1, 1987.

Any person desiring to be heard or to protest said filing should file a motion to intervene or to protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. In accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure. (18 CFR 385.211, 385.214). All such motions or protests should be filed before June 12, 1987. 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 to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-13349 Filed 6-10-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-13-014]

Northwest Pipeline Corp.; Change in FERC Gas Tariff

June 5, 1987.

Take notice that on June 1, 1987, Northwest Pipeline Corporation ("Northwest") submitted for filing, to be a part of its FERC Gas Tariff, First Revised Volume No. 1, Original Volume No. 1-A and Original Volume No. 2, the following tariff sheets:

First Revised Volume No. 1

Thirty-Fifth Revised Sheet No. 10

Original Volume No. 1-A

Ninth Revised sheet No. 201

Original Volume No. 2

Fourth Revised Sheet No. 2.1
Fourth Revised Sheet No. 2.2
Eighth Revised Sheet No. 2-A
Second Revised Sheet No. 2-A.1

Northwest states the purpose of the filing is to reflect the new statutory corporate federal income tax rate of 34 percent in its sales and transportation rate schedules, pursuant to the settlement terms in Docket No. RP85-13-000.

The proposed effective date of the tendered tariff sheets is July 1, 1987.

A copy of this filing has been served on Northwest's jurisdictional customers and affected state regulatory Commissions.

Any person desiring to be heard or 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 or 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 12, 1987. 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 Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-13350 Filed 6-10-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP83-35-059]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 5, 1987.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on June 1, 1987 tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1 and Original Volume No. 2, the tariff sheets listed in Appendix A to the filing.

The purpose of this filing is to revise Texas Eastern's jurisdictional rates, in accordance with Article IX of the Stipulation and Agreement filed May 13, 1983 and approved by the Commission on July 14, 1983 in Docket No. RF83-35, *et al.*, in order to reflect the reduction in the statutory corporate federal income tax rate from 40% to 34% effective July 1, 1987. Pursuant to the above mentioned Article IX, Texas Eastern is required to reflect any change in the federal income tax rate in its jurisdictional rates.

The rates shown on the tariff sheets listed in Appendix A, with the exception of rates for Rate Schedules SS-II, SS-III, FTS, FTS-II, CTS, X-127, X-129, X-130 and Contact Adjustment-Demand rates for Rate Schedules DCQ, GS, and SGS, are based on the Docket No. RP85-177 filed cost of service and are being revised solely to reflect the reduction in the corporate federal income tax rate. Initial rates for Rate Schedules SS-II, SS-III, FTS-II, X-127, X-129, and X-130, rates based on actual costs for Rate Schedules FTS and CTS, and Contract Adjustment-Demand rates based on actual costs are also being revised solely to reflect the reduction in the corporate federal income tax rate.

The proposed effective date of the tariff sheets listed in Appendix A is July 1, 1987, the effective date of the 34% corporate federal income tax rate.

Copies of the filing were served on Texas Eastern's jurisdictional 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 Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 12, 1987. 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-13351 Filed 6-10-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-2-1-000]

Alabama-Tennessee Natural Gas Co.; Proposed PGA Rate Adjustment

June 5, 1987.

Take notice that on June 1, 1987, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets:

Thirteenth Revised Sheet No. 4
Sixth Revised Sheet No. 5

These tariff sheets are proposed to become effective July 1, 1987. Alabama-Tennessee states that the purpose of this filing is to adjust its rates to conform to the rates of its suppliers. Alabama-Tennessee states that the changes in its rates have been made in conformity with the PGA and related provisions of its tariff.

Alabama-Tennessee has requested any necessary waivers of the Commission's regulations in order to permit the tariff sheets to become effective as proposed.

Alabama-Tennessee states that copies of this filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 12, 1987. 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-13352 Filed 6-10-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER87-463-000 et al.]

Electric Rate and Corporate Regulation Filings; Boston Edison Co. et al.

June 5, 1987.

Take notice that the following filings have been made with the Commission:

1. Boston Edison Company

[Docket No. ER87-463-000]

Take notice that on June 1, 1987, Boston Edison Company (Edison) tendered to filing updated charges to be paid by Cambridge Electric Light Company (Cambridge) for the support of Edison's Substation 509 located in North Cambridge, Massachusetts. These charges are filed pursuant to Boston Edison Company FPC Rate No. 101 approved by the Commission on March 11, 1975, in Docket E-9254.

Edison requests waiver of the Commission's notice requirements to permit these charges to be made effective as of June 1, 1987.

Edison states that it has served the filing of Cambridge Electric Light Company and the Massachusetts Department of Public Utilities.

Comment date: June 19, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. The Dayton Power and Light Company

[Docket No. ER87-456-000]

Take notice that on May 29, 1987, The Dayton Power and Light Company (DP&L) tendered for filing an executed Service Agreement For Partial Requirements and/or Transmission Wheeling Service (Agreement) between DP&L and the City of Celina, Ohio, (Celina).

The proposed Agreement provides for a reduction in the existing tariff for service to Celina and allow DP&L to serve all of Celina's purchased power requirements except the power obtained under an existing agreement with the Power Authority of the State of New York.

DP&L requests that the Commission waive its notice and filing requirements and permit the proposed Agreement to become effective July 1, 1987.

Comment date: June 19, 1987, in accordance with Standard Paragraph E at the end of this document.

3. The Detroit Edison Company

[Docket No. ER87-464-000]

Take notice that the Detroit Edison Company (Detroit Edison) on June 1, 1987, tendered for filing Addendum I to Detroit Edison's FERC Rate Schedule No. 33.

Detroit Edison states that Addendum I establishes conditions, rates and charges for the sale of Net Interchange Coordinated Energy to Consumers Power Company. Net Interchange Coordinated Energy consists of two components—an economy component and a continuous nonreplacement component. The rates and charges for the economy component are the same as those presently specified for Economy Energy in Supplement E to Detroit Edison's Rate Schedule No. 33. The rates and charges for the continuous nonreplacement component delivered from Detroit Edison's equipment are established as Detroit Edison's incremental kilowatthour cost of energy delivered plus ten percent of such cost. A capacity charge in an amount up to 8.0 mills per kilowatthour will also be made for continuous nonreplacement energy. The rates and charges for nonreplacement energy purchased from an entity other than Detroit Edison shall be 100% of the energy cost incurred. Detroit Edison requests that Addendum I be permitted to become effective immediately.

Comment date: June 19, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. Florida Power & Light Company

[Docket No. ER87-332-000]

Take notice that Florida Power & Light Company (FPL) on May 1, 1987, tendered for filing a letter which amends FPL's filing made on March 20, 1987, in this docket.

FPL states in the letter that FPL agrees to make a filing with the Commission and adjust the rates applicable to service provided under the Agreement to Provide Specified Transmission Service Between Florida Power & Light Company and Utility Board of City of Key West, Florida, as appropriate, to reflect the federal corporate income tax rate of 34% provided under the Tax Reform Act of 1986. FPL further states that FPL will make a filing with the Commission on or before July 1, 1987, and shall request that such proposed rates become effective no later than July 1, 1987.

Comment date: June 19, 1987, in accordance with Standard Paragraph E at the end of this notice.

5. Georgia Power Company

[Docket No. ER87-457-000]

Take notice that May 29, 1987, Georgia Power Company (Georgia Power) tendered for filing Revised Tariff Sheet No. 16 to its FERC Electric Tariff, Original Volume No. 2. Georgia Power states that its current partial requirements tariff will terminate by its own terms on May 31, 1987, because it has not received service contracts from any customers for service after that date as required by the tariff. The revised tariff sheet will extend the deadline for twelve months.

Georgia Power states that it has served copies of its filing on all of its partial requirements customers.

Comment date: June 19, 1987, in accordance with Standard Paragraph E at the end of this notice.

6. Houston Lighting & Power Company

[Docket No. ER83-657-002]

Take notice that on May 28, 1987, Houston Lighting & Power Company (HL&P) tendered for filing a Compliance Refund Report, as required by the Commission's letter order in *Public Service Company of Oklahoma, et al.*, Docket Nos. ER82-545-000, *et al.*, issued on January 27, 1987.

HL&P states that it has made no refunds because no refunds were required under the terms of the settlement approved by the Commission. The filing shows that amounts collected under HL&P's effective tariff for the refund period from January 27, 1987, to February 25, 1987, did not exceed amounts that would have been collected during this period under HL&P's settlement tariff, which became effective on February 26, 1987.

The compliance refund report shows monthly billing determinants, revenue receipts dates, and revenues under the prior and settlement rates, together with a summary of such information for the total refund period.

Copies of this compliance refund report have been furnished all affected customers and to the following state commission, within whose jurisdiction the wholesale customers taking service, subject to refund, under HL&P's previously effective tariff distribute and sell electric energy at retail: Texas Public Utilities Commission, 7800 Shoal Creek Boulevard, Suite 450 N., Austin, Texas 78757.

Comment date: June 19, 1987, in accordance with Standard Paragraph E at the end of this document.

7. Iowa Public Service Company

[Docket No. ER86-373-000]

Take notice that Iowa Public Service Company (IPS) on May 28, 1987, tendered for filing its First Amendment containing additional documentation for an executed Firm Power Interchange Service Agreement dated November 15, 1985, and the First Amendment to Firm Power Interchange Service Agreement dated November 21, 1986, whereby IPS will supply the LaPorte City Municipal Utilities, LaPorte City, Iowa with firm electric capacity, commencing December 23, 1985, and continuing through December 31, 2000. IPS also filed an executed Agreement for LaPorte City Connection dated December 19, 1985 by which Iowa Electric Light and Power Company will provide transmission service to implement the Firm Power Agreement.

IPS requests an effective date of December 23, 1985, and therefore requests a waiver of the Commission's notice requirements.

Comment date: June 19, 1987, in accordance with Standard Paragraph E at the end of this notice.

8. Montaup Electric Company

[Docket No. ER81-749-003 and ER82-325-002 (Phase I)]

Take notice that on May 27, 1987, Montaup Electric Company (Montaup) tendered for filing rate schedule revisions in compliance with the provisions of the Commission's Opinion No. 267 and No. 267-A issued on March 13, 1987, and on May 8, 1987, respectively, in Docket Nos. ER81-749-003 and ER82-325-002 (Phase I).

Montaup filed a request for rehearing on the rate design issues seeking prospective only treatment. Montaup's petition also included a request for rehearing on CWIP and return on equity decisions. On May 8, 1987, the Commission issued Opinion No. 267-A granting prospective-only treatment on rate design but denying the request for rehearing on the CWIP and return on equity issues.

The tendered rate schedule revisions are proposed to be effective on the first day of the month following the Commission's order accepting this filing. Those rate schedule revisions incorporate the rate design changes required by Opinion No. 267 and provide for a one time refund credit to be applied in billings for the month's service. Interest will be calculated in accordance with the Commission's regulations, Section 35.19A.

Comment date: June 19, 1987, in accordance with Standard Paragraph E at the end of this notice.

9. Northern States Power Company, Interstate Power Company, Iowa Public Service Company, St. Joseph Light & Power Company, Kansas City Power & Light Company

[Docket No. ER87-459-000]

Take notice that on May 29, 1987, the investor-owned utility signatories to the Twin Cities-Omaha-Iowa-Kansas City 345kv Inter-connection and Co-

ordinating Agreement submitted for filing as a supplement to that Agreement a letter agreement dated as of May 1, 1987, which sets forth the terms and conditions on which Iowa Public Service Company (IPS) will be entitled to reserve 60MW of firm transmission capacity. The purpose of the reservation is to enable IPS to sell 60MW of firm capacity and associated energy to the City of Independence, Missouri. The rate for the reservation of transmission capacity will be $2,245 per megawatt per month through December 31, 1987, and thereafter will be $2,189 per megawatt per month.

Comment date: June 19, 1987, in accordance with Standard Paragraph E at the end of this notice.

10. Pacific Gas and Electric Company

[Docket No. ER87-462-000]

Take notice that Pacific Gas and Electric Company (PGandE) tendered for filing, on June 1, 1987, a Rate Settlement Agreement between PGandE and the Department of Water Resources of the State of California (DWR) (Agreement), dated November 21, 1986.

The Agreement provides for firm and interruptible transmission rates and charges to go into effect on January 1, 1987. The Agreement also provides for the automatic adjustment of each affected rate on January 1 of each subsequent year for the four-year term of the Agreement.

Copies of this filing were served upon DWR and the California Public Utilities Commission.

Comment date: June 19, 1987, in accordance with Standard Paragraph E at the end of this notice.

11. Pennsylvania Electric Company

[Docket No. ER87-458-000]

Take notice that on May 29, 1987, Pennsylvania Electric company (Penelec) filed tariff changes decreasing its rates for wholesale all requirements, supplemental and wheeling service. Penelec states that the changes reflect waiver of the sixty-day prior notice requirement and an effective date of July 1, 1987.

Comment date: June 19, 1987, in accordance with Standard Paragraph E at the end of this notice.

12. Southwestern Public Service Company

[Docket No. ER87-461-000]

Take notice that Southwestern Public Service Company (SPS) on June 1, 1987, tendered for filing a proposed change in its Electric Service Tariff, FERC Rate Schedule No. 104. The proposed change consists of the addition of Service Schedule D for Power Exchange Service between SPS and El Paso Electric Service Company (EPE) dated March 3, 1987, supplementing the Interconnection Agreement dated December 8, 1981, between SPS and EPE.

The proposed Service Schedule D provides for electric energy to be exchanged between the electrical systems of EPE and SPS fulfilling a need for energy exchange between the parties not presently filled by existing Emergency Service, Economy Energy Service, Interruptible Power or other schedules. It will further improve the efficiency and economy of interconnected system operation. There shall be no charges, costs or energy losses associated with Power Exchange Service provided under Service Schedule D.

Copies of this filing were served upon El Paso Electric Company, Arizona Public Service Commission, Public Utility Commission of Texas, and the New Mexico Public Service Commission.

Comment date: June 19, 1987, in accordance with Standard Paragraph E at the end of this notice.

13. Utah Power & Light Company

[Docket No. ER87-460-000]

Take notice that on May 29, 1987, Utah Power & Light Company (UP&L or Company) tendered for filing its FERC Electric Tariff, Fourth Revised, Volume No. 1. This revised tariff removes Manti as a resale customer but does not change the rate or service to any other customer. It also has been revised to remove other resale customers who terminated service in 1985 and 1986.

UP&L states that resale service terminated on April 1, 1987, and the Company commenced transmission service to Manti on that date. UP&L requests a waiver of the Commission's notice requirements as provided in 18 CFR 35.11 and to make the revised tariff effective retroactively as of April 1, 1987.

Comment date: June 19, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-13346 Filed 6-10-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-535-006]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff and Filing of Service Agreement

June 5, 1987.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on May 29, 1987 tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets:

Fourteenth Revised Sheet No. 97
Thirteenth Revised Sheet No. 98
Seventh Revised Sheet No. 100
Thirteenth Revised Sheet No. 101
Fourth Revised Sheet No. 179

and submitted for filing the Service Agreement under Rate Schedule SGS between Texas Eastern and the City of Kennett, Missouri (Kennett).

By letter to Texas Eastern dated September 19, 1986, Kennett requested that current service provided by Texas Eastern to Kennett under Texas Eastern's Rate Schedule GS be converted to Rate Schedule SGS. Texas Eastern acknowledged its agreement of such conversion to Kennett by letter dated October 1, 1986. Accordingly, Texas Eastern herewith submits for filing pursuant to Texas Eastern's blanket certificate in Docket No. CP82-535 and 18 CFR 157.217 (a) of the Commission's regulations, six copies of the Service Agreement under Rate Schedule SGS between Texas Eastern and Kennett. This Service Agreement being filed reflects the conversion from current Texas Eastern Rate Schedule GS service to Kennett to Rate Schedule SGS as requested by Kennett. Such conversion will not change Kennett's maximum daily quantity, annual contract quantity or annual quantity entitlement.

Proposed Fourteenth Revised Sheet No. 97 reflects the elimination of gas entitlements under Rate Schedule GS for Kennett, proposed Thirteenth Revised Sheet No. 98 reflects the reduction in the Rate Schedule GS total, proposed

Seventh Revised Sheet No. 100 reflects the addition of the same quantity of gas entitlements under Rate Schedule SGS for Kennett as were under Rate Schedule GS, Thirteenth Revised Sheet No. 101 reflects changes in the Rate Schedule SGS subtotal and grand total of all Rate Schedules, and proposed Fourth Revised Sheet No. 179 updates the Index of Purchasers to reflect the conversion of Rate Schedules to the Kennett contract.

The proposed effective date of the tariff sheets and the Service Agreement under Rate Schedule SGS between Texas Eastern and Kennett is July 1, 1987, the date service provided by Texas Eastern to Kennett under Rate Schedule GS is to be converted to service under Rate Schedule SGS as mutually agreed to by Texas Eastern and Kennett.

Thirteenth Revised Sheet No. 97, Revised Eleventh Revised Sheet No. 101 and Substitute Twelfth Revised Sheet No. 101 filed by Texas Eastern May 14, 1987 in Docket No. CP87-185-001 are currently pending Commission approval. Fourteenth Revised Sheet No. 97 and Thirteenth Revised Sheet No. 101 being filed herein to be effective July 1, 1987 incorporate the revisions reflecting the Kennett Rate Schedule conversion. In the event Thirteenth Revised Sheet No. 97, Revised Eleventh Revised Sheet No. 101 and Substitute Twelfth Revised Sheet No. 101 are not approved or are a altered in any way by the Commission's decision, Texas Eastern will refile such tariff sheets and any subsequent tariff sheets directly affected in this instant filing to reflect the Commission's decision.

Copies of this filing were served on Texas Eastern's jurisdictional customers, interested state commissions and party to the agreement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 12, 1987. 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-13353 Filed 6-10-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-115-008]

Trunkline Gas Co.; Compliance Filing

June 5, 1987.

Take notice that on June 1, 1987, Trunkline Gas Company (Trunkline) tendered for filing the revised tariff sheets as listed on the filing's Appendix No. 1 pursuant to Ordering Paragraph (A) of the Commission's April 30, 1987 Order in the subject dockets. The proposed effective date of these revised tariff sheets and alternate revised tariff sheets is May 1, 1987.

Trunkline states that it previously filed in Docket No. RP87-15-009 substitute tariff sheets which modified rates for Trunkline's sales and transportation rate schedules to reflect the authorization by the Commission of Mississippi River Transmission Corporation's application pursuant to section 7(b) of the Natural Gas Act to abandon purchases from Trunkline, without prejudice to Trunkline's rights for rehearing and review. On May 29, 1987 the Commission approved these tariff sheets to be effective May 1, 1987 in Docket No. RP87-67-000.

In making the required tariff sheet modifications pursuant to the Commission's April 30, 1987 Order, Trunkline noted that certain organization changes could be made to Rate Schedule PT to provide for additional administrative efficiencies. These minor organizational changes do not revise the substance of Rate Schedule PT nor the Commission's conditions contained in its April 30, 1987 Order.

Trunkline further states that it respectfully requests waiver of any provisions or regulations, in order that this compliance filing and the accompanying tariff sheets may be accepted.

This filing is without prejudice to Trunkline's request for rehearing and any subsequent review of the condictions contained in the April 30, 1987 Order and to the Order of May 5, 1987 in Docket No. CP84-348.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 12, 1987. 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-13354 Filed 6-10-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER82-769-008 et al.]

Electric Rate and Corporate Regulation Filings; Minnesota Power & Light Co. et al.

June 4, 1987.

Take notice that the following filings have been made with the Commission:

1. Minnesota Power & Light Company

[Docket No. ER82-769-008]

Take notice that on May 22, 1987, Minnesota Power & Light Company tendered for filing in compliance with FERC Opinion Nos. 263 and 263-A a revised Outlet Facilities Agreement No. 3 between Minnesota Power & Light Company (MP&L) and Cooperative Power Association (CPA), calculations of CPA's Investment Obligation and Accumulated Fixed Cost and Interest thereunder, and a revised system control and load dispatching cost-of-service study for CPA

Comment date: June 18, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Southern California Edison Company

[Docket No. ER81-177-006]

Take notice that on May 26, 1987, Southern California Edison Company (Edison) tendered for filing pursuant to the Commission's Opinions Nos. 261 and 261-A revised resale rates and supporting rate design and cost of service data. Edison states that the revised rates will replace the resale rate which became effective, subject to refund, on July 16, 1981, and continued in effect until superseded by rates filed in Docket No. ER82-427-000 which became effective subject to refund on June 2, 1982.

Copies of the revised resale rate have been served upon the parties in the service list.

Comment date: June 18, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. Upper Peninsula Generating Company

[Docket No. ES87-29-000]

Take notice that on May 21, 1987, Upper Peninsula Generating Company, ("Generating Company") filed an application seeking authority pursuant to section 204(a) of the Federal Power Act to issue an unsecured subordinated promissory note not exceeding $300,000 in principal amount to the Lake Superior and Ishpeming Railroad Company ("LSI"). The note will be issued as part of the consideration for the transfer by LSI to Generating Company of certain coal unloading facilities which LSI currently leases to Generating Company.

Comment date: June 18, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. Western Area Power Administration

[Docket No. EF87-5061-000]

Take notice that on May 22, 1987, the Under Secretary of the United States Department of Energy tendered for review, confirmation, approval, and placement into effect on a final basis power Rate Schedule FA-C1, Fryingpan-Arkansas Project (FryArk), Western Area Power Administration (Western). Power Rate Schedule FA-C1 provides that the rate for capacity without energy should be increased in two phases. The monthly rate in the first phase is $3.42/kW of contract rate of delivery, effective the first day of the first full billing period on or after June 20, 1987. The monthly rate in the second phase is $3.75/kW of contract rate of delivery, effective the first day of the first full billing period on or after September 20, 1988. The Federal Energy Regulatory Commission (FERC) is requested to place power Rate Schedule FA-C1 into effect for a period of 5 years.

On June 24, 1982, FERC issued the order confirming and approving the Fry-Ark Rate Schedule FA-C1. In the order, the FERC made this statement: According to the AS/CE, the Department of the Interior, in a recent internal audit on the Fry-Ark, suggested a change in the allocation of joint costs that would increase the total capital costs allocated to power. In the event a higher rate is required because of a higher allocation of joint costs to power, such rate should be promptly filed to avoid a possible deficit situation.

The Fry-Ark rate change embodied in Rate Schedule FA-C1 reflects the updated allocation of joint costs.

Comment date: June 18, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-13311 Filed 6-10-87; 8:45 a.m.]

BILLING CODE 6717-01-M

Oil Pipeline; Tentative Valuation

June 9, 1987.

The Federal Energy Regulatory Commission by order issued February 10, 1978, established an Oil Pipeline Board and delegated to the Board its functions with respect to the issuance of valuation reports pursuant to section 19a of the Interstate Commerce Act.

Notice is hereby given that a tentative basic valuation is under consideration for the common carrier by pipeline listed below:

1983 Basic Report

Valuation Docket No. PV—1492-000
Buckeye Pipeline Company of Michigan, Inc., P.O. Box 368, Emmaus, Pennsylvania 18049

On or before July 20, 1987, persons other than those specifically designated in section 19a(h) of the Interstate Commerce Act having an interest in this valuation may file, pursuant to rule 214 of the Federal Energy Regulatory Commission's "Rules of Practice and Procedure" (18 CFR 385.214), an original and three copies of a petition for leave to intervene in this proceeding.

If the petition for leave to intervene is granted the party may thus come within the category of "additional parties as the FERC may prescribe" under section 19a(h) of the Act, thereby enabling it to file a protest. The petition to intervene must be served on the individual company at its address shown above and an appropriate certificate of service must be attached to the petition. Persons specifically designated in section 19a(h) of the Act need not file a petition; they are entitled to file a protest as a matter of right under the statute.

Francis J. Conner,

Administrative Office, Oil Pipeline Board.

[FR Doc. 87-13312 Filed 6-10-87; 8:45 am]

BILLING CODE 6717-01-M

Oil Pipeline; Tentative Valuation

June 9, 1987.

The Federal Energy Regulatory Commission by order issued Febraury 10, 1978, established on Oil Pipeline Board and delegated to the Board its functions with respect to the issuance of valuation reports pursuant to Section 19a of the Interstate Commerce Act.

Notice is hereby given that a tentative basic valuation is under consideration for the common carrier by pipeline listed below:

1983 Basic Report

Valuation Docket No. PV – 1490-000
Ciniza Pipe Line, Inc., 7227 N. 16th Street, Phoenix, Arizona 85020

On or before July 20, 1987, persons other than those specifically designated in section 19a(h) of the Interstate Commerce Act having an interest in this valuation may file pursuant to rule 214 of the Federal Energy Regulatory Commission's "Rules of Practice and Procedure" (18 CFR 385.214), an original and three copies of a petition for leave to intervene in this proceeding.

If the petition for leave to intervene is granted the party may thus come within the category of "additional parties as the FERC may prescribe" under section 19a(h) of the Act, thereby enabling it to file a protest. The petition to intervene must be served on the individual company at its address shown above and an appropriate certificate of service must be attached to the petition. Persons specifically designated in section 19a(h) of the Act need not file a petition; they are entitled to file a protest as a matter of right under the statute.

Francis J. Connor,

Administrative Officer, Oil Pipeline Board.

[FR Doc. 87-13313 Filed 6-10-87; 8:45 am]

BILLING CODE 6717-01-M

Oil Pipeline; Tentative Valuation

June 9, 1987.

The Federal Energy Regulatory Commission by order issued February 10, 1978, established an Oil Pipeline

Board and delegated to the Board its functions with respect to the issuance of valuation reports pursuant to section 19a of the Interstate Commerce Act.

Notice is hereby given that a tentative basic valuation is under consideration for the common carrier by pipeline listed below:

1981 Basic Report

Valuation Docket No. PV – 1474–000
Midland-Lea, Incorporated, 1001 North Turner, Hobbs, New Mexico 88240

On or before July 20, 1987, persons other than those specifically designated in section 19a(h) of the Interstate Commerce Act having an interest in this valuation may file, pursuant to rule 214 of the Federal Energy Regulatory Commission's "Rules of Practice and Procedure" (18 CFR 385.214), an original and three copies of a petition for leave to intervene in this proceeding.

If the petition for leave to intervene is granted the party may thus come within the category of "additional parties as the FERC may prescribe" under section 19a(h) of the Act, thereby enabling it to file a protest. The petition to intervene must be served on the individual company at its address shown above and an appropriate certificate of service must be attached to the petition. Persons specifically designated in section 19a(h) of the Act need not file a petition; they are entitled to file a protest as a matter of right under the statute.

Francis J. Connor,

Administrative Officer, Oil Pipeline Board.

[FR Doc. 87–13314 Filed 6–10–87; 8:45 am]

BILLING CODE 6716–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 3216–1]

Construction Quality Assurances for Hazardous Waste Land Disposal Facilities

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of Technical Guidance Document (TGD).

SUMMARY: The Environmental Protection Agency (EPA) announces the availability of the document entitled, "Construction Quality Assurance for Hazardous Waste Land Disposal Facilities" (EPA 1530–SW–86–031, OSWER Policy Directive No. 9472.003)

ADDRESS: 1. National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, Telephone: 703/487–4650, NTIS Order No. PB 87–132825/AS.

The document may be purchased either in paper copy or on microfiche. Requestors should be sure to cite the title, NTIS Order No., and the EPA number that has been assigned to the document, EPA/530–SW–86–031.

2. The document is available for public inspection at all EPA libraries during their operating hours.

SUPPLEMENTARY INFORMATION: The construction quality assurance (CQA) TGD was originally prepared in draft and noticed in the **Federal Register** as available for public comment on November 21, 1985. The public comment period lasted from December 2, 1985, through March 4, 1986. A total of 32 sets of comments were received during that period varying in length from one-half page of general observations about the document to several pages of detailed comments on specific aspects of the guidance. The comments were reviewed and addressed and changes were made in the draft guidance in direct response to a number of the comments that were received.

Construction quality assurances as applied in this document uses scientific and engineering principles and practices to ensure that a hazardous waste land disposal facility meets or exceeds all design criteria, plans, and specifications. The document covers CQA for hazardous waste landfills, surface impoundments, and waste piles. The major components of these facilities that are addressed include: foundations, dikes, low-permeability soil liners, flexible membrane liners, leachate collection systems, and final cover systems. This document is intended to compliment the "Minimum Technology Guidance" being developed by EPA's Office of Solid Waste and Emergency Response. It is believed that a technically sound, well developed, site-specific CQA plan will assist in improving the long-term performance of hazardous waste land disposal facilities.

The CQA plan is a site-specific document that should be submitted during permitting to satisfy EPA's CQA requirements. At a minimum, the CQA plan should include five elements as summarized below.

- *Responsibility and Authority.* The responsibility and authority of all organizations and key personnel (by title) involved in permitting, designing and constructing the hazardous waste land disposal facility should be described fully in the CQA plan.
- *CQA Personnel Qualifications.* The qualifications of the CQA officer and supporting CQA inspection personnel should be presented in the CQA plan in terms of the training and experience necessary to fulfill their identified responsibilities.
- *Inspection Activities.* The observations and tests that will be used to ensure that the construction or installation meets or exceeds all design criteria, plans, and specifications for each hazardous waste land disposal facility component should be described in the CQA plan.
- *Sampling Requirements.* The sampling activities, sample size, methods for determining locations, frequency of sampling, acceptance and rejection crtieria, and methods for ensuring corrective measures are implemented as addressed in the design criteria, plans, and specifications should be presented in the CQA plan.
- *Documentation.* Reporting requirements for CQA activities should be described in detail in the CQA plan. This should include such items as daily summary reports, inspection data sheets, problem identification and corrective measures reports, block evaluation reports, acceptance reports, and final documentation. Provisions for the final storage of all records should also be presented in the CQA plan.

The TGD describes these elements in detail and presents information of those activities pertaining to each of the elements that are necessary to ensure that the facility meets or exceeds the specified design. It is intended for the use of organizations involved in permitting, designing, and constructing hazardous waste land disposal facilities.

FOR FURTHER INFORMATION CONTACT: Jonathan G. Herrmann, U.S. Environmental Protection Agency, Hazardous Waste Engineering Research Laboratory, 26 W. St. Clair Street, Cincinnati, OH 45268, 513/569–7839 or FTS 684–7839.

Dated: June 3, 1987.

Vaun A. Newill,

Assistant Administrator for Research and Development.

[FR Doc. 87–13339 Filed 6–10–87; 8:45 am]

BILLING CODE 6560–50–M

[Docket No. F–87–SACA–FFFFF; FRL–3216–2]

Batch-Type Adsorption Procedures for Estimating Soil Attenuation of Chemicals

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of Public Comment Draft Technical Resource Document.

SUMMARY: The Environmental Protection Agency (EPA) announces the availability of a 197 page draft Technical Resource Document (TRD) entitled, "Batch-Type Adsorption Procedures for Estimating Soil Attenuation of Chemicals" (EPA/530–SW–87–006) for public review and comment. The document is presently available for purchase from the National Technical Information Service and is available for inspection at a number of EPA facilities.

DATE: Comments must be received by August 15, 1987 or postmarked on that date.

ADDRESSES: Those persons interested in commenting on the document will be able to obtain copies as follows:

(1) The document can be purchased from the National Technical Information Service (NTIS) either as a paper copy ($18.95 plus $3.00 for handling) or as microfiche ($6.50 plus $3.00 for handling). National Technical Information Service 5285 Port Royal Road, Springfield, VA 22161, Telephone: 703–487–4650, NTIS Order No. PB 87–146155.

Requestors should cite the title, NTIS order number, and the EPA number that has been assigned to the document, EPA/530–SW–87–006.

(2) The document will also be available for public inspection at the:

Public Information Reference Unit, U.S. Environmental Protection Agency, Room M2404, 401 M Street S.W., Washington, DC 20460;

EPA Library (MD–35), U.S. Environmental Protection Agency, Environmental Research Center, Research Triangle Park, NC 27711

EPA Library U.S. Environmental Protection Agency, Andrew W. Breidenbach Environmental Research Center, 26 West St. Clair Street, Cincinnati, OH 45268, and at all ten of the EPA Regional Office Libraries during their operating hours.

An original and two copies of all comments on this document should be sent to the following address: EPA RCRA Docket (S–212) U.S. Environmental Protection Agency (WH–562) 401 M Street SW., Washington, DC 20460.

Comments should list the docket number (F–87–SACA–FFFFF) and should identify the document by title and number; e.g. "Batch-Type Adsorption Procedures for Estimating Soil Attenuation of Chemicals," (EPA/530–SW–87–006). For additional details about the OSW docket see the "OSW Docket" section at the end of "SUPPLEMENTARY INFORMATION."

FOR FURTHER INFORMATION CONTACT: Michael H. Roulier, U.S. Environmental Protection Agency, Hazardous Waste Engineering Research Laboratory, 26 West St. Clair Street, Cincinnnati, OH 45268, 513/569–7796 or FTS: 684–7796.

SUPPLEMENTARY INFORMATION: This Technical Resource Document (TRD) contains laboratory procedures and guidelines for conducting adsorption experiments using batch equilibrium techniques to study soil attenuation of chemicals dissolved in solution (solutes). The procedures were designed for routine use, and may be used to generate date for the construction of equilibrium adsorption isotherms or curves. Procedures for inorganic and organic solutes, and volatile organic solutes are given.

The scientific basis and rationale for each procedural step is discussed in detail, and was based on both the scientific literature and procedural development and testing by the authors and other cooperating laboratories, using several different types of soil materials, solutions, containing several solutes, and aqueous extracts of actual wastes. The application of major procedural steps and concepts is illustrated by examples, including the application of batch adsorption data in calculations of solute movement through compacted landfill liners, particularly for estimating the thickness of liner required for pollutant retention.

A TRD is one of the three types of documents that EPA is developing for preparers and reviewers of permit applications for hazardous waste land treatment, storage, and disposal facilities. The other two types of documents are RCRA Guidance Documents and Permit Guidance Manuals.

RCRA Guidance Documents present design and operating specifications or design evaluation techniques that generally comply with or demonstrate compliance with Design and Operating Requirements and the Closure and Post-Closure Requirements of 40 CFR Part 264.

The Permit Guidance Manuals are being developed to describe the permit application information the Agency seeks and to provide guidance to applicants and permit writers in addressing information requirements. These manuals will include a discussion of each step in the permitting process and a description of each set of specifications that must be considered for inclusion in the permit.

TRDs present state-of-the-art summaries of technologies and evaluation techniques determined by the Agency to constitute good engineering designs, practices, and procedures. They support the RCRA Guidance Documents and Permit Guidance Manuals by describing current technologies and methods for designing hazardous waste facilities or for evaluating the performance of a facility design. Although emphasis is given to hazardous waste facilities, the information presented in a TRD may be used for designing and operating nonhazardous waste LTSD facilities as well. Whereas the RCRA Guidance Documents and Permit Guidance Manuals are directly related to the regulations, the information in a TRD covers a broader perspective and should not be used to interpret the requirements of regulations.

This document is a first edition draft being made available for public review and comment. It has undergone review by recognized experts in the technical areas covered, but Agency peer review processing has not yet been completed. Pubic comment is desired on the accuracy and usefulness of the information presented in this document. Comments received will be evaluated and suggestions for improvement will be incorporated, wherever feasible, before publication of the second edition.

Comments on this document should be sent to the OSW docket, as discussed above. The OSW docket is located at: EPA RCRA Docket (Sub-basement), 401 M Street SW., Washington, DC 20460.

The docket is open from 9:30 to 3:30 Monday through Friday, except for Federal Holidays. The public must make an appointment to review docket materials. Call Michelle Lee at 475–9327 or Kate Blow at 382–4675 for appointments. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost $0.20 per page.

Dated: May 29, 1987.

Vaun A. Newill,

Assistant Administrator for Research and Development.

[FR Doc. 87–13338 Filed 6–10–87; 8:45 am]

BILLING CODE 6560–50–M

[ECAO–R–065; FRL–32116–4]

Workshop on a Draft Chlorine Health Assessment Document

AGENCY: Environmental Protection Agency.

ACTION: Notice of a public meeting.

SUMMARY: This notice announces a workshop to be held by EPS's Environmental Health and Assessment

Office, Office of Health and Environmental Assessment, at the Sheraton Imperial Hotel and Towers, Research Triangle Park, North Carolina, to facilitate preparation of an external review draft of a Health Assessment Document for Chlorine.

DATE: The workshop will be held on June 29, and 30, 1987, from 8:30 a.m. to 5:00 p.m. Members of the public are invited to attend as observers.

FOR FURTHER INFORMATION CONTACT: Dr. Nick Jajjar of Dynamac at (301) 468–2500, ext. 439. He will confirm seating for those planning to attend the workshop.

SUPPLEMENTARY INFORMATION: In October 1986, EPS's Office of Air Quality Planning and Standards requested that the Environmental Criteria and Assessment Office (ECAO) prepare a health assessment document for chlorine. The document will be used by EPA in the decision-making process to possibly regulate chlorine under the Clean Air Act as Amended, 42 U.S.C., 7401 *et seq.*

ECAO is now assembling a panel of scientifically and technically qualified persons to review a draft of the health assessment document at the workshop. Copies of the workshop draft will be available to the public at the meeting, and observers will have an opportunity to make brief oral statements. The draft subsequently will be revised and released as an external review draft. Ample opportunity will be provided for public review and submission of written comments upon release of the external review draft. The public period will be announced in a subsequent **Federal Register** notice.

Dated: June 3, 1987.

Vaun A. Newill,

Assistant Administrator for Research and Development.

[FR Doc. 87–13337 Filed 6–10–87; 8:45 am]

BILLING CODE 6560-50-M

EXPORT-IMPORT BANK

Open Meeting of the Advisory Committee of the Export-Import Bank of the United States

SUMMARY: The Advisory Committee was established by Pub. L. 98–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank of the United States Congress.

Time and Place: Tuesday, June 30, 1987 from 9:30 a.m. to 12 noon. The meeting will be held in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

Agenda: The meeting agenda will include a discussion of the following topics: Eximbank's Financial Report, New Program and Legislative Update, Review of Competitiveness Report, Report of State/City/Municipal Task Force, Report of Banks/FCIA Task Force, Report of LDC Debt Task Force, and other topics.

Public Participation: The meeting will be open to public participation; and the last 20 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. In order to permit the Export-Import Bank to arrange suitable accommodations, members of the public who plan to attend the meeting should notify Joan P. Harris, Room 935, 811 Vermont Avenue NW., Washington, DC 20571, (202) 566–8871, not later than June 29, 1987. If any person wishes auxiliary aids (such as a language interpreter) or other special accommodations, please contact prior to June 23, 1987, the Office of the Secretary, Room 935, 811 Vermont Avenue NW., Washington, DC. 20571, Voice: (202) 566–8871 or TDD: (202) 535–3913.

FOR FURTHER INFORMATION CONTACT: For further information, contact Joan P. Harris, Room 935, 811 Vermont Avenue NW., Washington, DC 20571, (202) 566–8871.

Hart Fessenden,

General Counsel.

[FR Doc. 87–13368 Filed 6–10–87; 8:45 am]

BILLING CODE 6690-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Training and Fire Programs Directorate Board of Visitors for the National Fire Academy; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name: Board of Visitors (BOV) for the National Fire Academy (NFFA)

Dates of Meeting: July 13–14, 1987.

Place: National Emergency Training Center, G Bldg., 2nd Floor Conference Room, Emmitsburg, Maryland 21727.

Time: July 13–8:30 a.m. to 5:00 p.m.; July 14–8:30 a.m. to Agenda Completion.

Proposed Agenda: Briefing of FY 88 Operating Plans.

The meeting will be open to the public with seating available on a first-come, first-serve basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, National Fire Academy, Training and fire Programs Directorate, 16825 South Seton Avenue, Emmitsburg, Maryland, 21727 (telephone number, 301–447–1123) on or before July 1, 1987.

Minutes of the meeting will be prepared by the Board and will be available for public viewing in the Associate Director's Office, Training and fire Programs Directorate, Federal Emergency Management Agency, Building N, National Emergency Training Center, Emmitsburg, MD, 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: May 28, 1987.

Caesar A. Roy,

Deputy Associate Director, Training and Fire Programs.

[FR Doc. 87–13323 Filed 6–10–87; 8:45am]

BILLING CODE 6718-03—M

[Docket No. FEMA-REP-5-OH-2]

The Ohio Radiological Emergency Response Plan Site-Specific for the Beaver Valley Nuclear Power Plant

ACTION: Certification of FEMA Findings and Determination.

In accordance with the Federal Emergency Management Agency (FEMA) rule 44 CFR Part 350, the State of Ohio formally submitted its plan relating to the Beaver Valley Nuclear Power Plant to the Director of FEMA Region V on April 28, 1980, and the plans were subsequently revised and resubmitted on January 23, 1986, for FEMA review and approval. On March 16, 1987, the Regional Director forwarded his evaluation to the Associate Director for State and Local Programs and Support in accordance with section 350.11 of the FEMA rule. Included in this evaluation is a review of the State and local plans around the Beaver Valley Nuclear Power Plant, evaluations of joint exercises conducted on November 19, 1986, June 12, 1984, February 16, 1983, July 14, 1982, and February 17, 1982, in accordance with section 350.9 of the FEMA rule, and a public meeting held on August 24, 1983, to discuss the site-specific aspects of the State and local plans around the Beaver Valley Nuclear Power Plant in accordance with section 350.10 of the FEMA rule.

Based on the evaluation by the Regional Director and the review by the FEMA Headquarters staff, I find and determine that the State and local plans

and preparedness for the Beaver Valley Nuclear Power Plant are adequate to protect the health and safety of the public living in the vicinity of the plant. These offsite plans and preparedness are assessed as adequate in that they provide reasonable assurance that appropriate protective actions can be taken offsite in the event of a radiological emergency and are capable of being implemented. On December 27, 1985, the adequacy of the public alert and notification system was verified as meeting the standards set forth in Appendix 3 of the Nuclear Regulatory Commission/FEMA criteria of NUREG–0654/FEMA–REP–1 Rev. 1, and FEMA–43 "Standard Guide for the Evaluation of Alert and Notification Systems for Nuclear Power Plants" (now published as FEMA–REP–10).

FEMA will continue to review the status of offsite plans and preparedness associated with the Beaver Valley Nuclear Power Plant in accordance with the FEMA rule.

For further details with respect to this action, refer to Docket File FEMA–REP–5–OH–2.

Dated: June 5, 1987.

For the Federal Emergency Management Agency.

Dave McLoughlin,

State and Local Programs and Support.

[FR Doc. 87–13322 Filed 6–10–87; 8:45 am]

BILLING CODE 6718–01–M

[No. 87–620]

FEDERAL HOME LOAN BANK BOARD

Self-Regulatory Organizations, Application for Unlisted Trading Privileges and Opportunity for Hearing; Cincinnati Stock Exchange

Dated: June 5, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The Cincinnati Stock Exchange has filed, pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1, and application with the Federal Home Loan Bank Board ("Board") for unlisted trading privileges in the following securities:

Coast Savings and Loan Association, Los Angeles, California (FHLBB No. 7046)
Common Stock, No Par Value

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Comments: Any interested person may inspect the application at the Board, and, within 15 days of publication of this notice in the **Federal Register**, submit to the Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, written data, views and arguments bearing upon whether the extensions of unlisted trading privileges pursuant to such application are consistent with the maintenance of fair and orderly markets and the protection of investors. Following this opportunity for hearing, the Board will approve the application after the date mentioned above if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application are consistent with the maintenance of fair and orderly markets and the protection of investors.

FOR FURTHER INFORMATION CONTACT: John P. Harootunian, Assistant General Counsel for Securities Policy, Corporate and Securities Division, Office of General Counsel, at (202–377–6415) or at the above address.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Acting Secretary.

[FR Doc. 87–13308 Filed 6–10–87; 8:45 am]

BILLING CODE 6720–01–M

[No. AC–631]

Cabarrus Savings Bank Concord, NC; Final Action Approval of Conversion Application

Dated: June 4, 1987.

Notice is hereby given that on May 8, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Cabarrus Savings Bank, Concord, North Carolina for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552 and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Atlanta, 1475 Peachtree Street NE., Atlanta, Georgia 30309.

By the Federal Home Loan Bank Board

Jeff Sconyers,

Secrtary.

[FR Doc. 87–13398 Filed 6–10–87; 8:45 am]

BILLING CODE 6720–01–M

[No. AC–629]

First Federal Savings and Loan Association of Durham, Durham, NC; Final Action Approval of Conversation Application

Dated: June 4, 1987.

Notice is hereby given that on May 15, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal Savings and Loan Association of Durham, Durham, North Carolina for permission to covert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street N.W., Washington, DC 20552 and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Atlanta, 1475 Peachtree Street NE., Atlanta, Georgia 20309.

By the Federal Home Loan Bank Board

Jeff Sconyers,

Secretary.

[FR Doc. 87–13399 Filed 6–10–87; 8:45 am]

BILLING CODE 6720–01–M

[No. AC–630]

Peoples Federal Savings & Loan Association of DeKalb County, Auburn, IN; Final Action, Approval of Conversion Application

Dated: June 4, 1987.

Notice is hereby given that on May 18, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Peoples Federal Savings and Loan Association of DeKalb County, Auburn, Indiana, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Indianapolis, 1350 Merchants Plaza, South Tower, 115 West Washington Street, Indianapolis, Indiana 46204.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 87–13400 Filed 6–10–87; 8:45 am]

BILLING CODE 6720–01–M

[No. 87-615]

Approval of Application for Unlisted Trading Privileges Cincinnati Stock Exchange

Dated: June 2, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The Cincinnati Stock Exchange, has filed with the Federal Home Loan Bank ("Board") an application ("Application"), pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 [17 CFR 240.12f-1] thereunder, for unlisted trading privileges in the following securities which are listed on one or more national secuirities exchange:

Home Federal Savings and Loan Association, San Diego, California (FHLBB No. 3143)
Common Stock, $0.01 Par Valu.

Notice of the Application and opportunity for hearing was published in the **Federal Register** on April 21, 1987, and interested persons were invited to submit written data, views and arguments within 15 days. See Board Resolution No. 87-463 dated April 16, 1987 (52 FR 13125, April 21, 1987). The Board received no comments with respect to the Application. Notice is hereby given that the Office of General Counsel of the Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the Application for unlisted trading privileges in these securities on May 27, 1987.

SUPPLEMENTARY INFORMATION: The Board finds that the approval of the Application for unlisted trading privileges in these securities is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange registered with the Securities and Exchange Commission ("Commission") pursuant section 6 of the Act, the Cincinnati Stock Exchange is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection authority and oversight responsibility under sections 17 and 19 of the Act and the rules and regulations thereunder. Transactions in the subject securities, regardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 11Aa3-1 under the Act [17 CFR 240.11Aa3-11. The availability of last sale information for the subject securities should contribute to pricing efficiency and to ensuring that transactions on the Cincinnati Stock Exchange are executed at prices which are reasonably related to those occurring in other markets. Further, the approval of the Application will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system. Finally, the Board received no comments indicating that the granting of the Application would not be consistent with the maintenance of fair and orderly markets and the protection of investors.

Accordinly, pursuant to section 12(f)(1)(B) of the Act, the Office of General Counsel of the Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the Application for unlisted trading privileges in the above named securities on May 27, 1987.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 87-13397 Filed 6-10-87; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

[Docket No. 87-13]

Pate Stevedore Company of Mobile, et al. v. The Alabama State Docks Department, et al.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Pate Stevedore Company of Mobile, Ryan-Walsh Stevedoring Company, Inc., Murray Stevedoring Company, Inc., Gray and Company, Inc., North River Insurance Company, Employers National Insurance Company, and American Mutual Liability Insurance Company ("Complainants") against The Alabama State Docks Department, The Home Insurance Company and Aetna Casualty and Surety Company ("Respondents") was served June 4, 1987. Complainants allege that Respondents have violated section 17 of the Shipping Act, 1916, 46 U.S.C. app. 816, and sections 10(b)(12) and 10(d)(1) of the Shipping Act of 1984, 46 U.S.C. app. 1709(b)(12) and (d)(11), through the application of tariff provisions which are unreasonable and unjust in connection with the receiving, handling, storing, or delivering of property.

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 June 6, 1988, and the final decision of the Commission shall be issued by October 6, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 87-13278 Filed 6-10-87; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Cooperative Agreement Program Announcement for Implementation of Occupational Safety and Health Prevention Strategies

Application Receipt Date: July 20, 1987.

Introduction

The Centers for Disease Control (CDC), National Institute for Occupational Safety and Health (NIOSH), solicits applications for implementation of occupational safety and health prevention strategies. The purpose of the strategies is to provide guidance for a national initiative to reduce or eliminate problems associated with the workplace. This initiative involves all parties interested in occupational safety and health matters, including government, academia, industry, labor, insurance companies, and the legal system. NIOSH proposes to stimulate cooperation with outside organizations that can contribute to the initiative.

(The Catalog of Federal Domestic Assistance number is 13.262.)

Authority

The legislative authority for this program is contained in section 20 of the Occupational Safety and Health Act (29 U.S.C. 669(a)(1)) and section 501(c) of the Federal Mine Safety and Health Amendments Act of 1977 (30 U.S.C. 951).

Background

NIOSH published in 1983 a "suggested list of Ten Leading Work-Related

Diseases and Injuries" as part of a national goal to improve the health of the American people through prevention activities. Subsequently, working groups composed of NIOSH scientists drafted proposed national strategies for these ten areas of concern. These strategies were refined in a process involving two national meetings of health and safety professionals representing academia, management, organized labor, professional associations, and voluntary organizations. At these meetings, the following concept was presented: unsafe working conditions are no longer tolerable and clear steps can be taken to prevent the leading occupational diseases and injuries. Thus, the strategies contain actions that can be taken now and guidance for obtaining new knowledge that is needed by the occupational safety and health community for further prevention steps.

This cooperative agreement program is to provide assistance for implementing components of the strategies as proposed by the successful applicant.

Eligible Applicants

Eligible applicants include non-profit and for-profit organizations. Thus, universities, colleges, research institutions and other public and private organizations including State and local governments and small, minority and/or woman-owned businesses are eligible for this program.

Cooperative Activities

A. Recipient

From among the following types of activities, applicants should propose to address those areas that are within the interests and strengths of their organizations:

1. Develop surveillance methods to identify and report problems that are not well defined at present. Seek information on new technologies and new occupations to predict hazards that may be associated with them. Profile changes that are occurring in industry and occupational safety and health. Evaluate the effectiveness of surveillance methods in directing the optimum prevention measures and in measuring the impact of prevention.

2. Develop knowledge through scientific research that is needed to accomplish the prevention steps defined in the Proposed National Strategies referenced at the end of this section. Conduct research on sampling and analysis of hazardous agents in the workplace, characterizing exposures, determining relationships between exposures and effects, understanding the mechanisms of disease, defining early stages of diseases, and developing controls or substitutes for hazardous agents.

3. Define and demonstrate good work practices to eliminate exposure to hazards. Develop communication models for informing management and labor of the nature of the work hazards and for modifying attitudes and behavior.

4. Meet annually with NIOSH representatives in Atlanta, Georgia, to discuss progress, exchange information, and to seek means of resolving problems which have arisen. Applicants should include travel funds in the proposal for this annual meeting.

5. Publish results of research in the appropriate scientific literature.

Further guidance may be found in the following two references which may be requested from the technical information contact person given under "Inquiries."

Proposed National Strategies for the Prevention of Leading Work-Related Diseases and Injuries, Part 1, 1986, The Association of Schools of Public Health.

Draft Proposed National Strategies for the Prevention of Leading Work-Related Diseases and Injuries: Disorders of Reproduction, Neurotoxic Disorders, Noise-Induced Hearing Loss, Dermatologic Conditions, and Psychological Disorders, National Institute for Occupational Safety and Health.

B. NIOSH

Representatives from NIOSH will assist, advise, and interact with the successful applicant in the following ways:

1. Provide consultation and technical assistance in planning, conducting, and evaluating prevention-related activities.

2. Provide scientific information related to the proposed research topics.

3. Meet annually with recipient in Atlanta, Georgia, to discuss progress, exchange information, and seek means of resolving problems which have arisen.

4. Collaborate in the development of surveillance methods for discovering and documenting problems that are not yet well defined.

5. Assist in predicting hazards that may be associated with new technologies and new occupations and characterize changes that are occurring in industry and occupational safety and health.

6. Assist in determining the effectiveness of surveillance methods in directing the optimum prevention measures and in measuring the impact of prevention.

7. Provide technical assistance in conducting scientific research in order to accomplish the prevention steps defined in the Proposed National Strategies.

8. Assist in the dissemination of information about good work practices to eliminate exposure to hazards.

9. Assist in encouraging schools of business and engineering to address more definitively the training of students in the recognition of work hazards and the need for prevention.

Availability of Funds

It is anticipated that $400,000 will be available over a 3-year period to fund one award, with annual allocations being approximately $50,000, $150,000, and $200,000. Actual award levels will depend on the merit and scope of the proposals and the availability of funds. Projects should be fully operational with nonfederal funds at the end of 3 years.

Use of Funds

Funds may be used to support personnel, equipment, supplies, domestic travel, publication, and other costs. Funds may not be used to support construction or renovation costs. Without specific approval, funds may not be used for purchasing office equipment or furniture and for leasing or renting office space.

Recipient Financial Participation

This program has no statutory cost-sharing formula. No specific matching funds are required; however, the application should include data on the applicant's contribution to the overall program costs.

Review Procedures and Criteria

Proposals responsive to this solicitation will be reviewed in accordance with Public Health Service Grants Administrative Manual Chapter PHS:1-507, Objective Review of Grant Applications. The initial review will be for scientific merit by an appropriate ad hoc peer review group, convened by NIOSH. The secondary review for relevance will be made by an internal NIOSH committee.

Factors considered to be important for review include scientific merit and significance of the project, competence of the proposed staff in relation to the type of project involved, feasibility of the project, likelihood of its producing meaningful results, appropriateness of the proposed project period, adequacy of the applicant's resources available for the project, appropriateness of the budget request, availability of subject population(s) when applicable, and

evidence of willingness to work cooperatively with appropriate federal staff.

Method of Applying

Applications should be submitted on Form PHS-398 (revised May 1982). In applying to the Centers for Disease Control, note the following differences:

Information Available to the Principal Investigator/Program Director (Page 2)

This section is replaced by:

The Centers for Disease Control maintains application files by application number (supplied upon receipt of the application) or name of the applicant organization and not by name of principal investigator/program director. The application number or name of the applicant organization must be furnished to request copies of the application records or amendment of the record if the applicant believes the information to be inaccurate, untimely, incomplete, or irrelevant. Amendment requests must be submitted prior to the initial review. Inquiries should be directed to the Grants Management Officer, Centers for Disease Control, 255 E. Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305.

Information related to awards of these grants is also maintained within the management information system designated Grants Data System.

Within 30 days after the secondary review, CDC will notify the principal investigator/program director of the final disposition of the application.

General Instructions (pages 6–8)

Disregard this section of the Form PHS–398. General instructions appear in this Announcement.

Submission (Page 8)

The original and *two* copies of the application should be submitted to the address below on or before July 20, 1987.

Grants Management Officer, Centers for Disease Control, 255 E. Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305

Applications shall be considered as meeting the deadline if they are either received on or before the deadline date or sent on or before the deadline date and received in time for submission to the independent review group. (Applicants should request a legibly-dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.) Late applications will not be considered in the current competition and will be returned to the applicant.

Specific Instructions (Page 9)

Disregard Item 14.

Forms should be available from institutional business offices or the Grants Management Office above, telephone (404) 262–6575.

An applicant organization has the option of having specific salary and fringe benefit amounts for individuals omitted from the copies of the application that are made available to outside reviewing groups. If the applicant's organization elects to exercise this option, use asterisks on the original and two copies of the application to indicate those individuals for whom salaries and fringe benefits are being requested; the subtotals must still be shown. In addition, submit an additional copy of page four of Form PHS–398, completed in full with the asterisks replaced by the amount of the salary and fringe benefits requested for each individual listed. This budget page will be reserved for internal PHS staff use only. Applications are not subject to intergovernmental review pursuant to Executive Order 12372.

Inquiries

For Technical Information Contact:

Roy M. Fleming, Sc.D., Associate Director for Grants, National Institute for Occupational Safety and Health, Centers for Disease Control, 1600 Clifton Road, NE., Building 1, Room 3053, Atlanta, Georgia 30333, Telephone: (404) 329–3343.

For Application and Business Information Contact:

Karen Reeves, Grants Specialist, Procurement and Grants Office, Centers for Disease Control, 255 E. Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305, Telephone: (404) 262–6575.

Dated: June 5, 1987.

Larry W. Sparks,

Executive Officer, National Institute for Occupational Safety and Health.

[FR Doc. 87–13267 Filed 6–10–87; 8:45 am]

BILLING CODE 4160–19–M

Health Care Financing Administration

[BERC–452–NC]

Medicare Program; Recommendation of Update Factors for Rates of Payment for Inpatient Hospital Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice (with comment period) of recommended update factors for hospitals.

SUMMARY: As required by sections 1886(e)(4) and (e)(5) of the Social Security Act, this notice provides ur recommendation of the appropriate percentage change for Federal fiscal year 1988 in the—

- Urban and rural average standardized amounts for inpatient hospital services paid for under the prospective payment system; and
- Target rate-of-increase limits to the allowable operating costs of inpatient hospital services furnished by hospitals excluded from the prospective payment system.

We are providing a period for public comment on our recommendations.

DATE: To be considered, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5:00 p.m. on August 10, 1987.

ADDRESS: Mail comments to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: BERC–452–NC, P.O. Box 26676, Baltimore, Maryland 21207

If you prefer, you may deliver your comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Ave. SW., Washington, DC, or

Room 132 East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC–452–NC. Comments received timely will be available for public inspection as they are received, generally beginning about three weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Ave. SW., Washington, DC on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202–245–7890.

FOR FURTHER INFORMATION CONTACT: Linda Magno, (301) 594–9343.

SUPPLEMENTARY INFORMATION:

I. Background

Several provisions of the Social Security Act (the Act) impose requirements concerning procedures for setting update factors for Medicare payment for inpatient hospital services furnished during Federal fiscal year (FY) 1988. The provisions apply to update factors for both hospitals subject to the prospective payment system and those excluded from that system.

Section 1886(b)(3)(B)(i)(II) of the Act, as amended by section 9302(a)(1) of the

Omnibu Budget Reconciliation Act of 1986 (Pub. L. 99–509), prescribes for FY 1988 an update factor in the payment rates for inpatient hospital services for hospitals under the prospective payment system. Under this provision, the update factor must equal the market basket rate of increase forecasted for FY 1988 minus 2.0 percentage points. Because section 1886(b)(3)(B) of the Act also governs the target rate-of-increase limits for hospitals excluded from the prospective payment system, the rate of increase for these hospitals in FY 1988 must also equal the market basket rate of increase minus 2.0 percentage points.

In accordance with section 1886(d)(3)(A) of the Act, as amended by section 9302(a)(2) of Pub. L. 99–509, we published a proposed rule on June 10, 1987 (the "proposed rule") to update the urban and rural average standardized amounts using the estimated increase in the hospital market basket minus 2.0 percentage points. (The percentage change in the market basket reflects the average change in the price of goods and services purchased by hospitals to furnish inpatient care.)

The proposed rule reflected an update in the standardized amounts and the hospital-specific rates (which, for cost reporting periods beginning on or after October 1, 1987, apply only to sole community hospitals) of 2.7 percent based on the forecasted increase in the hospital market basket index of 4.7 percent. We also proposed a 2.7 percent update to the target rate-of-increase limits for hospitals excluded from the prospective payment system.

Section 1886(e)(3)(A) of the Act requires that the Prospective Payment Assessment Commission (ProPAC) have recommended to the Secretary by April 1, 1987 an update factor that, under section 1886(e)(2) of the Act, takes into account changes in the market basket index, hospital productivity, technological and scientific advances, the quality of health care provided in hospitals, and long term cost effectiveness in the provision of inpatient hospital services.

In its April 1, 1987 report, ProPAC recommended that a prospective payment update factor of 2.2 percent for urban hospitals and 3.0 percent for rural hospitals should be approved. The components of these factors are described in detail in the ProPAC report, which was published as Appendix C in the proposed rule. These ProPAC recommendations and our responses are discussed in section III, below.

Section 1886(e)(4) of the Act, as amended by section 9302(a)(2)(B) of Pub. L. 99–509, requires that the Secretary, taking into consideration the recommendations of ProPAC, *recommend* an appropriate update factor for FY 1988, which takes into account amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality. (We note that this provision of law requiring a recommendation applies to FY 1988 only.)

Under section 1886(e)(5) of the Act, we are required to publish the recommended FY 1988 update that is provided for under section 1886(e)(4) of the Act. Accordingly, the purpose of this notice is to provide our recommendation of an appropriate update factor, our analysis of the derivation of the amount of the update factor, and our responses to the ProPAC recommendations concerning the update factor.

II. Secretary's Recommendations

Under section 1886(e)(4) of the Act, we are recommending update factors of 0.75 percent for prospective payment hospitals and 1.9 percent for hospitals excluded from the prospective payment system. In recommending these increases, we have taken into account the requirement in this section of the law that the amounts be high enough to ensure the efficient and effective delivery of medically appropriate and necessary care of high quality. In addition, as required by section 1886(e)(4) of the Act and, as explained in section III, below, we have taken into consideration the recommendations of ProPAC.

A. Update Factor for Prospective Payment Hospitals

Medicare program data indicate that hospitals generally did well during the prospective payment system's first two years, with payments exceeding costs for about 80 percent of all hospitals. In some cases, hospitals earned substantial profits. The high operating margins observed in the first two years appear to be due, in part, to rates that, because they were based on unaudited data, were initially overstated. We have therefore recommended in previous years a modest increase in the rates that was below the forecasted increase in the hospital market basket. We believe that such an approach is also the appropriate policy for FY 1988. In this way, the Medicare program would continue to benefit from the changes in hospital behavior that have resulted from the prospective payment system, while at the same time financial dislocation in hospitals would be avoided.

We believe a policy of steady restraint is warranted in view of the data showing that most hospitals have fared well under the prospective payment system. However, the effect of the prospective payment system varies widely across hospital type and region, and existing data do not warrant the conclusion that all of the variation is due to differences in hospital efficiency. Current data also indicate that the decline in average length of stay has at least temporarily stopped and that the average length of stay most recently increased slightly, suggesting that hospitals may be losing some of their ability to adjust to low update factors by reducing their costs. This means that we may well be in transition from the initial phase of the prospective payment system, during which hospitals have earned healthy profits, to a phase when profits may be lower. Nevertheless, we believe it is appropriate that the update factor be set at a level below the projected increase in the hospital market basket because we never fully adjusted the rates in previous years for past improvements in coding, efficiency and practice patterns. However, rather than provide for large increases or decreases in hospital rates based on hospital profit margin data from FY 1984, we believe that a policy of steady, gradual restraint is advisable.

The chart that follows provides an overview of our recommendation.

PROSPECTIVE PAYMENT UPDATE FACTOR FOR FY 1988

	Percent
FY 1988 market basket forecast	4.70
Correction for FY 1986 forecast error	−0.40
Composite policy target adjustment factor	−3.55
Total	0.75

The recommendation is based upon the following considerations:

1. Current Hospital Market Basket Index Forecast and Correction to the FY 1986 Forecast of Hospital Market Basket Index

The most recent forecasted hospital market basket increase for FY 1988 is 4.7 percent. The correction for the FY 1986 forecast of the hospital market basket index is −0.4 percent.

2. Policy Target Adjustment Factor

In the final rule that updated the prospective payment system for FY 1986 (September 3, 1985, 50 FR 35646), we stated (at 50 FR 35705) that the annual prospective payment percentage update factor should be set so that it provides incentives for desired outcomes under the prospective payment system. We also stated that, to achieve incentives

for the desired outcome, we must ensure that the annual prospective payment update factor takes proper account of variables affecting the cost, efficiency, effectiveness and quality of hospital inpatient care. We believe that our composite policy target adjustment factor (PTAF) appropriately takes into account those variables. The PTAF takes account of productivity, cost-effective technologies, and improvements in practice patterns.

The PTAF is termed as such for two reasons: the components of the PTAF are extremely difficult to quantify individually with existing data sources; and the components of the PTAF are likely to be policy-determined variables reflecting targets, rather than reflecting historical experience.

Productivity improvements result in increases in outputs when inputs are held constant. In competitive industries, consumers benefit from increases in productivity by paying lower prices. Sharing the savings from increased productivity provides desirable incentives for the prospective payment system.

The component for cost-effective technologies is intended to allow for diffusion of health-enhancing new technologies and scientific advances. As with productivity, there is limited historical data with which to set a prospective target empirically. While some technologies or scientific advances have cost-increasing effects, others generate immediate cost reductions. Furthermore, many new technologies involve substantial capital costs but relatively small increases in operating costs. For these reasons, we believe that rather small upward adjustments for new science and technology are sufficient to ensure that hospitals can continue to adopt new cost.effective medical technologies.

The adjustment for improved practice patterns is designed to ensure that the Federal government shares in the substantial savings that result from hospitals' improving practice patterns through cost effective use of resources. Improvements in practice patterns include shifts in the use of certain inpatient services for hospitalized patients to more appropriate lower cost settings and the elimination of services that do not give value for money expended; that is, reduced outputs are associated with improvements in practice patterns.

In the first three years of the prospective payment system, the average length of stay of Medicare beneficiaries in prospective payment system hospitals decreased by approximately 17 percent. (This represents a decline in length of stay for the first two years of about 18 percent and a slight increase of less than one percent for the third year.)[1]

Assuming a marginal cost rate of 60 percent, as is used in making payment for day outliers, a 17 percent reduction in length of stay would translate into a 10.2 percent reduction in costs. A more conservative marginal cost rate of 50 percent would translate into an 8.5 percent reduction in costs. In line with the conservative nature of our offsets, we believe it is appropriate that the Federal government share in these savings over a period of time. This adjustment is particularly appropriate in that the Medicare program continues to pay for care furnished in other settings that previously was furnished as part of inpatient hospital services.

3. Case-mix Adjustment

Although the average Medicare case mix in FY 1986 was greater than that in FY 1985, there was relatively little change in reported case mix over the course of FY 1986, suggesting that case mix change has begun to level off. Currently available data indicate that average Medicare case mix has increased 0.6 percent in FY 1987. Since this amount of change is small compared to increases in previous years, we are not at this time recommending an offset for coding improvement.

B. Update Factor for Hospitals Excluded from the Prospective Payment System

Section 1886(e)(4) of the Act, as amended by section 9302(e)(2) of Pub. L. 99–509, authorizes the Secretary after FY 1988 to promulgate update factors for those hospitals and units excluded from the prospective payment system that may be different from the update factor used for the prospective payment hospitals. Congress made this change in recognition of the fact that excluded hospitals and units may not be subject to the same incentives as prospective payment hospitals and, thus, may not have enjoyed some of the same benefits as prospective payment hospitals in terms of overall profitability. In view of section 1886(e)(4) of the Act, we believe it is appropriate to set forth our recommended FY 1988 update factor for the target rates of increase of excluded hospitals and units. The recommendation of 1.9 percent is derived from the elements in the table that follows.

UPDATE FACTOR FOR EXCLUDED HOSPITALS FOR FY 1988

	Percent
FY 1988 market basket forecast	4.7
Correction for FY 1987 forecast error	−0.4
Composite policy target adjustment factor	−2.4
Total	1.9

We are not recommending the same PTAF for hospitals excluded from the prospective payment system, since they have not faced the same incentives as prospective payment system hospitals. This is because they are not paid a fixed price per discharge, but rather continue to be paid on the basis of actual reasonable costs incurred subject to the target rate-of-increase limitation. We also have indications that some of the excluded hospitals (such as rehabilitation hospitals) are treating sicker patients than they did prior to the implementation of the prospective payment system since prospective payment hospitals are discharging their patients sooner. We believe that this phenomenon limits the ability of excluded hospitals to improve their practice patterns to the same extent as prospective payment hospitals.

We do believe, however, that excluded hospitals, like prospective payment hospitals, should be able to achieve productivity increases comparable to the economy as a whole. Similarly, we believe excluded hospitals should also benefit from an upward adjustment for new science and technology in order to ensure the continuing availability of the latest medical advances to Medicare patients in such hospitals.

III. ProPAC Recommendations and Secretary's Responses

ProPAC included five recommendations in its report concerning the update factor. These recommendations and our responses are as follows:

• Amount of the Update Factor for Prospective Payment Hospitals (Recommendation No. 1)

For FY 1988, the standardized amounts should be updated by the following factors:

—An average 1.8 percent reduction to reflect first-year prospective payment system cost information, with separate reductions for urban and rural hospitals of −1.9 and −1.1 percent, respectively.

[1] For consistency, these length-of-stay data reflect the exclusion of Massachusetts and New York hospitals from the prospective payment system for all years from FY 1983 through FY 1986 (even though, technically, Massachusetts and New York hospitals were included in the prospective payment system in FY 1986). If Massachusetts and New York hospitals were included for all years from FY 1983 through FY 1986, currently available billing data indicate that the cumulative decline in average length-of-stay would be about 19 percent.

—The projected increase in the hospital market basket (estimated at the time of ProPAC's report as 4.9 percent).
—A discretionary adjustment factor of 0.5 percent composed of the following two allowances:
+A −0.8 percent allowance for scientific and technological advancement, productivity change, and site-of-care substitution.
+A positive allowance for real case-mix change (estimated by ProPAC as 1.3 percent).

In addition, the diagnosis related group (DRG) weights should be adjusted to remove any increase in the average DRG weight occurring during FY 1987. (These adjustments are addressed in greater detail in recommendations two through four.)

Response: We concur with ProPAC that the congressionally mandated update of the market basket increase less 2.0 percentage points is too high, and that a lower update should be approved. Although the market basket increase was estimated at 4.9 percent when ProPAC issued its report, the market basket increase is currently estimated at 4.7 percent. In addition, our findings suggest that a −0.4 percent correction for forecast error is necessary. Comments on the components of Recommendation No. 1 are addressed in our responses to Recommendations Nos. 2 through 4, below.

• Adjustment to the Level of Standardized Amounts (Recommendation No. 2)

The update factor should include an adjustment to lower the standardized amounts an average of 5.4 percent, phased in over three years. The urban and rural standardized amounts should be reduced 5.7 percent and 3.3 percent, respectively, resulting in differential urban and rural updates of the standardized amounts. The reductions should be made in three equal increments averaging 1.8 percent beginning in FY 1988. The adjustments are based on ProPAC's judgment about how information on average Medicare costs per case from the first year of the prospective payment system should be incorporated into the update factor.

Response: We agree with ProPAC that the standardized amounts should be increased by less than market basket inflation in order to allow the program to share in the savings realized by hospitals under the prospective payment system. We also agree with ProPAC that it is best that sharing in these savings be accomplished over a period of time so that hospitals do not experience disruptions to their cash flows due to sharp changes in rates.

Reports of hospital profits have generated calls for "rebasing" the prospective payment system, that is, basing the rates on later data than was used originally to derive the rates. The rationale for rebasing is that the profits realized by hospitals are the result of rates that are too high, and rebasing on later data would produce rates that are lower and more consistent with actual hospital cost experience.

If rebasing were to be implemented, it is important to note that it may have unintended consequences due to actions that have been taken recently to fine-tune the existing system. An often overlooked fact is that Congress has already taken significant steps to increase payments for rural hospitals relative to urban hospitals.

First, section 9104 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272) reduced the amount of the additional payment to teaching hospitals for the indirect costs of medical education. Since most medical education programs are operated by large urban hospitals, the effect of this provision falls predominantly on urban hospitals.

Second, section 9302(b) of Pub. L. 99–509 mandated separate outlier reductions to the rates for urban and rural hospitals based on their differential outlier experience, effective for discharges on or after October 1, 1986. Since rural hospitals typically experience fewer outlier cases than urban hospitals, the effect of this change is to increase rural rates and to reduce urban rates relative to the previously uniform five percent outlier offset.

Third, section 9302(c) of Pub. L. 99–509 provides that the rates be computed on a discharge-weighted basis, rather than a hospital-weighted basis, effective for discharges in FY 1988. This change narrows the difference between the urban and rural standardized amounts by more than three percent.

Finally, section 9302(d) of Pub. L. 99–509 revised the criteria for rural hospitals to qualify as rural referral centers. We estimate that 60 additional rural hospitals will qualify as rural referral centers under the revised law.

While all these changes could be characterized as desirable fine-tuning adjustments that have improved the equity of the current system, our analyses indicate that their effect in conjunction with rebasing could be to produce a payment system that would over-compensate rural hospitals compared to urban hospitals. We believe that ProPAC's recommendation that there be different update factors for the urban and rural standardized amounts would similarly result in over-compensation for rural hospitals because ProPAC's analyses do not take these statutorily-mandated refinements into account. Therefore, we do not support different update factors for urban and rural hospitals.

We also differ with ProPAC with respect to the allowance for forecast error by which the change in the market basket is adjusted. ProPAC assumes no forecast error while we find, based on complete data, that the forecasted increase in the market basket for FY 1986 was overstated by 0.4 percent. We believe it is essential to the integrity of the process by which the rates are updated that forecast error not be carried forward in the rates indefinitely. We understand from discussions with ProPAC staff that their recommendation of no offset for forecast error is based on their position that the error to be corrected is in the FY 1987 increase, and that no correction should be made if the error is below .3 percent. However, we believe that if error exists, it should be corrected. Moreover, in accordance with the position we adopted in 1986 in response to comments on our proposed rates for FY 1987 (51 FR 31507), we agreed that we would correct forecast errors only after a year had ended so that a correction is based on actual price movements rather than based merely on a revised forecast. Therefore, our forecast error correction is for FY 1986, rather than for FY 1987. To the extent that the forecasted increase in the market basket for FY 1987 was inaccurate, it would be corrected once the actual price movements are reflected in the market basket database.÷

• Allowance for Scientific and Technological Advancement and Productivity Goals, and Site-of-Care Substitution (Recommendation No. 3)

For the FY 1988 payment rates, the allowance in the discretionary adjustment factor for scientific and technological advancement, productivity improvement, and substitution of site-of-service should be set at −0.8 percent. The specific allowances recommended are scientific and technological advancement, +0.5 percent; productivity improvement, −1.0; and site-of-care substitution, −0.3 percent.

Response: We are recommending that the composite policy target adjustment factor, which encompasses the areas dealt with by ProPAC in this recommendation, be set at −3.55 percent. While this is grater than ProPAC's recommended .0.8 percent, we note that there are certain differences between our methodology and ProPAC's. For example, our adjustment for improved practice patterns is not completely

comparable to ProPAC's adjustment for site-of-care substitution. We consider site-of-care substitution to be only one element of practice pattern improvements, reflecting the provision of services in other settings that previously had been furnished on an inpatient hospital basis. Our definition of practice pattern improvements also encompasses the elimination of unnecessary or cost-ineffective services. We also note that, while Pro-PAC recomends an average offset of 1.8 percent per year over the next three years to take account of more recent cost data, we have not made this same adjustment. However, since our PTAF reflects our estimate of an appropriate target for hospital performance, we believe it is appropriate that this estimate have reference to the data on past hospital performance under the prospective payment system. Therefore, we are accounting for some of the same phenomena as ProPAC, but our methodologies are somewhat different. Therefore, it is to be expected that our adjustment will also be somewhat different.

Adjustments for Case-Mix Change (Recommendation No. 4)

For FY 1988, the update of prospective payment system prices should be adjusted for three types of case-mix change in the following manner:

—A positive allowance in the discretionary adjustment factor for within-DRG case complexity change.
—A positive allowance in the discretionary adjustment factor for across-DRG real case-mix change.
—An across-the-board reduction in the DRG weights for increases in the case-mix indexes during FY 1987, currently estimated at 1.3 percent.

Therefore, the net change in the prospective payment system prices resulting from case-mix change should be 0.0 percent.

Response: As noted above, observed case mix for FY 1987 has increased 0.6 percent to date. Since this amount of change is small compared to increases in previous years, we are not at this time recommending an offset for coding improvements. However, we are concerned about the magnitude of ProPAC's recommended upward adjustment to reflect real case-mix change. Our data indicate that case mix has changed not by the magnitude reflected in ProPAC's recommendation but rather by a smaller amount.

In reviewing ProPAC's recommendation and the discussion justifying the recommendation, we do not believe that ProPAC's figures of 0.8 percent for across-DRG real case-mix change, and 0.5 percent for within-DRG case complexity change, are based on substantive information. ProPAC's estimate of 0.5 percent for within-DRG case complexity is based on its belief that case-mix change is now less pronounced than previously. ProPAC does not explain the basis for this belief or why a value of 0.5 percent was selected. Our position has been not to recognize such increases (although not denying that they may occur). We do not recognize changes in the mix of patients within DRGs (that is, severity of illness), because we do not believe that currently there is any satisfactory method for measuring such severity. However, we have analyzed the charges within each DRG. To the extent there have been within-DRG case-mix increases, we would expect to see increases in charges after controlling for market basket increases and factors that affect charge levels. We have observed no such increases.

With respect to changes in the case-mix index, ProPAC bases its estimate on past projections of 2.6 percent, halved to 1.3 percent to reflect the anticipated course of the case-mix trend. Our data, however, shows a relatively small case-mix increase.

• Update Factor for Excluded Hospitals and Distinct-Part Units (Recommendation No. 5).

For FY 1988, an update factor for the target rate-of-increase limit, separate from the prospective payment system update factor, should be used to update payment rates for the group of psychiatric, rehabilitation, and long-term care hospitals and hospital distinct-part units excluded from the prospective payment system. The update factor for the target rate-of-increase limit should reflect the projected increase in the hospital market basket for rehabilitation, psychiatric and long-term care hospitals, corrected for forecast errors, minus a 0.5 percent adjustment for productivity and scientific and technological advancement goals established for prospective payment hospitals.

For FY 1988, the target rate of increase factor for pediatric hospitals and distinct-part units should reflect the projected increase in the hospital market basket for prospective payment hospitals, corrected for forecast error, minus a 0.5 percent adjustment for the productivity and scientific advancement goals established for prospective payment hospitals.

Response: We are recommending an increase in the target rate-of-increase limit of 1.9 percent for all excluded hospitals and units. This recommended increase incorporates the latest available market basket forecast, as well as the offset for the market basket forecast correction. In addition, we are using a market basket that includes all types of hospitals. While we have been monitoring the market basket rate of increase for different categories of hospitals, we are not at this time adopting the use of such a different market basket for purposes of recommending an update factor for excluded hospitals. This is because historically the market basket increase for prospective payment hospitals has been the same as, or very close to, the increase for excluded hospitals. We will continue our monitoring of the various market baskets in this regard.

As indicated above, we also believe that the same PTAF should not be applied to excluded hospitals as is applied to prospective payment hospitals. We believe that our recommended update factor for excluded hospitals strikes the proper balance between recognizing projected input price changes and encouraging appropriate changes in hospital behavior. ProPAC's recommended updates for excluded hospitals would, in effect, pass through almost the entire amount of the forecasted market basket increase. We believe that this recommended increase is too high and would not maintain incentives for excluded hospitals to improve productivity and practice patterns.

Authority: Sections 1886 (e)(4) and (e)(5) of the Social Security Act as amended (42 U.S.C. 1385ww (e)(4) and (e)(5)).

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance)

Dated: June 4, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: June 4, 1987.

Don M. Newman,

Acting Secretary.

[FR Doc. 87-13122 Filed 6-5-87; 3:57 pm]

BILLING CODE 4120-01-M

National Institutes of Health

National Institute of Arthritis and Muculoskeletal and Skin Diseases, National Institute of Diabetes and Digestive and Kidney Diseases; Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee (AMS), National Institute of Arthritis and Musculoskeletal and Skin

Diseases, and certain subcommittees of the Diabetes and Digestive and Kidney Diseases Special Grants Review Committee (DDK), National Institute of Diabetes and Digestive and Kidney Diseases.

These meetings will be open to the public to discuss administrative details or other issues relating to committee activities as indicated in the notices. Attendance by the public will be limited to space available. Notice of the meeting rooms will be posted in the hotel lobby.

The publication of this meeting notice is less than the required 15 day timeframe due to the fact that definite meetings dates were difficult to schedule. The unanticipated delay was a result of the recent reorganization of the Diabetes and Digestive and Kidney Diseases Special Grants Review Committee (formerly the Arthritis, Diabetes, and Digestive and Kidney Diseases Special Grants Review Committee) and the establishment of the Arthritis and Musculoskeletal and Skin Disease Special Grants Review Committee. This not only involved the reassignment of various members but a redistribution of special grant applications to be reviewed.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual research grant applications. Discussion of these applications could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Carole Frank, Committee Management Officer, National Institute of Diabetes and Digestive and Kidney Diseases and the National Institute of Arthritis and Musculoskeletal and Skin Diseases, National Institutes of Health, Building 31, Room 9A19, Bethesda, Maryland 20892, 301–496–6917, will provide summaries of the meetings and rosters of the committee members upon request. Other information pertaining to the meetings can be obtained from the Executive Secretary indicated.

Name of Committee: Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee
Excutive Secretary: Dr. Tommy Broadwater, Westwood Building, Room 404, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301/496–7531
Date of Meeting: June 15, 1987
Place of Meeting: Hyatt Regency One Bethesda Metro Center Bethesda, Maryland 20814
Open: 8:30 a.m.–9:30 a.m.
Agenda: Review of administrative details
Closed: June 15, 9:30 a.m. to adjournment.
Closure Reason: To review grant applications.

(Catalog of Federal Domestic Assistance Progran No. 13.846, project grants in arthritis, musculoskeletal and skin diseases research, National Institutes of Health)

Name of Subcommittee: DDK-C
Excutive Secretary: Ms. Tommie Sue Tralka, Westwood Building, Room 406, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301/496–8830
Date of Meeting: June 18, 1987
Place of Meeting: Hyatt Regency One Bethesda Metro Center Bethesda, Maryland 20814
Open: 8:30 a.m.–9:30 a.m.
Agenda: Review of administrative details
Closed: June 18, 9:30 a.m. to adjournment.
Closure Reason: To review grant applications.

(Catalog of Federal Domestic Assistance Program No. 13.848, project grants in digestive diseases and nutrition research, National Institutes of Health)

Name of Subcommittee: DDK-D
Excutive Secretary: Dr. William Elzinga, Westwood Building, Room 421, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301/496–7546
Date of Meeting: June 15, 1987
Place of Meeting: Hyatt Regency, One Bethesda Metro Center, Bethesda, Maryland 20814
Open: June 15, 7:30 p.m.—8:30 p.m.
Agenda: Review of administrative details
Closed: June 15, 8:30 p.m. to adjournment
Closure Reason: To review grant applications.

(Catalog of Federal Domestic Assistance Program No. 13.849, project grants in kidney diseases, urology and hematology research, National Institutes of Health)

Dated: June 3 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–13342 Filed 6–10–87; 8:45 am]

BILLING CODE 4140–01–M

National Advisory Dental Research Council; Special Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a special meeting of the National Advisory Dental Research Council, National Institute of Dental Research, on July 31, 1987, Conference Room 7, Building 31, National Institutes of Health, Bethesda, Maryland.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the special meeting of the Council will be closed to the public on July 31 from 9 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Marie U. Nylen, Executive Secretary, National Advisory Dental Research Council, and Director, Extramural Programs, National Institute of Dental Research, National Institutes of Health, Westwood Building, Room 503, Bethesda, Maryland 20892, (telephone 301–496–7723) will furnish a roster of committee members, a summary of the meeting, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program Nos. 13.121 Diseases of the Teeth and Support Tissues; Caries and Restorative Materials; Periodontal and Soft Tissue Diseases; 13.122-Disorders of Structure, Function, and Behavior: Craniofacial Anomalies, Pain Control, and Behavioral Studies; 13.845-Dental Research Institutes; National Institutes of Health.

Dated: June 3, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–13344 Filed 6–10–87; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Irrigation Operation and Maintenance Charges; Water Charges and Related Information on the Flathead Irrigation Project, Montana

This notice of proposed operation and maintenance rates and related information is published under the authority delegated to the Assistant Secretary—Indian Affairs by the Secretary of the Interior in 230 DM 1 and redelegated by the Assistant Secretary—Indian Affairs to the Area Director in 10 BIAM 3.

This notice is given in accordance with § 171.1(e) of Part 171, Chapter 1, of

Title 25 of the Code of Federal Regulations, which provides for the Area Director to fix and announce the rates for operation and maintenance assessments and related information of the Flathead Irrigation Project for Calendar Year 1988 and subsequent years.

This notice sets forth changes to the operation and maintenance charges and related information applicable to the Flathead Irrigation Project, St. Ignatius, Montana. These charges were proposed pursuant to the authority contained in the Acts of August 1, 1913 and March 7, 1928. (38 Stat. 583, 25 U.S.C. 382; 45 Stat. 210,25 U.S.C. 387).

In compliance with the above, the operation and maintenance charges for the lands under the Flathead Irrigation Project, Montana, for the season of 1988 and subsequent years until further notice, and hereby fixed as follows:

Lands included in an Irrigation District, lands held in trust for Indian and non-District lands will be assessed operation and maintenance charges at $14.67 per acre for the season of 1988.

Payment

The operation and maintenance charges on the trust and non-District lands become due on April 1 each year and on the lands within an Irrigation district are biannually billed. To all assessments on lands in non-Indian ownership, remaining unpaid 60 days after the due date, there shall be added a penalty of one and one-half percent per month, or fraction thereof, from the due date until paid. No water shall be delivered to any farm until all O&M charges have been paid.

Purpose

The purpose of this notice is to announce an increase in the assessment rates commensurate with actual operation and maintenance costs on the Flathead irrigation Project. The public is welcome to participate in the rule making process of the Department of the Interior.

Accordingly, interested persons may submit written comments, views or arguments with respect to the proposed rates and related regulations to the Area Director, Portland Area Office, Bureau of Indian Affairs, Post Office Box 3785, Portland, Oregon 97208, within 30 calendar days of this publication.

Stanley M. Speaks,

Area Director.

[FR Doc. 87-13369 Filed 6-10-87 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[AK-967-4213-15 and AA-50379-09]

Alaska Native Claims Selection; Chugach Alaska Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 22(f) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1621(f), and sections 1302(h) and 1430(a) of the Alaska National Interest Lands Conservation Act of December 2, 1980, 94 Stat. 2371, 2475, 2531, will be issued to Chugach Alaska Corporation for 99.90 acres. The lands involved are in the vicinity of Whittier, Alaska:

Lots 1 and 2 of U.S. Survey No. 8857, situated on Shotgun Cove, 4 miles easterly of Whittier, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Cordova Times*. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal Government or regional corporation, shall have until July 13, 1987 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Terry R. Hassett,

Chief, Branch of KCS Adjudication.

[FR Doc. 87-13374 Filed 6-10-87; 8:45 am]

BILLING CODE 4310-JA-M

[MT-020-06-4212-13; M-72425]

South Dakota; Realty Action, Mineral Exchange

AGENCY: Bureau of Land Management, Miles City District Office, Interior.

ACTION: Notice of Realty Action M-72425 (SD) Exchange of public and private minerals in Custer County, South Dakota.

SUMMARY: The following described mineral estate has been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716.

Black Hills Meridian

T. 5 S., R. 6 E.,
Sec. 25, All.
Containing 640 acres of public lands.

In exchange for this mineral estate, the United States will acquire the following mineral estate from the South Dakota Department of School and Public Lands:

Black Hills Meridian

T. 5 S., R. 6 E.,
Sec. 16, All.
Containing 640 acres of private lands.

DATES: For a period of 45 days from the date of this notice interested parties may submit comments to the Bureau of Land Management at the address shown below. Any adverse comments will be evaluated by the BLM, Montana State Director, who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Information related to the exchange, including the environmental assessment and land report is available for review at the Miles City District Office, Garryowen Road, P.O. Box 940, Miles City, Montana.

SUPPLEMENTARY INFORMATION: The publication of this notice segregates the mineral estates described above from sale, exploration and entry under the public land laws, including the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976. The exchange will be made subject to all valid existing rights (e.g., rights-of-way, easements and leases of record).

The purpose of this exchange is to place federal mineral estate under existing federal surface administered by National Park Service and place state mineral estate under existing South Dakota Department of School and Public Lands administered surface. The mineral estates have been appraised at equal value. This exchange is consistent with the Bureau of Land Management and National Park Service plans and policies. It has been discussed with state

and local officials. The intended time of the exchange is July of 1987.

June 2, 1987.

Sandra E. Sacher,

Acting District Manager.

[FR Doc. 87-13393 Filed 6-10-87; 8:45 am]

BILLING CODE 4310-DV-M

[NM-030-07-4920-10-7769; NM NM 61209, NM NM 62341, NM NM 68034]

Conveyance and Order Providing for Opening of Public Lands in Dona Ana, Sierra, Otero, Socorro, Lincoln, and San Juan Counties, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States issued exchange conveyance documents to the State of New Mexico on December 30, 1986, and May 1, 1987, under the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716. The conveyance is for the surface estate only in lands in Dona Ana County as described in Notice of Realty Action published in the **Federal Register**, Volume 50, No. 153, dated August 8, 1985.

In exchange for these lands, the United States acquired the surface estate only in lands in Dona Ana, Sierra, Otero, Socorro, and Lincoln Counties as described in Notice of Realty Action published in the **Federal Register**, Volume 50, No. 153, dated August 8, 1985, and the surface estate of the following described lands located within San Juan County:

New Mexico Principal Meridian

T. 24 N., R. 12 W.,
Sec. 9, lots 1, 2, 7–10, inclusive, 15, and 16;
Sec. 10, lots 1–16, inclusive;
Sec. 11, lots 1–16, inclusive;
Sec. 15, lots 3–6, inclusive, 11, 12, and 13;
Sec. 16.

The purpose of this exchange was to acquire the non-Federal lands within the White Sands Missile Range, Organ Mountain Recreation Area, and De-na-zin Wilderness Area for use in support of the Federal Government's defense program and the Bureau of Land Management's recreation and wilderness programs.

The values of the Federal public land and the non-Federal land in the exchange were equal.

At 9 a.m. on July 20, 1987, the lands shall be open to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law.

Dated: June 3, 1987.

Monte G. Jordan,

Associate State Director.

[FR Doc. 87-13302 Filed 6-10-87; 8:45 am]

BILLING CODE 4310-FB-M

[CA-060-87-4333-10]

Availability of Draft Management Plan and Environmental Assessment; East Mojave National Scenic Area, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management, California Desert District, is making available to the public the East Mojave National Scenic Area Draft Management Plan and Environmental Assessment and is establishing a public comment period and meeting schedule.

SUPPLEMENTARY INFORMATION: The draft of a 10-year plan for management of the East Mojave National Scenic Area recreation, scenic and associated resources, accompanied by a Draft Environmental Assessment of the proposed Federal action, has been published by the Bureau of Land Management, California Desert District, and is available for public review and comment. Copies of the Draft Plan and Environmental Assessment are available at BLM District offices in Riverside, Palm Springs, Barstow, Ridgecrest, Needles and El Centro. The formal comment period will close August 5, 1987, and the Final Plan and Environmental Assessment are scheduled for public release in mid-October, 1987.

Informal public workshops and more formal public meetings will be conducted July 6 in San Bernardino, CA; July 7 in Barstow and Van Nuys, CA; July 8 in Needles and San Pedro, CA; July 14 in Sacramento and Anaheim, CA; and July 15 in San Diego, CA and Las Vegas, NV. Specific meeting room locations will be announced at a later date. More information will be available at all BLM offices listed above.

The East Mojave National Scenic Area is an integral part of the California Desert Conservation Area designated by Congress in 1976, and contains 1.3 million acres of public lands bordered by Interstate 15 on the north, Interstate 40 on the south, and the Nevada state line on the east, all within the County of San Bernardino in Southern California. The Scenic Area was created by former Secretary of the Interior Cecil Andrus in January, 1981, as the first official act in implementation of the California Desert Plan.

The Draft East Mojave National Scenic Area Management Plan and Environmental Assessment reviews all resources and uses in the Scenic Area, with primary attention paid to land tenure adjustment, off-highway vehicle use, enhancement of recreation opportunities and improvement of the Area's scenic qualities.

FOR FURTHER INFORMATION, CONTACT: John Bailey, Scenic Area Manager, Needles Resource Area, Bureau of Land Management, 101 W. Spikes Road, Needles, CA 92363 (619) 326-3896.

Dated: June 3, 1987.

Gerald E. Hillier

District Manager

[FR Doc. 87-13291 Filed 6-10-87; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-07-4212-13; CA 18779]

Realty Action; Exchange of Public and Private Lands and Order Providing for Opening of Public Land; Riverside Co., CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of issuance of land exchange conveyance document and order providing for opening of public land.

ADDRESS: Inquiries concerning the land should be addressed to: Chief, Branch of Adjudication and Records, Bureau of Land Management, California State Office, 2800 Cottage Way (Room E-2841), Sacramento, California 95825.

SUMMARY: The purpose of this exchange was to acquire a portion of the non-Federal land within the proposed 13,030-acre preserve for the Coachella Valley fringe-toed lizard. The lizard is Federally listed as threatened and State listed as endangered. The Bureau of Land Management's goal is to acquire approximately 6,700 acres within the preserve. The land being acquired does not constitute habitat for the lizard, but provides a sand source required for the continuing production of active sand dune areas that are critical habitat for the lizard. Other State and Federal agencies will acquire the remaining portion for the preserve.

The public interest was well served through completion of this exchange. The land acquired in this exchange will be opened to operation of the public land laws and to the full operation of the United States mining laws and mineral leasing laws.

FOR FURTHER INFORMATION CONTACT: Dianna Storey, California State Office, (916) 978-4815

1. The United States issued an exchange conveyance document to The Nature Conservance on May 20, 1987, under section 206 of the Act of October 21, 1976 (43 U.S.C. 1716) for the following described land:

San Bernardino Meridian, California

T. 3 S., R. 4E.,
Sec. 32, NE¼NE¼.

Containing 40 acres of public land in Riverside County.

2. In exchange for this land, the United States acquired the following described land from The Nature Conservancy:

San Bernardino Meridian, California

T. 4 S., R. 6E.,
Sec. 11, A11.

Containing 640 acres of non-Federal land in Riverside County.

3. A payment in the amount of $1,500.00 has been paid to the United States by The Nature Conservancy to equalize the values between the non-Federal land and the public land.

4. At 10 a.m. on July 15, 1987, the non-Federal land described above shall be open to operation of the public land laws generally, subject to valid existing rights and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on July 15, 1987 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

5. At 10 a.m. on July 15, 1987, the non-Federal land described shall be open to location under the United States mining laws. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of opening is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

6. At 10 a.m. on July 15, 1987, the non-Federal land described above shall be open to applications and offers under the mineral leasing laws.

Dated: June 3, 1987.

Sharon N. Janis,

Chief, Branch of Adjudication and Records.

[FR Doc. 87-13296 Filed 6-10-87; 8:45 am]

BILLING CODE 4310-40-M

[ID-040-4341-14-24-10]

Salmon District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Salmon District of the Bureau of Land Management (BLM) announces a forthcoming meeting of the Salmon District Advisory Council.

DATE: The meeting will be held Tuesday, July 14, 1987 at 9:00 a.m.

ADDRESS: The meeting will be held at the Salmon District Office, Bureau of Land Management, Conference Room, South Highway 93, Salmon, Idaho 83467.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with Public Laws 92-463 and 94-579. Agenda topics for the meeting include:

(1) A report to the Council by the working group for the Pilot Riparian project.

(2) The Salmon District easement acquisition plan.

(3) The Salmon District river exchange program.

(4) The Salmon District plan amendment for designation of Areas of Critical Environmental Concern (ACEC) and Research Natural Areas (RNA).

The meeting is open to the public. Interested persons may make oral statements to the Council between 10:00 a.m. and 10:30 a.m., or file written statements for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager at the Salmon District Office by July 10, 1987.

Summary minutes of the meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting. Notification of oral statements and requests for summary minutes should be sent to: Jerry W. Goodman, District Manager, Bureau of Land Management, Salmon District Office, P.O. Box 430, Salmon, Idaho 83467.

Dated: June 4, 1987.

Robert W. Heidemann,

Associate District Manager.

[FR Doc. 87-13293 Filed 6-10-87; 8:45am]

BILLING CODE 4310-GG-M

[(CO-940-87-4111-15; C-44514)]

Colorado; Proposed Reinstatement, Oil and Gas Leases

Notice is hereby given that a petition for reinstatement of oil and gas lease C-44514 for lands in Moffat County, Colorado, was timely filed and was accompanied by all the required rentals and royalties accruing from March 1, 1987, the date of termination.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5.00 and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee for the lease and has reimbursed the Bureau of Land Management for the estimated cost of this **Federal Register** notice.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920, as amended, (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective March 1, 1987, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Karen Purvis of the Colorado State Office at (303) 236-1772.

Richard E. Richards,

Supervisor Oil and Ga/Geothermal Leasing Unit.

[FR Doc. 87-13294 Filed 6-10-87; 8:45 am]

BILLING CODE 4310-JB-M

[ID-040-4410-08]

Salmon District; Challis MFP Plan Amendment; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: To amend **Federal Register** Notice Volume 52, Number 68, page 11562, dated April 9, 1987, concerning Challis MFP Plan Amendment. This amended notice also includes the Ellis-Pahsimeroi Management Framework Plan (MFP).

SUPPLEMENTARY INFORMATION: In the course of making an inventory of Land Tenure Adjustment Opportunities in the Challis MFP area, five parcels of land fell across the boundary into the Ellis-Pahsimeroi MFP area. Therefore, a category I amendment will also be prepared for the five parcels of land in the Ellis-Pahsimeroi MFP area.

Dated: May 27, 1987.

Shirley Alder,

Acting District Manager.

[FR Doc. 87-13292 Filed 6-10-87; 8:45 am]

BILLING CODE 4310-GG-M

[WY-920-07-4111-15; W-99465]

Wyoming; Proposed Reinstatement of Terminated Oil and Gas Lease

June 4, 1987.

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W-99465 for lands in Carbon County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $106.25 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-99465 effective July 1, 1986, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 87-13295 Filed 6-10-87; 8:45 am]

BILLING CODE 4310-22-M

[AZ-940-07-4212-14; A-21805]

Realty Action; Arizona

June 4, 1987.

AGENCY: Bureau of Land Management.

ACTION: Sale of Public Land in Cochise County, Arizona.

SUMMARY: Notice is hereby given that pursuant to sections 203 and 209 of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2750, 2757; 43 U.S.C. 1713, 1719), Roy W. and Geraldine G. McGoffin have purchased, by modified competitive sale, at the fair market value of $24,003.00, plus $50.00 for purchase of the mineral estate, public land in Cochise County, Arizona described as follows.

Gila and Salt River Meridian, Arizona

T. 16 S., R. 22 E.,

Sec. 9, SE¼NW¼, NE¼SW¼.

The area described aggregates 80.00 acres, according to the official plat of survey of said land, on file in the Bureau of Land Management.

The purpose of this notice is to inform the public and interested State and local government officials of the issuance of the patent to the above-named patentees.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87-13297 Filed 6-10-87; 8:45 am]

BILLING CODE 4310-32-M

[MT-920-07-4520-11]

Montana; Filing of Plats of Survey

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of filing of plats of survey.

SUMMARY: Plats of survey of the lands described below accepted April 22, 1987, April 24, 1987, and April 27, 1987, were officially filed in the Montana State Office effective 10 a.m. on May 26, 1987.

Principal Meridian, Montana

T. 25 N., R. 32 W.

The plat, in three sheets, representing the dependent resurvey of portions of the east, west, and north boundaries, a portion of the subdivisional lines, the subdivision of sections 12, 14, and 35, and Homestead Entry Surveys No. 908 and No. 917; and the survey of the subdivision of sections 2, 5, 6, 7, 8, 9, 11, 13, 26, 35, and Tract 37, Township 25 North, Range 32 West, Principal Meridian, Montana, was accepted April 27, 1987. The area described is in Sanders County.

This survey was executed at the request of the U.S. Forest Service.

Principal Meridian, Montana

T. 1 S., R. 26 E.

The plat representing the dependent resurvey of a portion of the east boundary and a portion of the subdivisional lines; and the survey of the subdivision of section 25, Township 1 South, Range 26 East, Principal Meridian, Montana, was accepted April 22, 1987. The area described is in Yellowstone County.

This survey was executed at the request of the Miles City District Office for the administrative needs of the Bureau.

Principal Meridian, Montana

T. 6 S., R. 12 W.

The plat, in two sheets, representing the dependent resurvey of a portion of the east boundary, a portion of the subdivisional lines, and certain boundaries of mineral surveys; and the survey of the subdivision of sections 13 and 24, Township 6 South, Range 12 West, Principal Meridian, Montana, was accepted April 24, 1987. The area described is in Beaverhead County.

Principal Meridian, Montana

T. 6 S., R. 11 W.

The plat representing the dependent resurvey of a portion of the subdivisional lines; and the survey of the subdivision of section 18, Township 6 South, Range 11 West, Principal Meridian, Montana, was accepted April 24, 1987. The area described is in Beaverhead County.

These surveys were executed at the request of the Butte District Office for the administrative needs of the Bureau.

EFFECTIVE DATE: May 26, 1987.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107.

Dated: June 2, 1987.

Marvin LeNoue,

Acting State Director.

[FR Doc. 87-13298 Filed 6-10-87; 8:45 am]

BILLING CODE 4310-DN-M

[NM 940-07-4520-12]

New Mexico; Filing of Plat of Survey

June 4, 1987.

The plats of survey described below were officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10:00 a.m. on June 2, 1987.

A survey representing:

—The dependent resurvey of a portion of the subdivisional lines, and the survey of the meander line of the present left bank of the Canadian River in section 19, Township 8 North, Range 2 West, IM, Oklahoma.

—The dependent resurvey of a portion of the subdivisional lines, a portion of the subdivision of section 35, the adjusted record meanders of the left bank of the Canadian River, the subdivision of section 35, and the survey of the meanders of a portion of the present left bank of the Canadian River in section 35, Township 6 North, Range 3 East, IM, Oklahoma.

—The dependent resurvey of a portion of the subdivisional lines, the

subdivision of section 21, and the survey of a portion of the meander lines of the present left bank of the Canadian River in section 21, Township 14 North, Range 13 West, IM, Oklahoma.

—The dependent resurvey of a portion of the subdivisional lines, the adjusted record meander line of the left bank of the Canadian River, the subdivision of a portion of section 7, and the survey of the meander lines of the present left bank of the Canadian River in section 7, Township 12 North, Range 10 West, IM, Oklahoma.

—The dependent resurvey of a portion of the subdivisional lines, the subdivision of section 11, and the survey of the meander line of the present left bank of the Canadian River, in section 11, Township 10 North, Range 7 West, IM, Oklahoma.

—The dependent resurvey of a portion of the subdivisional lines, the subdivision of section 18, and the survey of the meander lines of the present left bank of the Canadian River, in section 18, Township 9 North, Range 3 West, IM, Oklahoma, under Group 44 OK.

The survey was requested by the BLM Area Manager, Oklahoma Resource Area Headquarters (ORAH), Oklahoma.

The dependent resurvey of a portion of the Third Standard Parallel South, a portion of the subdivisional lines, and the subdivision of section 34, Township 15 South, Range 10 East, New Mexico Principal Meridian, New Mexico, under Group 857, NM.

These surveys were requested by the District Manager, Las Cruces District, New Mexico.

The plats will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504. Copies of the plats may be obtained from that office upon payment of $2.50 per sheet.

Kelley R. Williamson, Jr.,

Acting Chief, Branch of Cadastral Survey.

[FR Doc. 87-13299 Filed 6-10-87; 8:45 am]

BILLING CODE 4310-FB-M

[NM 940-07-4520-12-0850]

New Mexico; Filing of Plat of Survey

May 29, 1987.

The plat of survey described below was officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10:00 a.m. on May 29, 1987.

The survey representing the retracement of a portion of the subdivisional lines and a portion of the De-Na-Zin Wilderness Area Boundary, Township 24 North, Range 11 West, New Mexico Principal Meridian, New Mexico.

This survey was requested by the State Director, New Mexico State Office, Santa Fe, New Mexico.

The plat will be in the open files of the New Mexico State Office, Bureau of Land Management, P. O. Box 1449, Santa Fe, New Mexico 87504. Copies of the plat may be obtained from that office upon payment of $2.50 per sheet.

Kelley R. Williamson Jr.,

Acting Chief Branch of Cadastral Survey.

[FR Doc. 87-13300 Filed 6-10-18; 8:45 am]

BILLING CODE 4310-FB-M

[NM-940-07-4220-11; NM NM 0184187]

New Mexico; Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service, U.S. Department of Agriculture proposes that a 182.79-acre withdrawal for the Tunnel Spring Recreation Area continue for an additional 20 years. The land will remain closed to location and entry under the mining laws, and has been and will remain open to leasing under the mineral leasing laws.

DATE: Comments should be received by September 9, 1987.

ADDRESS: Comments should be sent to: New Mexico State Director, P.O. Box 1449, Santa Fe, NM 87504-1449.

FOR FURTHER INFORMATION CONTACT: Kay Thomas, BLM, New Mexico State Office, 505-988-6589.

The Forest Service, U.S. Department of Agriculture, proposes that the existing land withdrawal made by Public Land Order No. 2798 dated October 19, 1962, be continued for a period of 20 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian

Cibola National Forest

T. 12 N., R. 5 E.,

Sec. 5, lots 4 to 10, inclusive, S½SW¼, excluding that portion lying within the boundary of the Sandia Mountain Wilderness (PL 95-237 as amended by PL 96-248).

The area described contains approximately 182.79 acres in Sandoval County.

The purpose of the withdrawal is for protection of substantial capital improvements on the Sandia Ranger District, Cibola National Forest. The withdrawal closed the described lands to mining but not to surface entry or mineral leasing. No change in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued, and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Dated: June 4, 1987.

Monte G. Jordan,

Associate State Director.

[FR Doc. 87-13301 Filed 6-10-87; 8:45 am]

BILLING CODE 4310-FB-M

[AZ-020-4410-10]

Environmental Impact Statement; Availability; Lower Gila South Planning Area, AZ

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability of scoping documentation, Environmental Assessment of off-road vehicle designation and the Monitoring Plan for the (LGS) Resource Management Plan (RMP).

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, 40 CFR Part 1500 and 43 CFR 1610.4-9 the Bureau of Land Management has reviewed five areas identified through the scoping process for consideration as Areas of Critical Environment Concern. None of these areas met the criteria of relevance and importance and will not receive further consideration for ACEC designation.

Also reviewed through the scoping process was the designation of off-road vehicle (ORV) use areas. An environmental assessment of these alternatives has been prepared on ORV designation of 2,009,232 acres of public lands within the Lower Gila South (LGS) planning area.

The bureau has also prepared a monitoring plan for the LGS/RMP which specifies the monitoring standards and intervals that will be followed to insure the goals and objectives of the RMP are met.

SUPPLEMENTARY INFORMATION: Copies of the scoping documentation, the EA and the Monitoring Plan are available from BLM's Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Public comments on the EA will be accepted for a period of thirty (30) days following publication of this notice. For further information contact William T. Childress, Lower Gila Resource Area Manager, may be telephone at 602–863–4464. Reading copies may be reviewed at BLM's Arizona State Office, 3707 N. 7th Street, Phoenix, Arizona 85011, phone 602–241–5504.

Dated: June 2, 1987.

Henri R. Bisson,

District Manager.

[FR Doc. 87–13375 Filed 6–10–87; 8:45 am]

BILLING CODE 4310–32–M

Fish and Wildlife Service

Receipt of Applications for Permits; Gary R. Walker

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Gary R. Walker, Pueblo, CO—PRT–717432

The applicant requests a permit to import a sport-hunted trophy from a bontebok (*Damalicus dorcas dorcas*) which was a member of a captive herd maintained by Theo Erasmus, Orange Free State, Republic of South Africa. The herd is maintained for the purpose of sport hunting. The applicant contends that permission to import this trophy will enhance the likelihood of the continued maintenance of this herd and thereby enhance the likelihood of the survival of the species.

Applicant: Honolulu Zoo, Honolulu, HI—PRT–718217

The applicant requests a permit to import two pairs of captive born gavials (*Gavialis gangeticus*) from Arignar Anna Zoological Park, Tamil Nadu, South India, for the purposes of captive propagation and exhibition.

Applicant: Massachusetts Division of Fisheries and Wildlife, Boston, MA—PRT–685757

The applicant requests renewal and amendment of their previous Endangered Species permit by increasing the number of red-bellied turtles (Pseudemys rubriventris bangsi) they were previously authorized to capture for headstarting from 20 hatchlings to up to 200 hatchings annually.

Applicant: Robert Michel, Elmhurst, IL—PRT–71628

The applicant requests a permit to import a sport-hunted trophy from a bontebok (*Damalicus dorcas dorcas*) which was a member of a captive herd maintained by G. A. Sparks, Farm Clifton, Queenstown Republic of South Africa. The herd is maintained for the purpose of sport hunting. The applicant contends that permission to import this trophy will enhance the likelihood of the continued maintenance of this herd and thereby enhance the likelihood of the survival of the species.

Applicant: Vargas Productions, North Hollywood, CA—PRT–717784

In 52 CFR 17643, May 11, 1987, the Notice of Receipt for this application states that the applicant was requesting a permit to export and re-import two female Asian elephants (*Elephas maximus*) that are being held in captivity for the purpose of conservation education. In addition, the applicant is requesting to purchase these elephants from their original owner. The public comment period will not be extended and will terminate June 11, 1987.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: May 20, 1987.

R. K. Robinson,

Chief, Branch of Permits Federal Wildlife Permit Office.

[FR Doc. 87–11997 Filed 6–10–87; 8:45 am]

BILLING CODE 4310–55–M

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

International Animal Exchange–Ferndale, MI–PRT–718279

The applicant requests a permit to purchase in foreign commerce from the Rangoon Zoological Gardens, Rangoon, Burma, and sell and ship to the Taipei Municipal Zoo, Taipei, Taiwan, two female mandrills (*Papio sphinx*) born at the Rangoon Zoo. The mandrills are to be used for enhancement of the propagation and survival of the species through captive propagation and education of the public about the conservation needs of the species.

Applicant: ECOS Management Criteria, Inc., Cypress, CA—PRT–718459

The applicant requests a permit to live-capture and immediately release giant kangaroo rats (*Dipodomys ingens*) during a survey of Los Gatos and Warthan Creek Reservoir sites in California to determine the status and distribution of this species in the survey sites. Applicant will also survey for the San Joaquin kit fox (*Vulpes macrotis mutica*) and blunt-nosed leopard lizard (*Gambelia silus*) by walking transects and using spotlights at night.

Applicant: St. Louis District-U.S. Army Corps of Engineers, St. Louis, MO–PRT–718291

The applicant requests a permit to take 100 to 200 individuals of Higgins' eye pearly mussel (*Lampsilis higginsi*) and pink mucket pearly mussel (*Lampsilis orbiculata*) from the Mississippi River, Wisconsin and Iowa, the Meramec River, Missousi, The Osage River, Missouri, the Black River System, Arkansas, the White Water System, Arkansas and Missouri, the Lower Ohio River, Kentucky, the Kanawha River, West Virginia, the Cumberland River, Tennessee, and the Tennessee River, Tennessee and Alabama for the prupose of scientific research. The applicant plans to evaluate the taxonomic status of these species, determine feasibility of rearing and seeding juveniles, and conduct an impact study of tow traffic.e Five thousand individuals are expected to be released back to the Mississippi River.

Applicant: Humbert Thummler c/o Conroe Taxidermy, Conroe, TX–PRT–713914

The applicant requests a permit to import a trophy from a bontebok (*Damaliscus dorcas dorcas*) which was a member of a captive herd maintained by E.L. Pringle, Bedford, Republic of South Africa. The herd is maintained for the purpose of sport hunting. The applicant contends that permission to import this trophy will enhance the

likelihood of the continued maintenance of this herd and thereby enhance the likelihood of the survival of the species.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: May 22, 1987.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 87-12196 Filed 6-10-87; 8:45am]

BILLING CODE 4310-55-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-355 (Final)]

Certain Silica Filament Fabric From Japan

AGENCY: International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-355 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of woven fabrics, of glass (silica filaments), whether or not colored, containing not over 17 percent of wool by weight, provided for in items 338.25 and 338.27 of the Tariff Schedules of the United States, that have been found by the Department of Commerce, in a preliminary determination to be sold in the United States at less than fair value (LTFV). Unless the investigation is extended, Commerce will make its final LTFV determination on or before July 20, 1987 and the Commission will make its final injury determination by September 9, 1987 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: May 13, 1987.

FOR FURTHER INFORMATION CONTACT: Stephen A. Vastagh (202-523-0283), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-523-0161.

SUPPLEMENTARY INFORMATION:

Background.

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of certain silica filament fabric from Japan are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigation was requested in a petition filed on October 27, 1986, by counsel on behalf of Ametek, Inc. (Haveg Division), of Wilmington, DE, and HITCO of Newport Beach, CA. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise.

Participation in the investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register.** Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the 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.

Staff report

A public version of the prehearing staff report in this investigation will be placed in the public record on July 21, 1987, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on August 5, 1987, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearings should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on July 29, 1987. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on July 31, 1987, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is July 31, 1987.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with

§ 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of section 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on August 12, 1987. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before August 12, 1987.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in th Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be sumitted 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 (19 CFR 201.6).

Authority: This investigation is being conducted by under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: June 5, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-13271 Filed 6-10-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-341, 344, 345 (Final)]

Tapered Roller Bearings and Parts Thereof, and Certain Housings Incorporating Tapered Rollers From Hungary, The People's Republic of China, and Romania

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 735(b)(1) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)(1)), that an industry in the United States is materially injured by reason of imports from Hungary, the People's Republic of China and Romania of tapered roller bearings and parts thereof, and certain housings incorporating tapered rollers, all the foregoing provided for in items 680.3040, 680.3932, 680.3934, 680.3938, 680.3940, 681.1010, or 692.3295 of the Tariff Schedules of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value LTFV).

Further, pursuant to section 735(b)(4)(A) of the Act (19 U.S.C. 1673d(b)(4)(A)), the Commission determines that the material injury in the investigation involving imports from Romania is not by reason of massive imports over a relatively short period to an extent that, in order to prevent such material injury from recurring, it is necessary to impose the antidumping duty retroactively on these imports.

Background

The Commission instituted this investigation effective February 6, 1987, following preliminary determinations by the Department of Commerce that imports of the subject merchandise from Hungary, the People's Republic of China, and Romania are being sold at LTFVwithin the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of February 26, 1987 (52 FR 5841). The hearing was held in Washington, DC, on May 12, 1987, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on June 5, 1987. The views of the Commission are contained in USITC Publication 1983 (June 1987), entitled "Tapered Roller Bearings and Parts Thereof, and Certain Housings Incorporating Tapered Rollers from Hungary, The People's Republic of China, and Romania: Determinations of the Commission in Investigations Nos. 731-TA-341, 344, and 345 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

Issued: June 5, 1987.

By Order of the Commission:

Kenneth R. Mason,

Secretary.

[FR Doc. 87-13272 Filed 6-10-87; 8:45 am]

BILLING CODE 7020-02-M

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Chairman Liebeler and Vice Chairman Brunsdale dissenting.

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-19 (Sub-No. 135X)]

The Baltimore and Ohio Railroad Co.—Abandonment Exemption; Athens and Washington Counties, OH; Correction

June 2, 1987.

A notice of exemption was published in the **Federal Register** on May 1, 1987, with respect to the abandonment by The Baltimore and Ohio Railroad Company which has merged into The Chesapeake and Ohio Railway Company (C&O) of its line between Milepost 159.6, V.S. 8420+56, at or near Athens and Milepost 189.6, V.S. 10006+00, at or near Belpre, a distance of approximately 30 miles in Athens and Washington Counties, OH.

By letter dated May 6, 1987, C&O states that it does not presently desire to abandon approximately 0.8 miles of this line. Accordingly, the notice of exemption must be modified by describing the C&O line now proposed for abandonment as between Milepost 159.6, V.S. 8420+56, at or near Athens and Milepost 188.8, V.S. 9963+16, at or near Belpre, a distance of approximately 29.2 miles in Athens and Washington Counties, OH.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-13058 Filed 6-10-87; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-288X]

Franklin County Railroad Corp.—Abandonment Exemption; Decision—Franklin County, NC

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed exemption.

SUMMARY: Franklin County Railroad Corporation (Franklin) has filed a petition seeking an exemption under 49 U.S.C. 10505 from the requirements of 49 U.S.C. 10903, *et seq.*, to abandon service over its entire 9.64 mile line of railroad between Franklinton, NC, and Louisburg, NC. The Commission has determined that there should be notice and comment because the impact of the proposed abandonment on shippers using this line cannot be ascertained from the present record.

We are requiring Franklin to serve a copy of our decision in this proceeding on all shippers on the line within 5 days of the decision service date.

DATES: Comments must be filed with the Commission and served on petitioner's representative by July 1, 1987. Replies to the comments must be filed by July 13, 1987.

ADDRESSES: Send an original and 10 copies of comments and replies referring to Docket No. AB–288X to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

Send one copy to petitioner's representative: Fritz R. Kahn, Suite 1000, 1660 L Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357.

Decided: June 4, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87–13325 Filed 6–10–87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Quotas for Controlled Substances in Schedules I and II

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of established 1987 aggregate production quotas.

SUMMARY: This notice establishes revised 1987 aggregate production quotas for controlled substances in Schedule II, as required under the Controlled Substances Act of 1970.

DATE: This order is effective June 11, 1987.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, 1405 Eye Street NW., Washington, DC 20537, Telephone: (202) 633–1366.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (21 U.S. Code 826) requires the Attorney General to establish aggregate production quotas for all controlled substances in Schedules I and II eacy year. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration pursuant to § 0.100 of Title 28 of the Code of Federal Regulations.

On April 7, 1987, a notice of the proposed revised 1987 aggregate production quotas for certain controlled substances in Schedule II was published in the **Federal Register** (52 FR 11137). All interested parties were invited to comment on or object to these proposed aggregate production quotas on or before May 7, 1987.

One comment was received from Eli Lilly and Company of Indianapolis, Indiana, relative to the proposed revised aggregate production quota for dextropropoxyphene. Eli Lilly and Company commented that based on its current projected net disposal rate and the desirability of having approximately 50 percent year-end inventory of its 1987 dispositions, the company respectfully requests that, if necessary, the 1987 proposed revised aggregate production quota for dextropropoxyphene be increased. DEA has reviewed the data submitted by Eli Lilly as well as newly available information concerning the projected needs for dextropropoxyphene in 1987. Based on this information, DEA is changing the 1987 aggregate production quota for dextropropoxyphene to 77,917 kilograms. No other comments and no requests for a hearing were received.

Pursuant to sections 3(c)(3) and 3(e)(2)(C) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

The Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S.C. Code 601, et seq. The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by the international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Therefore, under the authority vested in the Attorney General by section 306 of the Controlled Substances Act of 1970 (21 U.S. Code 826) and delegated to the Administrator of the Drug Enforcement Administration by § 0.100 of Title 28 of the Code of Federal Regulations, the Administrator hereby orders that the 1987 revised aggregate production quotas be established as follows:

Basic class	Established revised 1987 aggregate Production quotas (expressed as grams of anhydrous acid or base)
Schedule II:	
Alfentanil	0
Amobarbital	0
Amphetamine	372,000
Codeine (for sale)	60,199,000
Codeine (for conversion)	3,814,000
Desoxyephedrine	1,314,000
1,300,000 grams for the production of levodesoxyephedrine for use in a noncontrolled, nonprescription product, and 14,000 grams for the production of methamphetamine.	
Dextropropoxyphene	77,917,000
Dihydrocodeine	444,000
Diphenoxylate	971,000
Hydrocodone	2,431,000
Hydromorphone	206,000
Levorphanol	14,500
Meperidine	11,596,000
Methadone	1,231,000
Methadone Intermediate (4-Cyano-2-dimethylamino-4,4-diphenylbutane)	1,539,000
Mixed Alkaloids of Opium	3,000
Morphine (for sale)	2,802,000
Morphine (for conversion)	64,466,000
Opium (tinctures, extracts, etc. expressed in terms of USP powdered opium)	1,676,000
Oxycodone (for sale)	2,202,000
Pentobarbital	12,937,000
Phenmetrazine	0
Phenylacetone	944,000
Secobarbital	927,000

Dated: May 27, 1987.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 87–13343 Filed 6–10–87; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 87–53]

NASA Advisory Council (NAC), Space Applications Advisory Committee (SAAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Applications Advisory Committee.

Date and Time: June 23, 1987, 9 a.m.–5 p.m., June 24, 1987, 8:30 a.m.–4 p.m., June 25, 1987, 9 a.m.–12 p.m.

ADDRESS: NASA Headquarters, 600 Independence Avenue, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Ray J. Arnold, Code EE, National

Aeronautics and Space Administration, Washington DC 20546 (202/453-1707).

SUPPLEMENTARY INFORMATION: The NAC Space Applications Advisory Committee consults with and advises the Council and NASA on plans for work in progress on, and accomplishments for NASA's Space Applications programs. The Committee is chaired by Mr. Leonard Jaffe and is composed of 32 members. The Committee operates both through a number of informal subcommittees and as a whole. The agenda which follows include all Committee and subcommittee sessions. The Microgravity Subcommittee meeting will be closed Tuesday, June 23, from 9 a.m. to Noon, to allow for a discussion on evaluations of individuals associated with the extramural research centers. The Full Committee meeting will be closed Wednesday, June 24, from 1:30 p.m. until 4 p.m., to allow for a discussion on committee membership. The Information Systems Subcommittee will be closed Friday, June 25, from 10 a.m. to Noon, to allow for a discussion on subcommittee membership. Such discussions would invade the privacy of the individuals involved. Since these sessions will be concerned with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that the meeting will be closed to the public for these periods of time. The remainder of the meeting will be open to the public up to the seating capacity of the rooms. It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Type of Meeting: Open - except for closed sessions as noted in the agenda below.

Agenda: June 23, 1987.

Communications Subcommittee - NASA Headquarters, Room 226B.

9 a.m. Headquarters Status Report.

9:30 a.m. Advanced Communications Technology Satellite System Program Report.

10 a.m. Mobile Satellite Communications Report.

10:30 a.m. Technology Development Plan for Future Systems.

11 a.m. Office of Space Station Presentation.

11:30 a.m. Office of Space Tracking and Data Relay Satellite System Presentation.

12 p.m. Break.

1 p.m. Discussion Topics: Manufacturing Technology for Terminals, Unconventional Satellite System Configuration, Integration of NASA Communication Activity Across Several Code Offices, Process for Subcommittee being informed/ regularize yearly schedule.

5 p.m. Adjourn.

Microgravity Subcommittee - Capital Gallery West Wing, Room 100.

9 a.m. Closed session.

12 p.m. Break.

1 p.m. Briefing by Microgravity Science and Applications Division on In-house Program.

2:30 p.m. Plans for Summer Study to formulate long-range plans.

4 p.m. Discussion of Report of the Discipline Working Groups.

5 p.m. Adjourn.

Information Systems - Capital Gallery East Wing, Room 770.

9 a.m. NASA Dependence on Information Systems.

11 a.m. Information System Strategic Planning.

12 p.m. Break.

1 p.m. Continue Discussion on Strategic Planning.

3 p.m. Science Communications Network Planning.

5 p.m. Adjourn

June 24, 1987

Full Committee - NASA Headquarters, Room 226A.

8:30 a.m. Introduction, Review of Agenda, and Purpose of Meeting.

9 a.m. Congressional Action on FY 88 Budget. Prospects for the FY 1989 Budget.

9:30 a.m. Review of Subcommittee Activities: Remote Sensing, Communications, Information Systems, Microgravity.

10:30 a.m. Status of Office of Space Science and Applications (OSSA) Programs. Views on the Role of SAAC in Advising OSSA.

12:30 p.m. Break.

1:30 p.m. Closed Session.

4 p.m. Adjourn.

June 25, 1987

Information Systems - Capital Gallery East, Room 770.

9 a.m. Continued Discussion on Network Planning.

10 a.m. Closed session.

12 p.m. Adjourn.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

June 5, 1987.

[FR Doc. 87-13273 Filed 6-10-87; 8:45 am]

BILLING CODE 7510-1-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of propsoed records schedules; request for comments.

SUMMARY: The National Archieves and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATE: Requests for copies must be received in writing on or before July 27, 1987. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESS: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a

thorough study of the records that takes into account their administrative use by the agency of orgin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules pending approval:

1. Department of Commerce, International Trade Administration (N1–151–87–10). Economic and commercial files created by Economic Affairs Division, Bureau of Foreign Commerce.

2. Department of Commerce, International Trade Administration (N1–151–87–12). Customs release files.

3. Department of Energy, Western Area Power Administration, Land Division (NC1–201–85–1). Records relating to land acquisition and use.

4. National Archives and Records Administration, Office of Records Administration, Records Appraisal and Disposition Division (N1–GRS–87–13). General Records Schedule for administrative claims files.

Dated: June 4, 1987.

Frank G. Burke,

Acting Archivist of the United States.

[FR Doc. 87–13373 Filed 6–10–87; 8:45 am]

BILLING CODE 7515-01-M

Preservation Advisory Committee; Meeting

AGENCY: National Archives and Records Administration.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Ad Hoc Subcommittee on the Preservation of Sound Recordings of the Advisory Committee on Preservation will meet on July 29–30, 1987. The meeting will be open to the public.

DATE: The meeting will be held from 10 a.m. to 4 p.m. on Wednesday, July 29, 1987, and 9 a.m. to 1 p.m. on July 30, 1987.

ADDRESS: Location of the meeting is room 105 of the National Archives Building, 7th and Pennsylvania Avenue NW., Washington, DC, 20508.

FOR FURTHER INFORMATION CONTACT: Alan Calmes, (202) 523–5496.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will be:

1. Preservation issues.

2. Tour of Sound Recording Archives at Pickett Street, Alaxandria.

3. Discussion of preservation options.

Notice of the meeting is made in accordance with the Federal Advisory Committee Act.

Dated: June 4, 1987.

Frank G. Burke,

Acting Archivist of the United States.

[FR Doc. 87–13372 Filed 6–10–87; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Design Arts Advisory Panel (Overview Section) to the National Council on the Arts will be held on June 25, 1987, from 9:00 a.m.–5:30 p.m. and June 26, 1987, from 9:00 a.m.–3:00 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennyslvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on June 25, 1987 from 9:00 a.m.–5:30 p.m. and June 26, 1987, from 9:00 a.m.–9:30 a.m. and 10:00 a.m.–3:00 p.m. The topics for discussion will be emerging conerns in the Design Arts, defining the Endowment's role, Five Year Plan, Guidelines and other policy issues.

The remaining session of this meeting on June 26, 1987, from 9:30 a.m.–10:00 a.m. is for the purpose of discussion and development of confidential materials and projections regarding FY 89 and future year budget levels to be submitted to the Office of Management and Budget and the Congress. In accordance with the determinations of the Chairman published in the Federal Register of February 13, 1980, this session will be closed to the public pursuant to subsection (c)(9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 87–13305 Filed 6–10–87; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–280 and 50–281]

Virginia Electric & Power Co., Surry Power Station, Units 1 and 2; Issuance of Director's Decision

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a decision concerning a request filed pursuant to 10 CFR 2.206 by Mr. Thayer Cory and Ms. Judy Zwelling on behalf of Citizen Action for a Safe Environment which requested that both reactors at the Surry Power Station remain shut down until all pipes had been fully inspected, until a complete report on the December 9, 1986 accident had been issued publicly by Virginia Electric and Power Company, and until all issues had been resolved.

The Director of the Office of Nuclear Reactor Regulation has determined that the Petition should be denied. The reasons for this decision are explained in the "Director's Decision Under 10 CFR 2.206," DD–87–09, which is available for public inspection in the Commission's Public Document Room, 1717 H Street NW., Washington, DC and at the Local Public Document Room at the Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

A copy of the Decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c). As provided in this regulation, the Decision will constitute the final action of the Commission twenty-five (25) days after issuance, unless the Commission, on its own motion, institutes review of the Decision within that time period.

Dated at Bethesda, Maryland, this 5th day of June, 1987.

For the Nuclear Regulatory Commission.

Chandu P. Patel,

Project Manager, Project Directorate II–2, Division of Reactor Projects–I/II.

[FR Doc. 98–13379 Filed 6–10–87; 8:45 am]

BILLING CODE 7590-01-M

PENSION BENEFIT GUARANTY CORPORATION

Request for Extension of Approval Under the Papework Reduction Act of Information Collection Request No. 1212-0030

AGENCY: Penson Benefit Guaranty Corporation.

ACTION: Notice of request for OMB extension of approval.

SUMMARY: The Pension Benefit Guaranty Corporation has requested approval by the Office of Management and Budget for an extension of the expiration date of a currently approved information collection request (1212-0030) without any change in the substance or in the method of collection. Current approval of the information collection is scheduled to expire on July 31, 1987. The information collection, which is not contained in a regulation, is a survey of insurance company rates for pricing annuity contracts that is conducted under the auspices of the American Council of Life Insurance. The effect of this notice is to advise the public of the PBGC's request for OMB approval of this extension.

ADDRESSES: All written comments (at least three copies) should be addressed to: Office of Information and Regulatory Affairs of OMB Attention: Desk Officer for the Pension Benefit Guaranty Corporation, 3208 New Executive Office Building, Washington, DC 20503. The request for extension will be available for public inspection at the PBGC Communications and Public Affairs Department, Suite 7100, 2020 K Street NW., Washington, DC 20006, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney Corporate Policy and Regulations Department (35400), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006, 202-778-8850 (202-8859 for TTY and TDD). (These are not toll-free numbers.)

Issued at Washington, DC, this 5th day of June 1987.

Royal S. Dellinger,

Deputy Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 87-13396 Filed 6-10-87; 8:45 am]

BILLING CODE 7708-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

June 5, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Alleghany Ludlum Corp., Common Stock, $.10 Par Value (File No. 7-0208)

Catalyst Energy Development Corp., Common Stock, $.10 Par Value (File No. 7-0209)

MFS Multimarket Income Trust, Shares of Beneficial Interest, No Par Value (File No. 7-0210)

NL Industries, Inc., Depository Receipts, No Par Value (File No. 7-0211)

Audiovox Corporation, Class "A" Common Stock, $.10 Par Value (File No. 7-0212)

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 June 26, 1987, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-13383 Filed 6-10-87; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

June 5, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stock:

Broken Hill Proprietary Co., Ltd., American Depositary Shares (File No. 7-0207)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 26, 1987 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-13382 Filed 6-10-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24545; File No. SR-MSRB-87-4]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Relating to Underwriting Assessment Fee

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 27, 1987, the Municipal Securities Rulemaking Board ("Board") filed with the Securities and Exchange Commission a proposed rule change as

described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Municipal Securities Rulemaking Board (the "Board") is filing herewith proposed amendments to rule A–13, on the underwriting assessment fee (hereafter referred to as the "proposed rule change"). The proposed rule change is to take effect July 1, 1987 to ensure that the industry receives ample notification of the revisions. The text of the proposed rule change is as follows: [1]

Rule A–13. Underwriting Assessment for Brokers, Dealers and Municipal Securities Dealers

(a) [In addition to the fees prescribed by other rules of the Board, e] *E*ach [municipal securities] broker, *dealer* and municipal securities dealer shall pay [a fee] to the Board *an underwriting fee as set forth in paragraph (b) for all municipal securities* [equal to .002% ($.02 per $1,000) of the par value of all municipal securities which are] purchased from an issuer by or through such [municipal securities] broker, *dealer* or municipal securities dealer, whether acting as principal or agent, as part of a new issue which has an aggregate par value of $1,000,000 or more and which has a final stated maturity of not less than two years from the date of the securities. [*; provided, however,* that if such municipal securities broker or municipal securities dealer is a member of] *If* a syndicate or similar account *has been* formed for the purchase of [such] *the* securities, [such fee shall be calculated on the basis of the participation of such municipal securities broker or municipal securities dealer in the syndicate or similar account. Such fee must be received at the office of the Board in Washington, DC, not later than 30 calendar days following the date of settlement with the issuer. In the event a syndicate or similar account has been formed for the purchase of the securities,] the fee shall be paid by the managing underwriter on behalf of each participant in the syndicate or similar account.

(b) [Payment of the fee required in paragraph (a) hereof shall be accompanied by one completed copy of Form A–13 prescribed by the Board.] *The amount of the underwriting fee is:*

.001% ($.01 per $1,000) of the par value for issues sold on or after July 1, 1987, and

.002% ($.02 per $1,000) of the par value for issues sold before July 1, 1987.

(c) [In addition to filing the copy or copies of the Form A–13 required by paragraph (b) hereof, each municipal securities broker and municipal securities dealer shall file with the Board one completed copy of Form A–13 for each issue of municipal securities which is purchased from an issuer by or through such municipal securities broker or municipal securities dealer, whether acting as principal or agent, as part of a new issue which has an aggregate par value of less than $1,000,000 and which has a final stated maturity of not less than two years from the date of the securities; provided, however, that if such municipal securities broker or municipal securities dealer is a member of a syndicate or similar account formed for the purchase of such securities, the Form A–13 with respect to such securities shall be filed by the managing underwriter on behalf of each participant in the syndicate or similar account. Each Form A–13 required to be filed under this paragraph] *The underwriting fee* must be received at the office of the Board in Washington, DC not later than [15] *30* calendar days following the [end of the calendar quarter in which the] date of the settlement with the issuer [occurs].

(d) [The fee prescribed in paragraph (a) shall be payable with respect to any new issue of municipal security which a municipal securities broker or municipal securities dealer shall have contracted on or after July 1, 1985 to purchase from an issuer.] *Payment of the underwriting fee must be accompanied by one completed copy of Form A–13 prescribed by the Board and a copy of the front page of the official statement in final form prepared by or on behalf of the issuer (as defined in Rule G–32). If an official statement in final form will not be prepared by or on behalf of the issuer, a copy of the front page of an official statement in preliminary form, if any, shall accompany the payment of the fee.*

[(e) In the event any person subject to this rule shall fail to pay the required fee, the Board may recommend to the Commission that the registration of such person with the Commission be suspended or revoked.]

[1] Italics indicate new language; [brackets] indicate deletions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

(a) Rule A–13 requires each broker, dealer and municipal securities dealer to pay the Board a fee based on its placements of new issue municipal securities. The purpose of the fee is to provide a continuing source of revenue to defray the costs and expenses of operating the Board and administering its activities. Brokers, dealers and municipal securities dealers are required to pay the underwriting assessment fee on all new issues purchased by or through them which have an aggregate par value of $1,000,000 or more and a final stated maturity of not less than 2 years from the issue of the securities. Currently the fee is calculated at the rate of $.02 per $1,000 of the par value of such securities. The Board has not changed the underwriting assessment fee rate since the rate was increased from $.01 to $.02 per $1,000, effective July 1, 1985. However, in light of the growth of the Board's fund balance and the expectation that annual volume will not drop below $80 billion, the Board has adopted the proposed rule change which would decrease the underwriting assessment fee from $.02 to $.01, effective July 1, 1987.

The proposed rule change would require the managing underwriter to furnish the Board with the front page of the final official offering statement in order to ensure that each new issue is adequately described so that the fees paid are credited to the proper accounts. The front page of the official statment would provide the official name of the issue, the identity of the underwriters, bond counsel, and other information required by the Board to process the fees and adequately record each issue.

In addition, the proposed rule change would eliminate the requirement that a Form A–13 be filed with the Board for each issue of municipal securities which is purchased from an issuer which is part of an issue which has an aggregate par value of less than $1,000,000 and a final stated maturity of not less than two years. The current requirement for small new issues has been in effect since January 1, 1980, and was intended to provide the Board with information regarding such issues. The Board adopted the proposed rule change to relieve brokers, dealers, and municipal securities dealers of the significant

administrative costs of preparing Form A–13 when fee payments for the issue are not required.

The proposed rule change also would eliminate paragraph (e) of rule A–13 which provides that the Board may recommend that the Commission revoke or suspend the registration of any firm failing to comply with the rule. The inspection procedures of the NASD and the bank regulators adequately enforce compliance with rule A–13, and render this provision unnecessary.

Finally, the Board has revised its Form A–13 to reflect the proposed rule change.

(b) The Board has adopted the proposed rule change pursuant to sections 15B(b)(2)(I) and 15B(b)(2)(J) of the Securities Exchange Act of 1934, as amended (the "Act"). Section 15B(b)(2)(J) of the Act authorizes and directs the Board to adopt rules providing for the assessment of municipal securities dealers to defray the costs and expenses of operating and administering the Board. Section 15B(b)(2)(I) authorizes and directs the Board to adopt rules providing for the operation and administration of the Board.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change, which will have an equal impact on all participants in the municipal securities industry, will have any impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Board has not solicited or received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 2, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 4, 1987.

Shirley E. Hollis,

Assistant Secretary.

FR Doc. 87–13381 Filed 6–10–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–15774; 812–6495]

Emerging Markets Growth Fund, Inc., Application for Exemption

June 5, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: Emerging Markets Growth Fund, Inc. ("Fund").

Relevant 1940 Act Sections: Exemption requested pursuant to section 6(c) from sections 2(a)(32), 5(a)(1), 18(d), 18(i), 20(b), 23(b) and 23(c)(2).

Summary of Application: The Fund seeks an order to permit: (1) The Fund's common stock to be deemed and treated as other than "redeemable securities," so that the Fund can be regulated as a "closed-end investment company" for all purposes under the 1940 Act; (2) the Fund to issue certain warrants and/or stock rights to Fund shareholders; (3) the allocation of voting rights among shareholders to elect the Fund's board of directors under the terms of a shareholders agreement; and (4) the Fund to repurchase shares of its common stock under certain circumstances.

Filing Date: The application was filed on October 7, 1986, and amended on March 31, and April 30, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the requested exemption will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on June 29, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549; Emerging Markets Growth Fund, Inc., 333 South Hope Street, 52nd Floor Los Angeles, California 90071.

FOR FURTHER INFORMATION CONTACT: Thomas C. Mira, Staff Attorney (202) 272–3033, or Brion R. Thompson, Special Counsel (202) 272–3016 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations and Undertakings:

1. The Fund is a Maryland corporation and is registered under the 1940 Act as a closed-end investment company, whose investment objective is to seek long-term capital growth through investment of its assets primarily in qualified markets in developing country securities. According to the application, "developing country securities" are defined as securities of issuers that are domiciled and have their principal place of business in those countries which, in the opinion of the Fund's board of directors ("Directors"), are generally considered to be developing countries by the international financial community. The Fund represents that, when considering whether the market of a developing country qualifies, the Directors will take into account, among other things, market liquidity, investor information, official regulation and fiscal and foreign exchange repatriation rules.

2. The Fund has raised $50 million through a private placement offering ("Initial Offering") of shares of the Fund's common stock ("Shares") made pursuant to section 4(2) of the Securities Act of 1933. Each Share sold through the Initial Offering was accompanied by a non-detachable warrant which was not exercisable at the time of issuance and only exercisable upon a condition subsequent, which the Fund has concluded will not occur. The Fund agrees that, as a condition to the order requested, such warrants will be cancelled by the Fund's Directors at their next meeting. The Fund does not request any relief with respect to these earlier warrants, nor will the Fund view any order issued by the SEC as extending to such warrants.

3. The Initial Offering was made to, and subscriptions were accepted from, only a limited number of institutions, including banks, pension funds, foundations and other organizations, within or outside the United States and having substantial assets. Subscriptions were accepted only from investors which the Fund had reasonable grounds to believe, (i) were capable of bearing the economic risk of the investment, and (ii) possessed such knowledge and experience in financial matters as to be capable of evaluating the merits and risks of the investment. The Initial Offering's minimum subscription was one million dollars.

4. In the subscription agreement used in connection with the Initial Offering ("Subscription Agreement"), each investor represented that it: (a) Had read and was familiar with the terms of the offering circular used in connection with the Initial Offering of the Fund's Shares; (b) was capable of bearing the economic risks of the investment for an indefinite period of time; and (c) had a net worth of at least $50,000,000, and the purchase of the Shares did not represent more than five percent (5%) of its net worth.

5. Through the Initial Offering the Fund sold 5,000,000 Shares ($.01 par value) to twelve investors (Shareholders"), none of which are individuals. All Shares are equal as to earnings, assets, voting privileges and liquidation rights, and there are no conversion, preemptive or other subscription rights, nor are there cumulative voting rights to elect the Fund's Directors.

6. In the future the Fund proposes to offer certain additional warrants and/or stock rights ("Rights"), which will entitle the holder thereof to purchase a share of the Fund's common stock at a price which may be at the net asset value or at a specified price above or below such amount. The terms and conditions of these Rights may vary for each holder. The exercise price of any such Right will be determined by the Fund's Directors and, if purchased in connection with the sale of additional Shares, may involve negotiation between the purchaser and the Fund which could result in a different exercise price for each such purchase. The Rights may be non-detachable from the Shares or transferable independent of the Shares; however, if they are transferable separate from the Shares, the following conditions must be satisfied: (i) Any transferee of the Rights may not be a natural person; (ii) the number of Rights which may be transferred to an unaffiliated third-party must be in an amount which if the Rights were exercised on the date of transfer would require a purchase payment for the Shares of no less than $500,000; and (iii) any unaffiliated transferee must provide satisfactory proof that the transferee has a minimum net worth of $5,000,000. All Rights issued by the Fund will expire by their terms before the commencement of a public offering of the Fund's shares.

7. Each of the Shareholders who purchased during the Initial Offering was required, pursuant to the Subscription Agreement, to enter into a shareholders agreement ("Shareholders Agreement"). The Shareholders Agreement provides, among other things, that each investor who purchased at least 500,000 Shares in the Initial Offering may nominate one person to serve on the Fund's board of directors, and that each other Shareholder is obligated to cast all of its votes in favor of the person chosen by each such nominating Shareholder. The Shareholders Agreement also prohibits each Shareholder from transferring all of its Shares without first offering to sell such Shares, on the same terms and conditions as the proposed sale, to the other parties to the Agreement on a pro-rata basis and then, if all such persons refuse the offer, to the Fund. The Shareholders Agreement terminates upon the commencement of a public offering of the Fund's common stock, upon the written unanimous agreement of the Shareholders, or upon liquidation of the Fund. Investors who acquire Shares prior to the commencement of a public offering of the Fund's common stock will be required to enter into an agreement having the same terms and conditions as the Shareholders Agreement.

8. Until such time as there is a public offering of the Fund's common stock, the Fund has agreed to repurchase Shares held by any Shareholders upon the request of such Shareholder. Upon such a repurchase, the tendering Shareholder will receive its pro-rata share of the Fund's assets in the form of cash (which may include foreign currencies) and/or portfolio securities as selected by the Directors, in their sole discretion. Any costs incurred in connection with a repurchase of Shares will be borne by the tendering Shareholder. During any period or periods in which the Directors believe that repurchases would be materially detrimental to the interests of the Fund and/or its Shareholders, the Fund may suspend such repurchases under circumstances described below.

Applicant's Legal Conclusion

1. The Fund requests exemption from sections 2(a)(32) and 5(a)(1) of the 1940 Act, to the extent necessary, to resolve any uncertainty as to the classification of the Fund under the 1940 Act, to permit Fund Shares to be deemed and treated as other than "redeemable securities" and, thus, ensure that the Fund will be considered a "closed-end investment company" for all purposes under the 1940 Act. Although its Shares may be sold to the Fund upon the request of a Shareholder, the Fund asserts that the Shares are not redeemable at any time. First, the Directors may, in their sole discretion, suspend the offer to repurchase any time they determine that such repurchase will be detrimental to the Fund and/or its Shareholders. The Fund states that, in determining whether a repurchase would be detrimental to the interests of the Fund and/or its Shareholders, the Directors will consider among other things: (i) Market liquidity of portfolio securities; (ii) the investment plan of the Fund; (iii) economies of scale; (iv) currency fluctuations; (v) repurchase history of the Fund; and (vi) the economic condition of world securities markets. Second, the agreement to repurchase the Shares of the Fund will be terminated upon commencement of a public offering of the Fund's common stock. Finally, the Fund notes that it was not established with the intent of operating, nor will it operate as, an open-end investment company.

2. The Fund requests exemption from sections 18(d) and 23(b) of the 1940 Act, to the extent necessary, to permit the Fund to issue the Rights which will by their terms expire more then 120 days after their issuance (but before the commencement of a public offering of common stock of the Fund). The Fund asserts that the Rights acquired in a private offering of its Shares are unlike warrants intended to be prohibited under sections 18(d) and 23(b) of the 1940 Act because those sections were

intended to protect public investors. The Fund further asserts that the Fund's Shareholders are sophisticated investors who will be fully aware of the potentially dilutive impact the exercise of the Rights by other Shareholders could have upon their interests. In addition, Shareholders owning equivalent Rights have it within their power to avoid the potential dilutive impact by exercising their own Rights following the exercise of Rights by others. The Fund represents that, until a public offering of the Fund's common stock is made, any future purchasers of Shares in a private offering will also be investors who have adequate economic substance to protect their interests and understand (themselves or through their investment advisers) the potential dilutive effect of the Rights. The Fund undertakes, as a condition to the relief sought, that the minimum invesment in any future private offering of Shares by a group of affiliated persons will be $500,000, and that each separate purchaser in such private offering will represent that it has a net worth of at least $5,000,000. A person will be considered to be affiliated with other persons if such person is controlled by or under common control with the other person. No Shares will be sold to natural persons in any such private offering.

3. The Fund also requests exemption from section 18(i) of the 1940 Act, to the extent necessary, to permit the Shareholders to elect the Fund's Directors in the manner provided by the Shareholders Agreement. As noted above, under the terms of the Shareholders Agreement, each Shareholder who purchased at least 500,000 Shares during the Initial Offering is entitled to nominate one of the Fund's Directors, and each Shareholder has agreed to cast all of its votes in favor of such nominated person. The Fund's Articles of Incorporation provide that the rights under the Shares are ratable, including that the holder of each Share is entitled to one vote for each full Share held. The Fund asserts that, under the prevailing circumstances, the fact that the Shareholders, all of whom are highly sophisticated in financial matters, have agreed to vote their Shares in a particular manner with respect to the election of the Fund's Directors does not alter the equal voting rights of the Shareholders as required by section 18(i). Until a public offering is made, at which time the Shareholders Agreement will terminate, the investors in the Fund will continue to be limited in number and experienced in business and financial matters. Each of the current Shareholders had full knowledge of, and agreed to, all of the terms of the Shareholders Agreement. In addition, the Fund asserts that all of the Shareholders can protect their interests through their right to vote on the appointment of the investment adivser and the approval of the investment advisory and service agreement.

4. In support of the request for exemption from section 20(b) of the 1940 Act, the Fund argues that the Shareholders Agreement does not constitute a voting trust certificate as prohibited by that section. Moreover, even if the Shareholders Agreement were considered a voting trust certificate, the Fund asserts that the purposes of section 20(b) have not been violated, because section 20(b) only prohibits the offer for sale, sale, or delivery after sale, of voting trust certificates in connection with a public offering. The Fund represents that the Shareholders Agreement has only been delivered in connection with a private offering of Shares and that the Shareholders Agreement automatically terminates upon commencement of a public offering of its common stock.

5. In support of the requested exemptive relief from section 23(c)(2) of the 1940 Act to permit the Fund to repurchase its Shares, the Fund asserts that all of the Shareholders have been made aware of the repurchase provisions through a description in the offering circular used in connection with the Initial Offering. The Fund represents that the repurchase provisions, including the Director's right to suspend repurchases under certain circumstances, apply to all Shareholders on an equal basis. In addition, the Fund agrees, as a condition to the relief requested, that all purchasers of Shares prior to the commencement of a public offering will be afforded the same opportunity to have their Shares repurchased by the Fund. At the commencement of such public offering, all such repurchase rights will terminate. The Fund submits that under these circumstances, all Shareholders will have an equal opportunity to tender their Shares to the Fund for repurchase as contemplated by section 23(c)(2). The Fund further asserts that the Shareholders Agreement does not discriminate unfairly against any Shareholder because all Shareholders, prior to the commencement of a public offering of the Fund's common stock, will be subject to all its provisions. Moreover, all current and future Shareholders will be informed of the provisions of the Shareholders Agreement and will have the financial capability and sophistication to protect themselves.

Applicant's Conditions

The Fund agrees that the requested order will be subject to the Fund's compliance with the undertakings set forth above as express conditions.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-13392 Filed 6-10-87; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Application No. 02/02-0503]

Application for a License to Operate as a Small Business Investment Company; Bishop Capital, L.P.

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1987)), by Bishop Capital, L.P., 58 Park Place, Newark, New Jersey 07102, for a license to operate as a limited partnership small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (the Act) (15 U.S.C. 661 *et seq.*), and the Rules and Regulations promulgated thereunder.

The formation and licensing of a limited partnership SBIC is subject to the provisions of § 107.4 of the Regulations.

The initial investors and their percent of ownership of the Applicant are as follows:

		(Percent)
Asta Capital Corp., 58 Park Place, Newark, NJ 07102.	General Partner	1
Mountain Ridge State Bank, One Essex Green Plaza, West Orange, NJ 07052.	Limited Partner	13
New Jersey Life Insurance Co., Park Eighty West One, Saddle Brook, NJ 07662.	Limited Partner	12
Peoples Bank, N.A., One Passaic Avenue, Fairfield, NJ 07006.	Limited Partner	17

The remaining 53 percent of Applicant's partnership capital will be owned by ten additional limited partners, none of whom as much as 10 percent.

Asta Capital Corp., Applicant's corporate general partner, is a New Jersey corporation organized for the sole purpose of managing the Applicant. Mr. Charles J. Irish is the sole shareholder of Asta Capital Corp. Asta's officers and directors are as follows:

Charles J. Irish, 270 Henderson Street, Jersey City, NJ 07302.	President and Director.
Alphonse T. Crescenzo, 75 West Cedar Place, Ramsey, NJ 07446.	Secretary and Director.
Leo E. White, 14 Lakeview Avenue, Short Hills, NJ 07074.	Treasurer and Director.
William A. Hildebrant, 231 Gold Edge Road, Westfield, NJ 07090.	Director.
Lawrence M. Waterhouse, 206 Pine Road, Briarcliff Manor, NY 10510.	Director.
Joseph C. Fatony, 584 Spruce Lane, Franklin Lakes, NJ 07417.	Director.
Anthony S. Abbate, 6 Robin Hood Court, Montvale, NJ 07645.	Director.
Nic P. Neumann, 6 Mustang Terrace, Warren, NJ 07060-6930.	Director.

The Applicant, a New Jersey limited partnership, will begin operations with an initial partnership capital of $1,840,000, and will operate principally in the State of New Jersey.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed officers, directors, and shareholder of the corporate general partner, as well as the limited partners of the Applicant, and the probability of sucessful operation of the Applicant in accordance with the Act and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in Newark, New Jersey.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 1, 1987.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 87-13367 Filed 6-10-87; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 1013]

Certain Nonimmigrant Visas; Validity

Public Notice 913 of August 22, 1984 authorized consular officers to issue, in their discretion, nonimmigrant visas under section 101(a)(15)(B) of the Immigration and Nationality Act valid for an indefinite period of time to otherwise eligible nationals of certain countries which offer reciprocal or more liberal treatment to nationals of the United States who are in a similar class.

This Notice deleted France from the list contained in Public Notice 913 in order to accord its nationals the same reciprocal treatment currently accorded U.S. nationals.

This Notice amends Public Notice 913 of August 22, 1984 (49 FR 33392).

Effective Date: August 1, 1987.

Dated: June 1, 1987.

Joan M. Clark,

Assistant Secretary for Consular Affairs.

[FR Doc. 87-13306 Filed 6-10-87; 8:45 am]

BILLING CODE 4710-06-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements Submitted to OMB on June 4, 1987

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation on June 4, 1987, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT: John Chandler, Annettee Wilson, or Cordelia Shepherd, Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street SW., Washington, DC 20590, telephone (202) 366-4735, or Gary Waxman or Sam Fairchild, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, (202) 395-7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "For Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB on June 4, 1987.

DOT No: 2896.
OMB No: 2115-0136.
Administration: U.S. Coast Guard.
Title: Excursion Parties.
Need for Information: This information collection requirement is needed to approve requests from vessel owners/operators for deviation from vessel operating limitations. The recordkeeping requirement is necessary to avoid civil or criminal penalty while operating outside the limits of the vessel's Certificate of Inspection.
Proposed Use of Information: Coast Guard uses this information to decide on whether or not to grant the request for deviation and to provide advice on extra precautionary measures.
Frequency: On occasion.
Burden Estimate: 2,000 hours.
Respondents: Vessel operators/owners.
Form(s): CG-949 and CG-950.

DOT No: 2897.
OMB No: 2115-0502.
Administration: U.S. Coast Guard.
Title: Applicant for Department of Justice Fingerprint.

Need for Information: This information collection requirement is needed to ensure that: (1) Alien applicants are legal entrants to the United States and in certain instances to ensure citizenship; and (2) that applicants have not been convicted on narcotics charges within the past 10 years.

Proposed Use of Information: The Coast Guard uses this information to initiate a Department of Justice fingerprint search.

Frequency: On Occasion.

Burden Estimate: 1,500 hours.

Respondents: U.S. Merchant Seamen.

Form(s): FD–258.

DOT No: 2898.

OMB No: 2115–0111.

Administration: U.S. Coast Guard.

Title: Course Approvals for Merchant Marine Training Schools.

Need for Information: This information collection is needed to ensure that schools desiring to have a course approved by the Coast Guard meet minimal statutory requirements.

Proposed Use of Information: The Coast Guard uses this information to approve the curriculum, facility and faculty for these training schools.

Frequency: Five years for reporting; one year for recordkeeping.

Burden Estimate: 1,588 Hours.

Respondents: Merchant Marine Training Schools.

Form(s): None.

DOT No: 2899.

OMB No: 2115–0067.

Administration: U.S. Coast Guard.

Title: Coast Guard Intelligence Check Request.

Need for Information: This information collection requirement is needed to support a Federal agency background investigation of alien applicants. Evidence of nationality is necessary on documents so vessel masters can comply with the manning statutes regarding citizenship.

Proposed Use of Information: Coast Guard uses this information to verify the identity and *bona fides* of alien merchant seamen.

Frequency: On occasion.

Burden Estimate: 375 hours.

Respondents: Alien U.S. Merchant Mariners.

Form(s): CG–2765.

DOT No: 2900.

OMB No: New.

Administration: U.S. Coast Guard.

Title: Non-Destructive Testing Proposal and Results for Pressure Vessel Cargo Tanks.

Need for Information: This information collection requirement is necessary for the Coast Guard to ensure safe shipment of liquid bulk dangerous cargoes. This requirement will allow the Coast Guard to extend the internal inspection interval on vessels that are twenty-five years old and older.

Proposed Use of Information: Coast Guard will use this information to determine if the proposed methods, procedures and scope are suitable for the purpose of detecting defects. The test results will enable the Coast Guard to accurately assess the condition of the tanks and to evaluate the suitability of the tank for continued service.

Frequency: Every five years.

Burden Estimate: 56 hours.

Respondents: Pressure Vessel Type Owners/Operators.

Form(s): None.

DOT No: 2901.

OMB No: New.

By: U.S. Coast Guard.

Title: U.S. Coast Guard Radionavigation User Survey.

Need for Information: Coast Guard needs this information collection requirement to define the need for, and to provide, operate and maintain aids to navigation and facilities for safe and efficient navigation. The statutory authority is section 81 of Title 14, United States Code. Specifically, this survey is needed to:

a. Determine currently used radionavigation systems
b. Estimate the number of radionavigation system users within the marine and terrestrial environments
c. Determine how each system is used
d. Estimate tangible and perceived benefits
e. Assess impacts from discontinuance of system and develop a system for disestablishing existing systems
f. Identify which current systems will be used after deployment of the Global Positioning System

Proposed Use of Information: Coast Guard will use this information to identify system applications, utility, preferences, limitations, perceived benefits and impacts from system discontinuance.

Frequency: One time.

Burden Estimate: 2,133 hours.

Respondents: Owners/operators of radionavigation systems within marine and terrestrial environments.

Form(s): CG–5468, CG–5469, CG–5470.

DOT No: 2902.

OMB No: 2127–0021.

By: National Highway Traffic Safety Administration.

Title: National Accident Sampling System (NASS) Crashworthiness Data System—Interview Forms: Accident and Injury Factors.

Need for Information: Data will be used to support NHTSA's Motor Vehicle safety standard evaluations.

Proposed Use of Information: NASS will collect crashworthiness data on vehicle accidents to support NHTSA's motor vehicle safety standard evaluations. Information collected will include vehicle damage, occupant injury, and vehicle dynamics.

Frequency: On occasion.

Burden Estimate: 7,190 hours.

Respondents: Individuals/State or Local Governments.

Form(s): HS–433, A and B.

DOT No: 2903.

OMB No: 2120–0027.

Administration: Federal Aviation Administration.

Title: Application for a Certificate of Waiver or Authorization.

Need for Information: The FAA needs the information to determine the type and extent of the intended deviation from prescribed regulations.

Proposed Use of Information: The information is collected, reviewed, and analyzed and if appropriate, a certificate of waiver or authorization to deviate is issued to the applicant.

Frequency: On occasion.

Burden Estimate: 13,646 hours.

Respondents: Businesses and individuals.

Form(s): FAA Form 7711–2.

DOT No: 2904.

OMB No: 2125–0502

Administration: Federal Highway Administration.

Title: Single Audit Requirements.

Need for Information: For the Federal Highway Administration to support or deny State highway agencies reimbursement claims.

Proposed Use of Information: For FHWA to ensure that State highway agencies are in compliance with Federal requirements under the Single Audit Act of 1984.

Frequency: Annually.

Burden Estimate: 65 hours.

Respondents: State highway agencies.

Form(s): None.

DOT No: 2905.

OMB No: 2106–0022.

Administration: Office of the Secretary.

Title: Applications for Permits to Foreign Air Carriers.

Need for Information: For applications submitted by foreign air carriers under Part 211 for permits to engage in foreign air transportation.

Proposed Use of Information: To process applications filed by foreign air

carriers for authority to engage in foreign air transportation under section 402 of the Federal Aviation Act.

Frequency: On occasion.
Burden Estimate: 45 hours.
Respondents: Foreign air carriers.
Form(s): 1.

DOT No.: 2906.
OMB No.: 2106–0020.
Administration: Office of the Secretary.
Title: Waiver of Warsaw Convention Liability Limits and Defenses (14 CFR Part 203).
Need for Information: Requires U.S. and foreign direct air carriers a minimum liability limit of at least $75,000 for each passenger for death, wounding, or other bodily injury.
Proposed Use of Information: Section 203.3 requires all direct U.S. and foreign air carriers (except certain air taxi operators) to file a signed counterpart of the agreement with the Department.
Frequency: One time.
Burden Estimate: 9.5 hours.
Respondents: All U.S. and foreign direct air carriers.
Form(s): OST Form 4523.

DOT No.: 2907.
OMB No.: 2106–0015.
Administration: Office of the Secretary.
Title: Airline Employee Protection Program.
Need for Information: Required pursuant to Airline Employee Protection Program (49 U.S.C. 1552).
Proposed Use of Information: To initiate investigation proceedings for determining whether statutory requirements for benefits are met.
Frequency: Filed once.
Burden Estimate: 150 hours.
Respondents: Former and present airline employees.
Forms: None.

DOT No.: 2908.
OMB No.: 2106–0011.
Administration: Office of the Secretary.
Title: Foreign Air Carrier Application for Statement of Authorization for Intermodal Services.
Need for Information: To approve or disapprove applications by foreign air carriers for permission to perform intermodal cargo services.
Proposed Use of Information: To screen out foreign air carriers representing countries which restrict intermodal services by U.S. carriers; to judge economic value of the authority requested.
Frequency: On occasion.
Burden Estimate: 5 hours.
Respondents: Foreign air carriers.
Forms: Form 4500.

DOT No.: 2909.
OMB No.: 2115–0039.
Administration: U.S. Coast Guard.
Title: Applications for Port Security Card.
Need for Information: This Information collection requirement is needed to ensure that individuals who require access to waterfront facilities or vessels do not pose a threat to national security. This requirement is particularly applicable to those ports that are vital to the military defense or that support military operations or where explosive cargo is loaded and unloaded.
Proposed Use of Information: The Coast Guard uses this information to do a national agency check for criminal history of civilians requiring access to certain areas by virtue of their employment as longshoremen, dock workers, construction workers, etc. It is an integral part of the Security Program which provides protection and security of vessels, harbors, etc., from sabotage and subversive activities.
Frequency: On occasion.
Burden Estimate: 1,000 hours.
Respondents: Civilian workers requiring access to vessels/port facilities.
Forms: CG–3835, CG–2685.

DOT No.: 2910.
OMB No.: 2106–0023.
Administration: Office of the Secretary.
Title: Part 201—Applications for Certificates of Public Convenience and Necessity.
Need for Information: This information sets forth the fitness data that must be submitted by applicants for certificate authority.
Proposed Use of Information: To ensure that applicants have standards that meet the Department's requirements.
Frequency: On occasion.
Burden Estimate: 125 hours.
Respondents: Air Carriers.
Forms: None.

DOT No: 2911.
OMB No: 2106–0025.
Administration: Office of the Secretary.
Title: 14 CFR Part 389—Fees and Charges for Special Services.
Need for Information: This information sets forth the standards carriers must demonstrate to secure relief from certain Part 389 provisions, including the payment of filing fees.
Proposed Use of Information: We examine the information to ensure that carries have made the requisite demonstrations to warrant relief.
Frequency: Non required; submissions are optional.
Burden Estimate: 14 hours.
Respondents: U.S. air carriers and foreign carriers that conduct U.S. operations.
Forms: None; submissions are made by letter.

DOT No: 2912.
OMB No: 2125–0039.
Administration: Federal Highway Administration.
Title: Highway Planning and Research Program Administration.
Need for Information: To determine how FHWA highway planning and research funds will be used by the State highway agencies (SHAs) and to determine if proposed work is eligible for Federal participation.
Proposed Use of Information: For FHWA to monitor and evaluate progress toward meeting national highway planning and research goals.
Frequency: Annually.
Burden Estimate: 23,764 hours.
Respondents: State highway agencies.
Forms: None.

DOT No: 2813.
OMB No: 2137–0562.
Administration: Research and Special Programs Adm.
Title: Air Carrier Operations in 49 CFR Part 175.
Need for Information: To ensure transportation safety in air transportation operations involving the transport of hazardous materials to protect the safety of passengers, crewmembers, ground handling personnel, aircraft and the general public.
Proposed Use of Information: The information is used to prevent unauthorized or improperly described, certified, labeled, marked or packaged hazardous materials from being transported in aircraft.
Frequency: On occasion.
Burden Estimates: 341 hours.
Respondents: Shippers and air carriers.
Forms: None.

DOT No: 2914.
OMB No: 2133–0013.
Administration: Maritime Administration.
Title: Monthly Report of Ocean Shipments Moving under Export-Import Bank Financing.
Need for Information: Data needed to determine whether certain U.S. flag merchant vessels are receiving limited cargo perference.
Proposed Use of Information: Data will be used to continue surveillance of Ex-Im bank financed cargoes to assure

equitable distribution between U.S. flag and foreign flag ships.

Frequency: Monthly.

Burden Estimate: 480 hours.

Respondents: Ship owners, ship operators.

Forms: MA–518.

DOT No: 2915.

OMB No: 2115–0071.

Administration: U.S. Coast Guard.

Title: Official Logbook.

Need for Information: This information is needed to keep official records of all voyages as well as load line and testing records.

Proposed Use of Information: Coast Guard uses this information to determine compliance with the commercial vessel safety program and to examine incidences of shipboard misconduct. Other Federal agency maritime casualty investigators/federal and civil courts use this information in cases of injury or litigation between seamen and shipping companies.

Frequency: On occasion.

Burden Estimate: 4,000 hours.

Respondents: U.S. Merchant Mariners and shipping companies.

Forms: CG–706B.

DOT No: 2916.

OMB No: 2137–0051.

Administration: Research and Special Programs Adm.

Title: Rulemaking and Exemption Petitions.

Need for Information: To allow the regulated public a means to propose new or amended safety standards or to deviate from the hazardous materials regulations to try out new methods of transportation, packaging, etc.

Proposed Use of Information: To allow the Department a means to find out what new or changed regulations are needed and to determine the safety of proposed regulatory changes or exemption requests.

Frequency: On occasion.

Burden Estimate: 4,069 hours.

Respondents: Individuals, state or local governments, farms, businesses, non-profit institutions, and small businesses.

Forms: None.

DOT No: 2917.

OMB No: New.

Administration: Office of the Secretary.

Title: Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

Need for Information: Information is needed to properly manage grant programs.

Proposed Use of Information: Grant management.

Frequency: Recordkeeping.

Burden Estimate: 2,700 grantees x 70 hours = 189,000 hours.

Respondents: State and local governments.

Forms: SF–269, SF–272, SF–270, SF–271, SF–424.

DOT No: 2918.

OMB No: New.

Administration: Federal Aviation Administration.

Title: Assessment of Effectiveness of Modified Low-Level Wind Shear Alert Systems.

Need for Information: To determine effectiveness of the low-level wind shear alert system.

Proposed Use of Information: Used to refine modifications to the system.

Frequency: One-time.

Burden Estimate: 500 hours.

Respondents: Pilots.

Form(s): Questionnaire.

DOT No: 2919.

OMB No: 2133–0024.

Administration: Maritime Administration.

Title: Operating Differential Subsidy (ODS) for Bulk Cargo Vessels Engaged in Worldwide Services.

Need for Information: To determine compliance with ODS contract.

Proposed Use of Information: Data is used to claim ODS payments from the Maritime Administration.

Frequency: Monthly, Annually.

Burden Estimate: 1,260 hours.

Respondents: Shipowners and Ship Operators.

Form(s): SF–1034 and Schedule A through D, MA–790.

DOT No: 2920.

OMB No: 2115–0501.

Administration: U.S. Coast Guard

Title: Merchant Marine Personnel Physical Examination Report.

Need for Information: This information collection requirement is needed to ensure that individuals who are assigned a merchant marine's document or license are physically competent to operate vessels at sea.

Proposed Use of Information: Coast Guard licensing officers use this information as a means of evaluating an individual's physical qualifications for a license or document.

Frequency: On occasion.

Burden Estimate: 35,100 hours.

Respondents: Applicants for a U.S. Merchant Meriner's Document or License.

Form(s): CG–719K.

Issued in Washington, DC on June 4, 1987.

Richard B. Chapman,

Acting Director of Information Resource Management.

[FR Doc. 87–13324 Filed 6–10–87; 8:45 am]

BILLING CODE 4910–62–M

Federal Highway Administration

Environmental Impact Statement: DeSoto County, MS

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in DeSoto County, Mississippi.

FOR FURTHER INFORMATION CONTACT: Mr. James P. Iverson, District Engineer, FHWA, Mississippi Division, 666 North Street, Suite 105, Jackson, Mississippi 39202, Phone: 601/965–4222.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Mississippi State Highway Department (MSHD) will prepare an environmental impact statement (EIS) for a proposed improvement to MS 391 from Eudora (MS 304) north to the Tennessee-Mississippi State Line, approximately 13.5 miles. Environmental and location studies are being initiated.

Alternatives under consideration include (A) the No Build; (B) reconstruction along the existing alignment with short sections of relocations to correct severe curvature; (C) reconstruction on new location to the east of the existing facility for approximately three miles, then to the west for approximately three miles, then along the existing alignment for the remainder of the length; and (D) construction on new location to the east of the existing alignment for approximately three miles, then to the west of the existing alignment for approximately seven miles, then along the existing alignment for the remainder of the length.

An informal public information meeting was held on Tuesday, April 29, 1986, with public officials and interested citizens attending. Comments will be solicited from appropriate Federal, State, and local agencies. A location public hearing will be held after the Draft EIS has been approved and circulated. No formal scoping meetings are planned at this time.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues

identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action would be directed to FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

James P. Iverson,

District Engineer, Jackson.

[FR Doc. 87-13307 Filed 6-10-87; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

Certification of Exchange of Information Programs of Treaty Partners for Purposes of the Foreign Sales Corporation Legislation

AGENCY: Department of the Treasury.

ACTION: Notice of Certification of Exchange of Information Programs of Certain U.S. Treaty Partners for Purposes of the Foreign Sales Corporation Legislation.

SUMMARY: This document contains a list of new income tax treaty partners of the United States that have exchange of information programs under such treaty that the Secretary of the Treasury has certified for purposes of the Foreign Sales Corporation legislation in accordance with section 927(e)(3)(B) of the Internal Revenue Code. This document supplements the list of treaty partners with satisfactory information exchange programs that was issued by the Treasury Department on November 6, 1984. This document also contains notice that the certification of South Africa will terminate simultaneously with the termination of the U.S.-South Africa tax treaty.

FOR FURTHER INFORMATION CONTACT: Jacob Feldman, Office of Associate Chief Counsel (International), Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (202) 566-3289 (not a toll-free call), or David M. Crowe, Office of International Tax Counsel, 15th & Pennsylvania Avenue, NW., Room 4013, Washington, DC 20220 (202) 566-8275 (not a toll-free call).

Notice: Sections 801 through 805 of the Tax Reform Act of 1984, Pub. L. No. 98-369, amended the Internal Revenue Code generally to replace the Domestic International Sales Corporation ("DISC") provisions of the Code (sections 911-997) with the Foreign Sales Corporation ("FSC") provisions (sections 921-927). The FSC provisions were enacted primarily in response to concerns raised by trading partners of the United States about the DISC program in the General Agreement on Tariffs and Trade.

A FSC must be incorporated under the laws of a country outside the U.S. customs jurisdiction that fulfills certain criteria relating to exchange of tax information with the United States. Section 927(e)(3)(B) of the Code provides that a FSC shall not be incorporated under the laws of a foreign country that has a bilateral income tax treaty with the United States unless the Secretary of the Treasury certifies that the exchange of information program under the treaty carries out the purposes of the exchange of information requirements of the FSC legislation.

On November 6, 1984, the Treasury Department issued a notice listing the income tax treaty partners that were certified for purposes of section 927(e)(3)(B) of the Internal Revenue Code. All of the countries on that list continue to be certified for FSC purposes. The following countries were listed in the November 6, 1984 notice: Australia, Canada, Denmark, Egypt, Finland, France, Germany, Iceland, Ireland, Jamaica, Korea, Malta, Morocco, New Zealand, Norway, Pakistan, Philippines, South Africa, Sweden, and Trinidad & Tobago.

As of January 1, 1986, tax treaties between the United States and Cyprus and the United States and Barbados came into effect. The countries of Cyprus and Barbados are hereby certified for FSC purposes. Barbados entered into an agreement to exchange tax information with the United States that went into effect upon signature on November 3, 1984. That agreement fulfilled the criteria of Code section 927(e)(3)(A). Therefore, Barbados has satisfied the exchange of information requirements of the FSC legislation at all times on and after November 3, 1984. The certification announced in this notice has no additional effect on the FSC qualification of Barbados.

The tax treaty between the United States and South Africa will terminate on July 1, 1987 in accordance with Article 18(2) of the treaty. The treaty was terminated according to its terms as required by recent Congressional legislation. Simultaneously with the termination of the treaty, South Africa will no longer be a foreign country that meets the requirements of Code section 927(e)(3)(B). Therefore, the FSC certification for South Africa will be revoked effective July 1, 1987.

A FSC may incorporate as a company that is covered by the exchange of information program under the tax treaty of any certified country.

The FSC certification procedure has been undertaken to comply with the intent of the legislation that a FSC be allowed to incorporate only in a country with which the United States has a satisfactory overall exchange of information program. The absence of any tax treaty partner of the United States from the list of certified countries is not intended to imply that the Treasury Department takes the position that such treaty partner is not fulfilling its exchange of information obligations under the treaty. The Treasury Department is having continuing consultations with certain treaty partners. Treaty partners not listed may subsequently be certified at any time upon publication of a notice to that effect in the Federal Register.

If, following a certification, the information exchange program with a treaty partner deteriorates significantly, the Secretary may terminate the certification. Such termination would be effective six months after the date of the publication of the notice of such termination in the Federal Register. Consultations with the tax officials of the treaty partner will precede any such termination.

Dated: June 4, 1987.

J. Roger Mentz,

Assistant Secretary for Tax Policy.

[FR Doc. 87-13329 Filed 6-10-87; 8:45 am]

BILLING CODE 4810-25-M

Customs Service

Performance Review Boards; Appointment of Members

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

ACTION: General Notice.

SUMMARY: This notice announces the appointment of the members of the U.S. Customs Service Performance Review Boards (PRBs) in accordance with 5 U.S.C. 4313(c)(4). The pupose of the PRBs is to review senior executive employees' performance and make recommendations regarding performance and performance awards.

DATE: The Performance Review Boards become effective on May 15, 1987.

FOR FURTHER INFORMATION CONTACT: Robert M. Smith, Acting Director, Office of Human Resources, U.S.Customs Service, 1301 Constitution Avenue, NW., Room 1130, Washington, DC, (202) 377-9205.

SUPPLEMENTARY INFORMATION: There are two Performance Review Boards in the U.S. Customs Service as follows:

1. The Performance Review Board to review Senior Executives rated by the Commissioner and Deputy Commissioner is composed of the following members:

Chester C. Bryant, Comptroller, Bureau of Alcohol, Tobacco and Firearms
Stephen E. Higgins, Director, Bureau of Alcohol, Tobacco and Firearms
John W. Mangels—Director, Office of Operations, Department of Treasury
John Simpson—Deputy Assistant Secretary for Regulations, Trade and Tariff Enforcement, Department of Treasury

2. The Performance Review Board to review all other Senior Executives is composed of the following members:

William P. Rosenblatt—Assistant Commissioner, Office of Enforcement, U.S. Customs Service
William Green—Assistant Commissioner, Office of Internal Affairs, U.S. Customs Service
Samuel H. Banks—Assistant Commissioner, Office of Inspection and Control, U.S. Customs Service
Gerald McManus—Assistant Commissioner, Office of Commercial Operations, U.S. Customs Service
James W. Shaver—Assistant Commissioner, Office of International Affairs, U.S. Customs Service
James R. Grimes—Regional Commissioner, South Central Region, U.S. Customs Service
Edward Kwas—Regional Commissioner, New York Region, U.S. Customs Service
George Heavey—Regional Commissioner, Southeast Region, U.S. Customs Service
Richard McMullen—Regional Commissioner, North Central Region, U.S. Customs Service
Quintin L. Villanueva Jr.—Regional Commissioner, Pacific Region, U.S. Customs Service

Dated: June 2, 1987.

William von Raab,

Commissioner of Customs.

[FR Doc. 87-13331 Filed 6-10-87; 8:45 am]
BILLING CODE 4820-02-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 112
Thursday, June 12, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, June 16, 1987, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, June 18, 1987, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Eligibility Report for Candidates to Receive Presidential Primary Matching Funds.
Certification Report for Convention Financing.
11 CFR Parts 4 and 5: Interim rules revising the FOIA and Public Disclosure regulations.
Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Mary W. Dove,

Administrative Assistant.

[FR Doc. 87-13442 Filed 6-9-87; 12:26 pm]

BILLING CODE 6715-01-M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m.—June 17, 1987.

PLACE: Hearing Room One—1100 L Street, NW., Washington, DC 20573-0001.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Agreement No. 212-010286—South Europe/U.S.A. Pool Agreement.
2. Policy Regarding Civil Penalty Compromise Procedure.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523-5725.

Joseph C. Polking,

Secretary.

[FR Doc. 87-13422 Filed 6-9-87; 11:23 am]

BILLING CODE 6730-01-M

NATIONAL SCIENCE BOARD

DATE AND TIME:

June 18, 1987
8:30 a.m. Open Session
June 19, 1987
8:30 a.m. Closed Session
8:45 a.m. Open Session

PLACE: National Science Foundation, Washington, DC.

STATUS:

Most of this meeting will be open to the public.
Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Thursday, June 18, 1987

Open Session—8:30-12:30 p.m.

1. Strategic Overview
2. Education and Human Resources
3. Centers and Groups

Open Session—2:00-5:30 p.m.

4. Disciplinary Research and Facilities
5. Administrative Strategies
6. Issues and Problems

Friday, June 19, 1987

Closed Session—8:30-8:45 a.m.

7. Minutes—May 1987 Meeting
8. NSB and NSF Staff Nominees

Open Session—8:45-11:30 a.m.

9. Chairman's Report
   a. Minutes—May 1987 Meeting
   b. 1988 Calendar of Meetings
10. NSB Biennial Report—Science and Engineering Indicators—1987
11. Strategic Planning—Priorities and Conclusion

Thomas Ubois,

Executive Officer.

[FR Doc. 87-13410 Filed 6-9-87; 10:11 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Thursday, June 11, 1987.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Week of June 8

Thursday, June 11

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. NFS Ltd's Proposed Purchase of the Stock of NFS, Inc.—and OCAWIU's Request for Hearing (Tentative)
b. Metcoa, Inc., FDBA the Pesses Company (hearing with Respect to Immediately effective Order Modifying License No. STB-1254; EA-85-122) (Tentative)
c. Request for Hearing on Applications to Import Uranium of South African Origin (Tentative) (New item)

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING) (202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Robert McOsker (202) 634-1410.

Robert B. McOsker,

Office of the Secretary.

June 8, 1987.

[FR Doc. 87-13401 Filed 6-9-87; 8:55 am]

BILLING CODE 7590-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, June 17, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 9, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-13484 Filed 6-9-87; 3:34 pm]

BILLING CODE 6210-01-M

Corrections

Federal Register
Vol. 52, No. 112
Thursday, June 11, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. 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.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 140

Conduct of Members and Employees of the Commission

Correction

In rule document 87-12479 beginning on page 20592 in the issue of Tuesday, June 2, 1987, make the following correction:

§ 140.735-4 [Corrected]

On page 20593, in the first column, in § 140.735-4(b)(1)(iii)(B), in the third line, "of" should read "or".

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

48 CFR Part 252

Department of Defense Federal Acquisition Regulation Supplement; Implementation of Section 1207 of Pub. L. 99-661; Set-Asides for Small Disadvantaged Business Concerns

Correction

In rule document 87-10099 beginning on page 16263 in the issue of Monday, May 4, 1987, make the following corrections:

252.219-7005 [Corrected]

On page 16267, in the second column, under amendatory instruction 21, the section number should read as set forth above; in the same section, in the 11th line from the bottom of the column, "XXX (1987)" should read "(————————1987)"; and the 7th and 8th lines from the bottom should read, "————————is, ———————— is not a small disadvantage business concern.".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[FDA 225-86-8251]

Memorandum of Understanding Between the Patent and Trademark Office and the Food and Drug Administration

Correction

In notice document 87-10713 beginning on page 17830 in the issue of Tuesday, May 12, 1987, make the following corrections:

1. On page 17831, in the first column, under *II. Background*, in the first paragraph, in the third line, "1987" should read "1984".

2. On the same page, in the third column, under paragraph C. 2. a., in the second line, "60 filing" should read "60 day filing".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

Grants for Nursing Special Projects

Correction

In proposed rule document 87-12809 beginning on page 21490 in the issue of Friday, June 5, 1987, make the following correction:

On page 21491, in the first column, insert the following paragraph after the second paragraph:

The purpose of these requirements is to assure that projects develop not only a method of attracting a supply of registered nurses to health manpower shortage areas, but also a plan for retaining them over time. The practice area is limited by statute to health manpower shortage areas identified under section 332.

BILLING CODE 4160-15-D

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701-TA-282 (Final) and Investigations Nos. 731-TA-351 and 353 (Final)]

Certain Forged Steel Crankshafts From Brazil, the Federal Republic of Germany, and the United Kingdom

Correction

In notice document 87-12622 beginning on page 20790 in the issue of Wednesday, June 3, 1987, make the following correction on page 20790:

In the first column, in the **SUMMARY**, in the 15th line, after "660.67" insert, "and 660.71".

BILLING CODE 1505-01-D

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1254

Use of Privately Owned Microfilm Equipment To Copy Records in the National Archives and Presidential Libraries

Correction

In rule document 87-12087 beginning on page 20077 in the issue of Friday, May 29, 1987, make the following corrections:

§ 1254.92 [Corrected]

1. On page 20081, in the first column, in § 1254.92(a), in the ninth line, "(NM)" should read "(NN)"; and in the second column, in paragraph (c)(5)(i), in the sixth line, "or" should read "of".

§ 1254.96 [Corrected]

2. On page 20082, in the second column, in § 1254.96(a)(1), in the third line, "inviewed" should read "reviewed".

§ 1254.98 [Corrected]

3. On the same page, in the third column, in § 1254.98(d), in the fifth line, "or" should read "of".

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

10 CFR Part 70

Material Control and Accounting Requirements for Facilities Licensed To Possess and Use Formula Quantities of Strategic Special Nuclear Material

Correction

In rule document 87-6945 beginning on page 10033 in the issue of Monday, March 30, 1987, make the following correction:

§ 70.32 [Corrected]

On page 10038, in the first column, in § 70.32(c)(1)(i), in the sixth line, "74.41(c)(1)" should read "74.51(c)(1)".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 25-XX; Transport Airplane Crashworthiness Handbook

Correction

In notice document 87-12790 appearing on page 21402 in the issue of Friday, June 5, 1987, make the following correction:

In the second column, under **DATES**, the second line should read "or before October 5, 1987.".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. IRA-21]

Inconsistency Ruling No. IR-8; Notice of Decision on Appeal; State of Michigan Rules and Regulations Affecting Radioactive Materials Transportation

Correction

In notice document 87-8832 beginning on page 13000 in the issue of Monday, April 20, 1987, make the following corrections:

1. On page 13000, in the third column, in the **SUMMARY**, in the third line "Department" was misspelled.

2. On page 13001, in the first column, under **I. Background**, in the second paragraph, in the 11th line, "§ 107.211)." should read "(§ 107.211).", and in the 14th line, "on" should read "of".

3. On the same page, in the second column, under *A. Introduction*, in the fourth paragraph, in the fourth line, "raised" was misspelled; and in the fifth line, "Rulings's" should read "Ruling's".

4. On page 13002, in the first column, in the 13th line from the bottom, "be" should read "by".

5. On the same page, in the second column, in the 17th line from the top, "104 S.CT. 1403 (1984))." should read "104 S.Ct. 1403 (1984)).", in the first complete paragraph, in the sixth line "department" should read "Department"; and in the 25th line from the bottom of the column, "follows" was misspelled.

6. On page 13003, in the first column, in the 18th line from the bottom of the column, "Rule 3" should read "Rule 5".

7. On page 13004, in the second column, in the 13th line from the bottom of the column, "doubt" was misspelled.

8. On page 13005, in the first column, under "Certification Requirements", in the fourth paragraph, in the first line, "expulsion" was misspelled.

9. On the same page, in the third column, in the second complete paragraph, in the fifth line, "HMR inconsistent" should read "HMR constitute inconsistent"; and the 10th line should read "additional state or "

BILLING CODE 1505-01-D

Federal Register

Thursday
June 11, 1987

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the Flattened Musk Turtle (Sternotherus depressus); Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the Flattened Musk Turtle (Sternotherus depressus)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the flattened musk turtle (*Sternotherus depressus*) in the Black Warrior River system upstream from Bankhead Dam to be a threatened species. This turtle was historically restricted to Alabama's upper Black Warrior River system upstream from the fall line (the steep northeastern edge of the coastal plain). The Service considers the flattened musk turtle populations unaffected by hybridization with *Sternotherus minor peltifer* to presently be restricted to the Black Warrior River system upstream from Bankhead Dam. Portions of its habitat have been eliminated by impoundments and agricultural, residential, and industrial development within the Black Warrior basin. It is threatened by overcollecting, disease, and habitat degradation from siltation and water pollution. Activities and sources that have historically contributed, or may currently be contributing, to the siltation and pollution problems include agriculture, forestry, mining (conducted in violation of State or Federal laws and regulations), and industrial and residential sewage effluents. This determination implements the protection provided by the Endangered Species Act of 1973, as amended.

DATE: The effective date of this rule is June 11, 1987.

ADDRESS: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Endangered Species Field Office, U.S. Fish and Wildlife Service, Jackson Mall Office Center, Suite 316, 300 Woodrow Wilson Avenue, Jackson, Mississippi 39213.

FOR FURTHER INFORMATION CONTACT: Mr. James Stewart at the above address (601/965-4900 or FTS 490-4900).

SUPPLEMENTARY INFORMATION:

Background

The flattened musk turtle is a small aquatic turtle having a distinctly flattened carapace up to 119 millimeters (mm) or 4.7 inches (in) long, with keels virtually, if not altogether, lacking (Mount 1981). The carapace is dark brown to orange with dark bordered seams and is slightly serrated behind (Ernst and Barbour 1972). The plastron is pink to yellowish. The head is greenish with a dark reticulum that often breaks up to form spots on the top of the snout (Mount 1981). Stripes on the top and sides of the neck, if present, are narrow. There are two barbels on the chin, all four feet are webbed, and males have thick, long, spine-tipped tails (Ernst and Barbour 1972).

According to Close (1982), male flattened musk turtles mature in four to six years at a body length of 60–65 mm (2.4–2.6 in), whereas females mature in six to eight years at a body length of 70–75 mm (2.8–3.0 in). Females normally deposit from one to two clutches of eggs each season with an average of three eggs per clutch.

All scientific treatments to date have considered the flattened musk turtle a morphologically distinct taxonomic entity that is found only in the upper Black Warrior River system of Alabama. It was originally described by Tinkle and Webb (1955) as *Sternotherus depressus*. Seidel and Lucchino (1981) considered *S. depressus* a full species, on the basis of morphometric and electrophoretic analysis. Ernst *et al.* (1987) considered *S. depressus* a distinct species on the basis of shell morphology. Other herpetologists, e.g. Wermuth and Mertens (1961), have treated it as a subspecies of *Sternotherus minor*.

Although the flattened musk turtle is found in a variety of streams and the headwaters of some impounded lakes, its optimum habitat appears to be free-flowing large creeks or small rivers having vegetated shallows about 2 feet deep alternating with pools 3.5–5 feet deep. These pools have a detectable current and an abundance of crevices and submerged rocks, overlapping flat rocks, or accumulations of boulders. Suitable conditions for this turtle include abundant molluscan fauna, low silt load and deposits, low nutrient content and bacterial count, moderate temperature, and minimal pollution (Estridge 1970, Mount 1981). Ernst *et al.* (1983) reported that *S. depressus* also inhabits stream stretches with sandy bottoms, alternating with suitable cover sites.

Herpetologists have been concerned about the status of the flattened musk turtle since it was first collected in 1952. Tinkle (1958), Estridge (1970), Iverson (1977b) and Seidel and Lucchino (1981) called attention to its limited distribution, noting preliminary evidence of gaps developing in its distribution at many places in the basin. They interpreted those gaps as indications of a long-term population decline, and stated that *S. depressus* should be regarded as a threatened species. A symposium sponsored by the Alabama Department of Conservation and Natural Resources resulted in the 1976 publication (endorsed by the Department) of a list of Alabama's endangered and threatened species, which included the flattened musk turtle in the category of threatened. A recent update of the list of Alabama's endangered and threatened vertebrate species also included the flattened musk turtle (Mount 1986).

The Service included the flattened musk turtle in a notice of status review for 12 turtle species published in the June 6, 1977, **Federal Register** (42 FR 28903). Additional information was solicited to determine if this species should be listed under the Endangered Species Act. Information provided in response to that notice by herpetologists, including Drs. Robert Mount, James Dobie, Carl Ernst, John Iverson, R. Bruce Bury, Stephan Edwards, and George Pisani, suggested that the flattened musk turtle should be listed as threatened.

The Alabama Department of Conservation indicated in 1982, and again in 1985, its support of any Federal regulations that might be forthcoming in regard to the flattened musk turtle. The Reptiles and Amphibians Committee at the Alabama Non-Game Wildlife Conference on July 15 and 16, 1983, assigned the status of "Threatened and Declining" to this turtle. Dr. Karen Bjorndal and Dr. Don Moll of the Freshwater Chelonian Specialist Group of the International Union for Conservation of Nature/Survival Service Commission recommended listing the flattened musk turtle. It was included in the vertebrate notice of review published December 30, 1982 (47 FR 58454) and revised September 18, 1985 (50 FR 37958) as a category 1 species (those species for which the Service has information indicating listing is appropriate).

On December 1, 1983, the Environmental Defense Fund petitioned the Service to list the flattened musk turtle as a threatened species. A finding was published in the **Federal Register** on April 5, 1984 (49 FR 13558), that the petition contained substantial biological information to indicate that a listing action may be warranted. On July 18, 1985 (50 FR 29238), the Service announced the finding that the petitioned action was warranted, but precluded by other higher priority listing actions. The proposed rule published

November 1, 1985 (50 FR 45638), constituted the final required 12-month finding.

The flattened musk turtle has been the subject of three major studies since the 1977 notice of review was published. Dr. Robert H. Mount conducted the first status survey during 1981, under a contract with the Service. The Alabama Coal Association sponsored an additional study and survey work on the flattened musk turtle during 1983, under the project directorship of Dr. Carl A. Ernst. The report from the second study (Ernst *et al.* 1983) was released for the public record and for review by the Service in November 1984. It contained a smaller appended report compiled by personnel of Drummond Coal Company (Hubbard *et al.* 1983). The data the Service considered most relevant and the authors' conclusions from both studies were summarized in the proposed rule to list the flattened musk turtle. A third study targeted specifically at determining possible impacts of coal mining on flattened musk turtle survival and distribution was funded by the Office of Surface Mining, and conducted by the Fish and Wildlife Service during 1985 (Dodd *et al.* 1986). Results of the Dodd *et al.* (1986) study were not available at the time of publication of the proposed rule, but have been incorporated in the final rule.

Historically, the flattened musk turtle was found in the upper Black Warrior River system of Alabama upstream from the fall line (near Tuscaloosa), the break between the Piedmont Plateau and the coastal plain (Tinkle 1959, Estridge 1970, Mount 1976, Mount 1981, Ernst *et al.* 1983). Beginning about 1930, several dams were built on the Black Warrior River below and near the fall line. The impoundments that were created behind those dams extended from well below to well above the steep gradient that forms the fall line. It has been hypothesized that the newly created impoundments allowed the range of *S. minor peltifer* (previously limited to below the fall line) to be functionally connected for the first time to the River above the fall line, and to have contact with the range of *S. depressus* (Iverson 1977, Seidel and Lucchino 1981). This linkage eliminated a natural, environmental barrier to interbredding between *S. depressus* and *S. minor peltifer* (Iverson 1977b). Bankhead Dam, which was constructed in 1915 and prior to the impoundments near the fall line, is further upstream and now constitutes the primary physical barrier between the ranges of *S. depressus* and *S. m. peltifer*. The Black Warrior River system below Bankhead Dam but above the fall line now contains hybrid populations of *Sternotherus* turtles (Iverson 1977, Mount 1981). Resultant changes from impoundments and other habitat degradation have been suggested to favor *S. m. peltifer* over *S. depressus* (Seidel and Lucchino 1981). Only remnants or pockets of *S. depressus* unaffected by hybridization now occur there, if any such remnants do actually still exist. In this area where hybridization is occurring, it cannot be assumed that turtles that phenotypically appear to be good *S. depressus* have not been genetically affected by hybridization. Another interpretation is that the area from the fall line to Bankhead Dam is an area of natural intergradation between subspecies, with integradation perhaps having been accelerated by habitat modification (Mount 1981).

As pointed out by the flattened musk turtle review panel (see Summary of Comments section), the specific identification of musk turtles inhabiting the section of river below Bankhead Dam to the fall line (Tuscaloosa County) has been a source of controversy, and remains so. Estridge (1970) identified one *S. depressus*, one *S. m. peltifer*-like turtle, and a presumed hybrid specimen from the North River, a large tributary of the Black Warrior River below Bankhead Dam. Ernst *et al.* (1983) relegated 18 *Sternotherus* that they collected from the North River to *S. depressus*. Ernst *et al.* (1987) reported that turtles in this area could not be differentiated from *S. depressus* on the basis of shell morphology but that head and neck patterns in many cases could be considered intermediate between *S. depressus* and *S. m. peltifer*. Iverson (1977) and Seidel and Lucchino (1981) suggested the presence of hybrids between *S. depressus* and S. m: peltifer in this area, and stated that stream impoundment and subsequent habitat alterations were the probable causes allowing hybridization. Mount (1986) also recognized turtles in this section of river as intermediates, and referred to them as intergrades (*S. m. peltifer* x *depressus*).

The data available to the Service at this time indicate that some *Sternotherus* in the Black Warrior River between Bankhead Dam and the fall line are phenotypic intermediates (primarily those in or near the main channel) and some (those in the North River and possibly other tributaries) closely resemble *S. depressus*. Turtles in the North River may represent a relict population of *S. depressus* remote from the main channel of the Black Warrior River and isolated from previous contact with *S. m. peltifer*, but field work and genetic studies are required to verify this. However, there is no barrier to contact between these isolates and *S. m. peltifer* and interbreeding would be expected to occur eventually if it has not already occurred. In the main channel and smaller "backwater" tributaries of the Black Warrior River between the fall line and Bankhead Dam, it appears that gene exchange, possibly substantial, has occurred between *S. m. peltifer* and *S. depressus*.

The Service has excluded the area between Bankhead Dam and the fall line from the effects of this final rule. The available evidence indicates a likelihood that few *S. depressus* inhabit this portion of the Black Warrior River system and that the *S. depressus* remaining in this area are subject to hybridization with *S. minor peltifer*. Because the environmental conditions below Bankhead Dam now appear to favor *S. minor peltifer*, that taxon will likely continue to extend its range there, further hybridizing with *S. depressus* wherever the two make contact during the next several decades. Individuals of hybrid origin are not covered under the Endangered Species Act (Department of Interior Solicitor's opinion, 1983). Populations of *S. depressus* unaffected by hybridization are presently known or believed to exist only upstream from Bankhead Dam in Blount, Cullman, Etowah, Jefferson, Lawrence, Marshall, Tuscaloosa, Walker, and Winston Counties, and therefore, the geographical scope of the present listing has been limited to this area. Any distribution in Fayette County is considered unlikely although not impossible; the widths and gradients of upper basin streams (entering the Black Warrior above Bankhead Dam) in east Fayette County are not in the range that Guthrie (19861 considered likely as habitat, and all musk turtles reported from farther west in the county (streams entering the Black Warrior below Bankhead Dam) are considered to show evidence of hybridization (Mount 1981, Estridge 1970).

The Service stresses that the evidence of present and future hybridization of the musk turtle population between Bankhead Dam and the fall line affects only the geographical scope of the listing and has no effect on the decision to list *S. depressus* as threatened. If there had been no evidence of hybridization of *S. depressus* below Bankhead Dam the Service would have proposed to list the species in this area as well. The primary reason for this is that the same degraded habitat conditions that form part of the basis for listing above Bankhead Dam

also exist below the Dam. Even if the entire historical range from the fall line upstream is considered the species' range and current numbers are extremely limited and the same threats apply.

The flattened musk turtle has been the subject of three recent studies that provide data on the impacts of habitat degradation (Mount 1981, Ernst *et al.* 1983, Dodd *et al.* 1986). In all three studies, the data indicate a strong correlation between heavy accumulations of silt and the absence or rarity of flattened musk turtles captured or observed, especially juveniles. Ernst *et al.* (1983) provided evidence that this effect was most strongly correlated with clay silt accumulations, but reported occurrence of *S. depressus* over a bottom of deep sand at two localities on one stream. Dodd *et al.* (1986) concluded after an intensive study that siltation appears to have seriously impacted the flattened musk turtle. None of the available studies presented conclusive evidence about the source of the clay siltation, nor its extent (fraction of the range that is unsuitable due to clay siltation).

While no single agricultural, industrial, or other activity is considered to be the sole cause of clay siltation, the combined effects of all activities and sources that have historically, and may currently be contributing to the siltation problem have significantly impacted the Black Warrior River Basin. The entire upper Basin is underlain by the Black Warrior and Plateau Coal Fields, and mining as well as forestry and agriculture are common land uses throughout the Basin. Before implementation of stricter regulations to limit the amount of silt entering the basin, about 69 percent of the annual sediment yield was attributed to accelerated erosion from such sources (USDA 1980). Annual erosion in 1975 was estimated at 5.5 million tons from cropland and pastureland (sheet and rill); 4.1 million tons from commercial forest land; 7.9 million tons from gulleys, roadsides, and streambanks; and 9.1 million tons from mined lands (USDA 1980).

While historically the Black Warrior River Basin has been significantly impacted by siltation, enforcement of the new regulations may have reduced both the amount and rate of current and future sedimentation. Many of the involved agencies are making progress to reduce siltation, but projections based on the newer regulations are not available. Stream recovery and any resulting improvement in the turtle's status are expected to be slow processes, and it may be some time before it can be determined if, and to what extent, these are occurring. Remaining habitat of the flattened musk turtle in the Black Warrior basin upstream from Bankhead Dam has been adversely affected by siltation. Past siltation continues to affect the habitat, and although efforts have been made to reduce the rate, siltation continues to be a problem for the forseeable future. Likely adverse impacts include: (1) The extirpation or reduction of populations of mollusks and other invertebrates on which the turtle feeds, (2) physical alteration of the rocky habitats where the turtle seeks food and cover, and (3) development of a substrate in which chemicals that may be toxic to the turtle or its food sources tend to accumulate and persist.

The composition of size classes within populations is one indicator of their normal reproduction and longevity. Demonstrated lack of juveniles signifies reduced rates or absence of recruitment, and consequently low population viability. Of all flattened musk turtles collected before 1970, 55 percent were juveniles (Dodd *et al.* 1986), including a large fraction of the original type series (Tinkle and Webb 1955). Mount (1981) found that 14 percent (14 out of 101) and Ernst *et al.* (1983) found that 15 percent (89 out of 577) of the turtles they collected had a carapace length shorter than 70 mm (considered juveniles). Actual changes in the overall size distribution or simply collecting bias (collection by wading yields a preponderance of juveniles, collection by trapping yields a preponderance of adults) have been suggested as contrasting interpretations of these differences. In fact, both explanations may be true; they are not mutually contradictory. Dodd *et al.* (1986) found a statistically significant absence of juveniles at mine affected sites when compared with populations at mine unaffected sites, and also noted that the populations sampled at mine affected sites were skewed toward very large adult sizes. Significant absences of juveniles in comparison to the average size distribution at all sites sampled can be found in Appendix A of Ernst *et al.* (1983). From two sites where apparently adequate wading efforts to obtain juveniles were reported, 29 and 20 individuals with carapace length greater than 70 mm were taken without any individuals smaller. The average composition of turtles larger than 70 mm at all sites was 84.6 percent, and the probabilities that the two sites mentioned were subsamples of that average composition drawn at random were about 0.0078 and 0.0351, respectively, both significant at the 95 percent level of confidence. These data suggest that reductions in the proportion of juveniles present at these sites were not a result of random variation. Remaining uncertainties involve the possible causes of such reductions and the magnitude of their effects on survival of the species.

Within its geographic range, the flattened musk turtle occurs only in a restricted portion of the apparently suitable habitat. In addition, local distribution appears fragmented. Two major distributional surveys found flattened musk turtles at fewer than one-half of the combined (approximately 125) sites sampled. Mount's estimate of the number of stream miles where this turtle has probably been extirpated amounts to 27 percent of its range. Ernst caught no *S. depressus* at 47 percent of the locations that he sampled. Based on Ernst's design objectives of sampling known or potential range, it is assumed that he did not sample the area Mount included as extirpated. An evaluation of USGS water quality records and Mount's collections, field observations, and habitat characterizations, suggests that only 15 percent of the Black Warrior system (142 out of 947 stream miles, including impoundments) supports healthy, viable flattened musk turtle populations. An evaluation of Ernst's field data, assuming (1) that population vigor is characterized by the numbers of individuals trapped and trapping success rates, an array of sizes among the specimens collected at individual locations, and evidence of some reproduction having occurred in more recent years, and (2) a statistically valid distribution of sample sites throughout the basin (as reported), suggests that only 10 to 20 percent of the Black Warrior system supports healthy, viable flattened musk turtle populations.

Summary of Comments and Recommendations

In the November 1, 1985, proposed rule (50 FR 45638) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the Service's effort in evaluating the turtle's status and determining if Endangered Species Act protection is justified. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in the *Birmingham News* on November 17, 1985, the *Cullman Times* on November

17, 1985, the *Jasper Mountain Eagle* on November 15, 1985, and the *Oneonta Southern Democrat* on November 20, 1985, which invited general public comment. A public hearing was requested and held in Birmingham, Alabama, on February 6, 1986. The comment period was reopened until February 16, 1986, to accommodate the public hearing and then again extended to March 18, 1986, to allow for review and comment on the flattened musk turtle study by Dodd *et al.* (1986), as was requested by some commenters. Comments, either written or presented orally at the public hearing, were received from 29 parties; some parties provided more than one comment.

Seventeen parties supported the proposal; these included the Environmental Defense Fund, which petitioned the Service to list the species, other conservation organizations, professional societies, college professors, and private individuals. Five parties provided comments and/or information but did not indicate either support of or opposition to the proposal. Seven parties expressed opposition to the proposal including the Alabama Congressional delegation, trade organizations, Chambers of Commerce, and private individuals. Many parties provided data further substantiating or clarifying the threats to the species. This information has been incorporated into the final rule where appropriate.

On October 31, 1986, the Service published a notice (51 FR 39758) extending the one-year deadline for six months until May 1, 1987. Comments submitted on the proposed rule during the previous comment periods indicated the existence of disagreements concerning the interpretation of biological data on the turtle. When such a scientific disagreement exists the 1-year period within which the Service must ordinarily take final action on a proposal to list a species may be extended for not more than 6 months in accordance with section 4(b)(6)(B)(i) of the Act. The Service established a panel of herpetologists to review all the available data and reopened the comment period. The panel's report was made available to the Service on February 2, 1987. The report was made available for review by the public and the comment period closed 30 days after the availability of the report was announced in the **Federal Register** (52 FR 5068; February 18, 1987) on March 20, 1987.

Seven additional comments were received in response to the panel report and during the reopened comment period. Five comments, from Dr. Robert Mount, the Environmental Defense Fund, a private individual, the Alabama Conservancy, and the Alabama Wildlife Federation supported the panel's findings and/or requested that the final rule be expedited. Two comments from the Alabama Coal Association and a private individual stated disagreements with the panel's conclusions and/or requested that the proposal be withdrawn. One commenter submitted a 1987 paper by Ernst *et al.* with his comments, which has been discussed in the Background section and below under Issue 17.

All written comments and oral statements obtained during the public hearing and all comment periods are covered in the following discussion. Comments of similar content are grouped in a number of general issues. These issues and the Service's response to each, are discussed below.

Issue 1: Endangered status was recommended as opposed to threatened. Response—The Service believes the category of threatened more accurately describes the biological status of the species. It does not appear to face imminent extinction now, but is likely to become an endangered species in the foreseeable future if the past trends continue.

Issue 2: The data sets of Mount (1981), Ernst *et al.* (1983), and Dodd *et al.* (1986) were compared, debated, and questioned by some commenters. These commenters also questioned the Service's interpretation of these data sets and the Service's conclusion that the flattened musk turtle should be listed as threatened. Response—The Service utilizes all available information when assessing the status of a species; it does not necessarily accept without question all the data presented or concur with the conclusions reached by all the authors and documents cited in the proposal. Specific points upon which commenters disagreed with the Service's interpretations or conclusions are addressed in the issues below. It is important to point out that the data sets and findings of these three major studies were much more similar than dissimilar. A primary finding in all major studies was the absence or extreme rarity of flattened musk turtles at all sites showing significant accumulations of clay silt (sandy silt was not correlated with this effect in any study). The general attributes of suitable habitat were similarly described (with Ernst *et al.*, 1983, noting the occurrence over deep sand substrate as a new observation, even in Sipsey Fork where Mount and Dodd also described sandy habitat). More than 45 percent of the sites in the Mount and Ernst surveys yielded no *S. depressus*. Dodd found eight *S. depressus* in more than 2,700 trap hours at two sites where neither Mount nor Ernst surveys had taken any, but added none in 2,755 trap hours where the Ernst survey had trapped two in 671 trap hours. These results suggest that both Mount and Ernst reports gave reasonable indications of *S. depressus* absence or extreme rarity, and that these change slightly over time, or cannot be distinguished from one another, or both. Several additional sites in all three studies had indications of reduced or limited population numbers coupled with the absence or extreme rarity of younger size classes. Ernst *et al.* minimized discussion about these, generalizing only about the size class ratios among the total number of *S. depressus* collected throughout. Those were dominated by the more balanced size distributions at the four most productive sites, which yielded among them 56 percent of the *S. depressus* captured. All of the contributing studies reported circumstantial evidence of heavy commercial taking of *S. depressus*, while the Ernst survey results also implicated the selective elimination of juveniles.

Issue 3: One comment suggested that historic habitat should be defined solely on the basis of positive findings by Mount (1981) and Ernst *et al.* (1983). Response—It is not clear whether the comment referred to the historic range of the species or to the fraction of former habitat presently occupied. Ernst *et al.* (1983) stated "Its geographical range has been determined to be permanent streams of the Black Warrior River system above the Fall Line (Iverson 1977). Thus its entire range lies within Alabama, and more importantly, within the Warrior Coal Basin." This agrees with the Service's concept of the geographic historic range of the species. In regard to the historic habitat, present distribution of this turtle is scattered over most of the larger streams of the basin at variable (but mostly very low) densities, and has been found at moderate to high density in very few spots. The Service sees little reason to doubt that: (a) *S. depressus* was able to utilize intervening and adjacent stretches of those streams wherever slope, substrate, depth and volume of water, and known kinds of food organisms were generally comparable to those in areas where it is now locally concentrated, (b) much, if not most of the length of the larger streams in the basin were at one time suitable as habitat in respect to those factors, (c) very sigificant losses of that area have

occurred and are continuing to occur as impoundment, siltation, and organic and chemical pollution have modified one or more of the stated factors. The exact percentage of probable historic habitat now occupied cannot be known, and the available estimates are not precise, but they are credible. The estimate of 15 percent that the Service used in the proposed rule, its derivation, and the estimates obtained by analyzing survey data of Mount (1981) and Ernst *et al.* (1983) (17 and from 10 to 20 percent respectively) were discussed above in the "Background" section.

Issue 4: The possible presence of the flattened musk turtle in the Coosa, Cahaba, Tombigbee, and other river drainages was suggested. Response—Although herpetologists have examined the Coosa, Cahaba and Tombigbee drainages (Dodd, pers. comm. 1986), no *S. depressus* collections have ever been reported from these areas and the Service had no reason to expect the flattened musk turtle to occur in these streams. Certain similarities of appearance between musk turtles in these and the Black Warrior drainage mentioned by Estridge (1970) appear to be attributable to convergence (Mount 1981).

Issue 5: Field studies have not established good population estimates for this turtle. Response—This is true, and has been discussed in all the field reports available. Dodd *et al.* (1986) stated that sufficient numbers of turtles have not been collected to estimate population sizes reliably anywhere except in Sipsey Fork. Exact population estimates are not necessary to recognize overall declining trends. The relative success or failure of a population to reproduce is a more significant indicator of capacity to survive than a species' numbers at a given time, especially when dealing with long-lived organisms such as turtles. A lack of younger age classes at a number of sites is discussed under "Background."

Issue 6: The extent and method of collecting affects the number, size, and age of specimens collected and there are problems inherent in comparing data from different years and collectors. Response—The Service concurs that collection methods and the frequency, spacing, etc. of collections affect the results obtained, and that this should always be borne in mind when assessing collection results. The Mount survey could compare its results only to previous collectors who used a variety of methods, some unspecified. Ernst *et al.* (1983) noted that "Mount (1981) inferred from his data that *depressus* populations today may have substantially fewer juveniles than those prior to 1970," and Mount's inference may be true. Ernst *et al.* noted further that "The lumping of the pre-1970 data . . . may be invalid for comparison . . ." Both statements by Ernst *et al.* (1983) are correct, and both also are appropriately indefinite. Consistency in the primary collecting methods adopted (night trapping using standard bait, supplemented with daytime wading) made the results of Mount (1981), Ernst *et al.* (1983), and Dodd *et al.* (1986), however, very comparable. As discussed in Issue 7, the results of these three studies were also more consistent than some commenters indicated.

Issue 7: Dr. Ernst commented that his survey (1) took more turtles, and (2) at a significantly greater percentage of its sites than the Mount survey, demonstrating that the turtles were more numerous than previously claimed. Response—The data of these two surveys do not support this claim. First, the Ernst survey invested approximately five times the amount of effort to obtain turtles as the Mount survey did, and obtained almost exactly five times as many turtles, having a very similar profile of overall size distribution. As pointed out in the discussion of Ernst *et al.* (1983) and in the proposed rule, there was no significant difference in the average number of turtles caught per trap hour or per trap night in either study (0.4072 versus 0.4044 per trap night, a rate difference that would yield 3.5 more turtles over the 1250 trap nights of the Ernst survey). Second, the Mount survey examined and described 68 localities, but it trapped for turtles at only 40, securing turtles at 21 (53 percent). The Ernst survey secured turtles at 36 out of 68 sites trapped (likewise 53 percent). There were few differences also in the fraction of sites with fine silt or other habitat problems, although the subjective formats used in both studies to describe these make exact comparisons difficult.

Issue 8: Correlations between molluscan availability and the presence and/or abundance of flattened musk turtles were questioned. Response—The consumption of molluscs by flattened musk turtles was demonstrated by Marion *et al.* (1986). They found 70 percent of the fecal content to be snails and 12 percent bivalve mollusks. While there are limitations to dietary analysis by fecal content, the importance of mollusks, especially snails, is evident. Ability of the flattened musk turtle to subsist on other foods has not been demonstrated. The known food organisms, usually including snails, were reported by Ernst *et al.* (1983) as present in some density at all localities where reasonable densities of flattened musk turtles were found, and were not seen at several sites where these turtles were not found. The comment elaborates that unspecified numbers of such turtles "have been found" without these food organisms and "vice versa." The implied existence of areas with known food availability that lack turtles actually argues against the primary point of this comment, but neither alternative was documented as anything more than an isolated observation having limited significance. This commenter readily documented certain other claims for which documentation was available.

Issue 9: Desirable sedimentation yields for fisheries are of no use. Response—Sediment yields for fisheries were used to illustrate general water quality levels. Flattened musk turtles (Marion *et al.* 1986) and fish both feed upon mollusks, which are adversely affected by degraded water quality. Typically, many mollusks are even more vulnerable than fisheries to water quality problems. Dr. Ernst commented that he had observed mollusks to be present in very silted areas. The Service would expect this to represent a rare situation.

Issue 10: The proposal alleges low pH as a problem in the Black Warrior River. Response—The proposal did not cite low pH as a problem, and the Service does not consider it to be a problem. The primary reference to acid mine drainage was a correlation of negative trap results with specific conductance values greater than 175 micromhos.

Issue 11: The Service overlooked the findings of Ernst *et al.* (1983) in favor of other studies that had more pessimistic conclusions. Response—On the contrary, the data of the Ernst survey went beyond that of the smaller Mount survey, and have been very valuable to the Service in reaching its present conclusions. The Ernst survey sampled more possible habitat types, e.g. more sites in reservoirs and smaller streams, studied more habitat variables, and reported more wading effort in search of juvenile turtles. Especially as they contrast to optimistic projections that Dr. Ernst had filed with the Service in critique of Dr. Mount's findings and methods before his own survey began, the negative evidence and findings reported in the Ernst survey achieve credibility even stronger than many of the opinions or conclusions stated by Ernst *et al.* (1983) or by any of the other contributors. At the same time, some very good collections obtained at the three best sites in the Ernst survey

served to validate the standard sampling methods used in all three major studies. Only in the larger samples based on greater collection effort in the Ernst and Dodd surveys could the reduced numbers or absence of juveniles at some localities be recognized as statistically significant deviations from average values or values found at other localities.

Issue 12: Dr. Ernst claimed that the proposal gave an erroneous impression that Ernst *et al.* (1983) indicated the entire Black Warrior watershed to be unfit. Response—The Service did not intend to give that impression, and has revised several aspects of the final rule to avoid that implication.

Issue 13: The statement in the proposal that the Ernst report found habitat that was heavily degraded is a gross mischaracterization. Response—The observance of habitat degradation in the Ernst report can be found on pages 3, 114, 115, 117, 118, 119, 120, 121, 122, and 129. For example, with reference to one collection site, the Ernst report stated: "This site is in the upper reaches of a stream which has received extensive degradation from surface mining and agriculture along much of its length. Above this influence a moderate to high density *depressus* population still exists, and serves to illustrate quite dramatically the detrimental environmental impact which can occur as a result of these activities."

Issue 14: Could the flattened musk turtle be bred or transplanted elsewhere? Response—Such possibilities will be explored during the recovery process with regard to reintroduction of the turtle to parts of its historical range from which it has been extirpated.

Issue 15: The Service's procedural handling of this listing action was questioned. Commenters felt the Service had decided on a final course of action prior to the closing of the comment period. Response—Written comments and those presented at the public hearing are carefully analyzed during the Service's administrative decision making process. Neither the Service nor the Department reaches any decision on any listing prior to the closure of the comment period or prior to a complete analysis of all information received. The Service objectively and carefully analyzed the biological information on the flattened musk turtle and the comments received prior to making the decision to list.

Issue 16: Are definitive data available regarding the disease that has been noted by researchers to affect this turtle? Response—The disease and its causative agent have not been identified to date, although the Service is pursuing further information (see factor C in the "Summary of Factors Affecting the Species" section). The question was also raised as to whether basking in the flattened musk turtle is normal (as suggested by one commenter) or whether it is abnormal behavior associated with diseased individuals. The Service does not have a conclusive answer to this question. If basking behavior is independent of disease, as one comment suggests, then the high incidence of disease observed among basking individuals (Mount 1981, Dodd 1986) may indicate a serious disease problem in the population as a whole. One comment suggested that disease is more prevalent in high density populations such as Sipsey Fork. No data exists to suggest that population levels should be considered abnormally high at the Sipsey Fork location. Other studies of kinosternid turtles have indicated much higher population levels than exist at Sipsey Fork yet serious disease has never been found in those populations.

Issue 17: Further explanation of the existence of intergrades between the flattened musk turtle [*Sternotherus depressus*) and the stripe-neck musk turtle (*Sternotherus minor peltifer*) was requested. One commenter submitted a manuscript by Ernst *et al.* (1987), which addressed the relationship of *S. depressus* and intergrades below Bankhead Dam. The Service's proceeding with a proposal prior to resolution of the proper taxonomic treatment of the intergrades was questioned. Response—Turtles with characteristics [degree of flatness of the carapace, neck and chin coloration and patterns, etc.) intermediate between *S. depressus* and *S. m. peltifer* have been collected. Intergradation (hybridization) of *S. depressus* and *S. m. peltifer* has been noted as occurring below Bankhead Dam (Mount 1981). The Service did not examine the specific turtles collected from Davis Creek by Drummond Coal Company. Davis Creek is below Bankhead Dam and is within that portion of the Black Warrior watershed where hybridization has occurred [see discussion in the "Background" section also). Following hybridization, the physical appearance of the turtles in the Davis Creek population could range from typical *S. depressus* to typical *S. minor peltifer.* The Davis Creek population is likely to show less pronounced *S. depressus* characteristics as interbreeding with *S. m. peltifer* continues. Whether the turtles in the Drummond sample had appeared to be all *S. depressus,* all *S. minor peltifer,* all hybrids, or any combination thereof, would have had no direct bearing on whether to or not to list (see discussion under Background section also). Ernst *et al.* (1987) considered the "presumed intergradient populations in west central Alabama" (Black Warrior River tributaries between Tuscaloosa and Bankhead Dam) referable to *S. depressus* on the basis of shell morphology comparisons among turtles of the *S. minor* complex. Determining the extent of hybridization (intergradation) in populations below Bankhead Dam would require extensive study and the comparison of characteristics other than shell morphology. Detailed biochemical and genetic studies, for example, would be necessary to document the precise extent of hybridization and to infer the reproductive fate of hybrid individuals. Whether individuals from intergrade populations are closer to *S. depressus* or *S. m. peltifer* with regard to shell characteristics does not negate other evidence that gene flow has occurred between *S. depressus* and *S. m. peltifer* in the area below Bankhead Dam. Hybridization has been occurring for some time and will continue to occur possibly eliminating all pure *S. depressus* from this area over time, if this has not already occurred. The Service will treat the entire population downstream from Bankhead Dam as hybrids for purposes of listing, recovery, and law enforcement. Hybrids are not considered (Department of Interior Solicitor's opinion, 1983) to be protected by the Endangered Species Act. The existence of intergrades and hybrids in nature is common; the Act does not provide for withholding the proper classification of species in need of protection under the Endangered Species Act because of the occurrence in some locations of hybrids or intergrades.

Issue 18: OSM provided as one of its comments a document by W. Guthrie (1986), which examined the correlation between slope, silt, and the occurrence of flattened musk turtles, and proposed further investigations of this. The document also claimed: (1) That the lower turtle/trap ratio reported by Dodd *et al.* (1986) may have been due to trap saturation, and (2) the population decline in Sipsey Fork documented by Dodd *et al.* (1986) is the result of commercial turtle collecting. Response—The Service doubts that the relationships are quite as uncomplicated as suggested by Guthrie, but considers this a reasonable approach for further research. In respect to the claims: (1) Mount used an average of one trap for each 50 yards; Ernst *et al.* did not state

the inter-trap distance but had trap yield rates virtually identical to those of Mount; Dodd *et al.* spaced traps an average of 54.5 yards apart. (2) The population decline at Sipsey Fork could have been the result of collecting, or could have been disease-related; the Service does not have conclusive information on this point. Other information in Guthrie's document will also be utilized by the Service as recovery plans are developed.

Issue 19: Several commenters said that the proposed rule presented mining as the worst or primary culprit contributing to sedimentation and other water quality problems. Commenters pointed out that the Soil Conservation Service (SCS) 1980 data reported in the proposal were based on projections developed prior to the passage of the most recent laws and regulations. Response—The proposal did not state that mining was presently the primary contributor to sedimentation and other water quality problems, but instead cited forestry, agriculture, industrial and residential sewage effluents, and mining as activities and sources of silt and pollutants both historically and presently. The Service does not have current data illustrating which of these activities presently contributes the most sediment and, since most parts of this watershed have all these activities present, this point would be difficult to determine. Projections based on the newer mining regulations are not available. The proposed rule did include more information on mining activities than on the other activities, including the SCS projections, but this was simply a reflection of the data available to the Service, and was not intended to single out or serve as any indictment of the mining industry. The proposal did not place blame, but rather attempted to demonstrate that siltation of fine particle size from any and all sources contributes to the degradation of flattened musk turtle habitat. The Service regrets any misinterpretations that have occurred. The Service issued a no-jeopardy Section 7 biological opinion to OSM on the State of Alabama's mining program prior to proposing to list the flattened musk turtle. The Service's Jackson Field Station has and will continue to work with OSM, the Bureau of Land Management, and the State of Alabama to insure that their programs adequately address the needs of the flattened musk turtle. It is anticipated that this can be accomplished through a cooperative effort, and will not require changes in OSM's or the State of Alabama's present mining regulations or the original no-jeopardy opinion.

Issue 20: Several commenters provided extensive comments and data illustrating the differences between active mines in compliance with current laws and regulations versus abandoned mines and the amount of sedimentation contributed by each. These commenters felt the proposal should have made this distinction. Some commenters felt that even historical, pre-regulation and abandoned mines did not nor do not impact the flattened musk turtle. Response—The proposal did not state that active, compliant mining operations are a major contributor to the decline of the turtle, nor that current and future mining would be appreciably affected, much less eliminated. To eliminate compliant mining operations would, in fact, serve no useful purpose or, by itself, appreciably improve the status of the flattened musk turtle. There is no evidence that current compliant mining operations are a major factor in the decline of the turtle. The Bureau of Land Management (BLM), the Office of Surface Mining (OSM), and the Alabama Department of Environmental Management (ADEM) stated that existing mining permit limitations will provide sufficient protection of water quality, assuming operator compliance. The Service has issued a section 7 opinion on Alabama's program (see discussion above) and has also modified Factor "A" under "Summary of Factors Affecting the Species" to reflect the protection provided by the existing regulations. Welfare of the flattened musk turtle requires that the criteria established by OSM and ADEM be adhered to closely in practice. The Service will work closely with these and other agencies to approach or achieve 100 percent compliance as part of the recovery process. The Service has some reservations about the extent to which limitations on effluents are reduced as rainfall increases, and about whether monitoring of effluents is continued during periods of heavy rainfall, and will address this issue and any others that arise with the involved agencies during the recovery process. The Service feels that sedimentation from pre-regulation mining and abandoned mines is certainly a more serious problem than any sedimentation from active, presently complying mines that may now occur. The Service will work with OSM, ADEM, and the Abandoned Mine Lands Programs to encourage the reclamation of abandoned mines during the recovery process. Two abandoned mines located near flattened musk turtle habitat have already been targeted by OSM for clean-up since publication of the proposed rule.

Issue 21: Commenters felt that an assumption had been made that the Federal and State agencies responsible for monitoring and permitting active mines were not enforcing or would not enforce the existing laws and regulations. Response—The Service expects that all mining and pollution laws will be enforced by OSM, the Environmental Protection Agency (EPA) and their Alabama counterparts, Alabama Surface Mining Commission (ASMC) and ADEM, and it recognizes the advances that have been made in enforcement of such laws. For example, the OSM and ASMC programs have made great progress in developing environmentally sound regulations for mining, and report having accomplished a 95 percent compliance rate for active mines in the Black Warrior System. Some reduction of siltation (from all sources) and other effluents seems to be occurring with adoption of strict standards by Federal and State agencies. However, a corresponding improvement is not yet evident in the populations of the flattened rusk turtle. While the Service certainly believes that OSM, EPA, and the corresponding Alabama agencies are making progress in bringing about improvements in the water quality of the streams, the Service also recognizes that there are other contributors of sediments, that stream recovery is a slow process, and that water quality is one of the important habitat factors in the species' status. Factor D in the "Summary of Factors" section of the proposal did not address the various laws and regulations governing mining because this section deals only with laws specifically addressing the species that is the subject of the proposed rule.

Issue 22: Dire economic consequences, such as the stopping of all mining in the Black Warrior Basin, were predicted and feared if the turtle were to be listed. Response—Section 4 of the Endangered Species Act prohibits the Service from considering economic impacts in determining whether to list a species. The Service does not, however, foresee the socioeconomic impacts suggested nor envision any circumstances under which they might occur. Based on current data, there is no reason to believe that any restrictions on current or future mining activities, conducted in accordance with current OSM and State regulations, will arise as a result of the listing. There is certainly no reason for a cloud of uncertainty to exist over development within the entire Black Warrior Basin, as commenters suggested. Any Federal agency funding, authorizing, or carrying out projects that

may have an effect on the flattened musk turtle or any other listed species or its habitat can initiate a Section 7 consultation immediately. The Service will work closely and earnestly with the mining, forestry, agricultural, and other interests in the Black Warrior Basin to accommodate their projects while ensuring the continued survival of the flattened musk turtle.

At the public hearing, Dr. Ernst posed the question "If the proposal is approved, will agriculture as well as surface mining be forced to cease along waterways containing *depressus* since it is the major contributor of silt?" Neither surface mining nor agriculture will be forced to cease in the Black Warrior Basin, and effects on both are expected to be minimal. Questions such as this and other dire predictions have generated unfounded and unwarranted fear of the listing: The Service will work with the local communities to dispel these erroneous impressions during the recovery process.

Issue 23: One commenter noted the inconsistency of the coal industry stating that the industry is not contributing to the deterioration of streams in the upper Black Warrior River Basin and simultaneously claiming that listing of the turtle could force the coal industry out of existence. Response—The Service agrees that if the coal industry is not negatively affecting the turtle, then listing of the turtle should have no effect on the industry.

Issue 24: Commenters questioned why critical habitat was not proposed. Some suggested that this cast doubt on what the species' true range is and that the Service had chosen not to designate critical habitat in order to avoid conducting an economic analysis. Response—Critical habitat was not proposed for the flattened musk turtle due to the severity of the problems with collectors. Section 4 of the Endangered Species Act (ESA) requires designation of critical habitat concurrent with listing to the maximum extent prudent and determinable. The overcollection pressures facing the flattened musk turtle make it imprudent to designate critical habitat (see "Critical Habitat" section). Economic analyses as required by the ESA address only the impact of critical habitat designations, and do not address the listing itself.

Issue 25: Commenters requested that the Service prepare economic analyses under Executive Order 12291 and the Regulatory Flexibility Act. Response—The Service has determined and the Office of Management and Budget has concurred that these are not required for listing actions that do not involve critical habitat. The Endangered Species Act requires that listing determinations be based solely on biological information.

Issue 26: The Alabama Forestry Commission stated that if best management practices are followed and streamside management zones are set aside, forestry related activities should not adversely affect the turtle's stream habitat. The Commission also recommended an educational program regarding the flattened musk turtle. Response—The Service will work with the Commission to approach or achieve full compliance with the best forestry management practices in the Black Warrior Basin. The Service will include an educational program in the recovery plan for this species.

Issue 27: Why does the Alabama State law prohibiting taking not remove all threats or at least the taking threat and how is the Lacey Act enforced with regard to the taking of flattened musk turtles? Response—The Service has information that commercial collecting is continuing. A serious decline in Sipsey Fork documented by Dodd *et al.* (1986) was suggested by one commenter to have resulted from commercial turtle collecting. Enforcement of taking prohibitions is extremely difficult. One commenter pointed out, and the Service agrees, that additional protection and enforcement would be provided under the Endangered Species Act. Commenters also pointed out that the grandfather provision of the Alabama law, passed in 1984, makes the law extremely difficult to enforce and the Alabama law does not prohibit incidental take as the Federal Act does. The Lacey Act should also enhance the Alabama State law since it essentially makes it a Federal offense to engage in interstate commerce of State listed wildlife and plant species. The Lacey Act is enforced by Federal wildlife law enforcement personnel.

Issue 28: Stream classification in the Black Warrior River Basin should be updated. Response—The stream classifications have been checked with ADEM and so noted in the final rule. There have been several stream classification changes since 1978, but 13 streams (about 20 percent) continue to be classified in the two lowest use categories (for agricultural and industrial water supply or for industrial operations only), as indicated in the proposal.

Issue 29: The Review Panel report was criticized for using speculative phrases (i.e. reasonable to assume, could possibly, may affect, may cause, etc.). Response—The use of such terms in the biological sciences is standard. Most of the panel's conclusions were based on data from the studies, however, where only empirical evidence is available, the consensus of qualified experts is valuable. A specific example of speculation that was criticized had to do with whether or not proof is available that toxic material has been introduced into the sediment and the flattened musk turtle's food sources. Neither the Service nor the panel claimed that this has been proved. On the basis of studies in other watersheds and on other aquatic organisms, the accumulation of toxins was appropriately mentioned as a possible concern.

Issue 30: A recommendation was made that the proposed rule be withdrawn and 3–5 years of additional study be undertaken. Response—The Service has concluded that listing is appropriate based on the best available biological and commercial data. The panel's conclusions support this conclusion. Three major studies have been carried out on this species, more than on most other listed species. The Service has been actively and formally gathering information on the flattened musk turtle for 10 years, since its first notice of review for the species in 1977. Two additional years of data gathering and evaluation were carried out after the Service was petitioned to list the species in 1983. The Service does not think additional study is necessary to reach the primary conclusion that the species is threatened. It does find listing to be appropriate at this time on the basis of existing biological data and the legal requirements of the Endangered Species Act.

Issue 31: A question was raised as to whether the panel considered Mount's 1981 report or the Alabama law, which offers some protection to the flattened musk turtle. Response—The panel considered all the available biological and commercial data, including the two documents in question. A 1987 paper by Ernst *et al.* was provided to the Service after the panel report had been completed and submitted. The Ernst *et al.* report was then circulated to all the panel members, who found nothing in the report that would cause them to change any of their conclusions.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the flattened musk turtle should be classified as a threatened 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 the flattened musk turtle (Sternotherus depressus) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The flattened musk turtle historically occurred in the Black Warrior drainage upstream from the fall line. The Service is listing the population of *S. depressus* in the Black Warrior River basin upstream from Bankhead Dam, which is considered to be unaffected by hybridization with *S. minor peltifer* (see discussion in Background section). Impoundments and habitat degradation between Bankhead Dam and the fall line are thought to have possibly contributed to the effective elimination of the flattened musk turtle from this lower portion of its range. Habitat of the flattened musk turtle in the Black Warrior basin upstream from Bankhead Dam has also been reduced or degraded due to agricultural, residential, and industrial development and siltation and water pollution.

Siltation appears to be a primary factor affecting the habitat of the flattened musk turtle. Possible adverse effects of silt include: "(1) The extirpation or reduction in populations of mollusks and other invertebrates on which the turtles feed, (2) physical alteration of the rocky habitats where the turtles seek food and cover, and (3) development of a substrate in which chemicals that may be toxic to the turtles or their food sources tend to accumulate and persist. Dodd *et al.* (1986) concluded after an intensive study that siltation appears to have seriously impacted the flattened musk turtle.

Activities and sources that have historically and may currently be contributing to the siltation problem include agriculture, forestry, mining, and industrial and residential development. Before passage of laws regulating the amounts of silt that these activites can contribute to streams the Black Warrior River Basin was being impacted heavily. The entire upper Basin is underlain by the Black Warrior and Plateau Coal Fields, and forestry and agriculture are common land uses throughout the Basin. Before implementation of the stricter regulations about 69 percent of the annual sediment yield was attributed to accelerated erosion from such sources (USDA 1980). Annual erosion in 1975 was estimated at 5.5 million tons from cropland and pastureland (sheet and rill); 4.1 million tons from commercial forest land; 7.9 million tons from gulleys, roadsides, and streambanks; and 9.1 million tons from mined lands (USDA 1980).

The Soil Conservation Service's projections for amounts and rates of sedimentation in the Black Warrior River Basin (USDA 1980) were discussed in the proposed rule to illustrate the magnitude of sedimentation possible. During the comment period it was pointed out that the USDA projections related to mining impacts were based on the 1975 Surface Mine Regulations, and that enforcement of new regulations may have reduced both the amount and rate of projected sedimentation. The projections have been removed and only the actual estimates for 1975 included in the final rule. Projections based on the newer regulations are not available. However, the streams in the Basin are still affected by past impacts, and considerable sedimentation is still occurring. Stream recovery and resulting improvement in the turtle's status are expected to be slow processes, and it may be some time before it can be determined if, and to what extent, these are occurring.

Chemical and organic pollution is another factor of water quality in the flattened musk turtle habitat that may affect its survival, although the correlation is less clear than with siltation. Mount (1981) postulated effects such as shell erosion and loss of invertebrate food organisms from this source. Some of Alabama's most severe water quality problems are located in this river basin, particularly in the Birmingham area. Of the streams in the Basin, 13 (about 20 percent) are classified only for agricultural and industrial use. The human population in the Black Warrior Basin is projected to increase 33 percent between 1975 and 2020 (USDA 1980), which may aggravate existing water quality problems. The most pervasive class of environmental contaminants found in aquatic ecosystems originates from non-point sources such as agriculture, energy-related activities, surface mining, and urban development (U.S. Fish and Wildlife Service 1983). Mine drainage effects have been described for other states by Matter *et al.* (1978) and Vaughan *et al.* (1978) and were summarized in the proposed rule. They indicate that contour mining for coal can profoundly affect population sizes, species richness, and equitability of various groups of organisms, but that streams can return to a "healthy" condition over a period of perhaps 20 years. Five other studies (Geological Survey of Alabama 1983, Cole 1985, Harris *et al.* 1985, Puente and Newton 1979, and Puente *et al.* 1982) describe local effects of surface mining on water quality as well as sedimentation. They indicate that concentrations of dissolved solids, calcium, magnesium, sulfate, aluminum, iron, manganese, noncarbonate hardness, alkalinity, and specific conductance are often much greater at mined sites than in streams draining unmined areas.

As indicated in the comment section, the Office of Surface Mining and its Alabama counterparts have made progress in enforcing the new, more stringent mining regulations. Active complying mines are probably not a major factor in the decline of the flattened musk turtle. Past mining practices, non-complying mines, and abandoned mines may still be contributing sediment and chemical pollution to the streams, and the Service will work with the regulatory agencies to address these problems during the recovery process. The Service does not anticipate that this listing will result in the imposition of new permit conditions on mines that comply with current regulatory programs or future regulatory programs that are as stringent as current programs.

Finally, hydrologic changes associated with mining, including declines in water level, spoil aquifer creation, and changes in streamflow characteristics, and various navigation and flood control projects may have adverse effects on the habitat of the flattened musk turtle, but the magnitude of such effects remains unknown. The existing navigation channel on the Black Warrior River covers approximately 88 river miles, and there are potential projects on the tributaries Valley Creek and Village Creek (U.S. Army Corps of Engineers 1982, 1984). The Soil Conservation Service has completed one project at Bristow's Creek and authorized one for construction at Mud Creek in the upper Black Warrior River Basin (USDA 1984). Such projects appear to have both potential benefits and threats for the flattened musk turtle.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The flattened musk turtle has been listed for sale on several dealer price lists at prices above $80 each. Documented collections have included 200 individuals from one stream, 169 individuals from two streams, 136 turtles

from a four-mile stretch of one stream, and 20 to 30 specimens from a single pool at one time. Most of the formerly good populations have been considerably reduced through collecting in recent years. The Dodd study documented a serious decline during its course in one of the best remaining populations (Sipsey Fork), attributed provisionally to an observed, unidentified disease, but possibly caused or exacerbated by illegal taking. Because this turtle inhabits clean, shallow water, it is more visible and therefore highly vulnerable to collecting. One or a few knowledgeable collectors can seriously reduce a local population in a short period of time. Persistent collecting in other chelonian populations reduces the intrinsic rate of increase of the population by removing breeding adults even though chelonians are long-lived and may exist in dense populations. Collecting of younger age cohorts will exacerbate the problem. In those few studies available, the effects of collecting are not observable for several generations. Uncontrolled collecting has resulted in extinction while even controlled and monitored collecting can result in a decline in the population. Collecting that permanently removes individuals from a population represents additional 'mortality' to the population which must be offset with higher than normal recruitment in order to maintain stable populations; however recruitment appears low in flattened rusk turtles.

C. Disease or Predation

Estridge (1970) found three out of seven specimens parasitized by a protozoan agent of turtle malaria. Ernst *et al.* (1983) found some specimens heavily parasitized by a leech that carries the protozoan. Mount (1981) hypothesized that flattened musk turtles are susceptible to shell erosion and infections, especially as a secondary effect of water pollution. A disease has been noted in populations of the flattened musk turtle. Almost one-fourth of the turtles caught by Dodd *et al.* (1986) in the last trap sample at one site were diseased; and more than one-half of all turtles of this species observed basking in the Dodd study were considered sick. The Sipsey Fork population was found to decline by 50% from the end of June through late July 1985; additional study in 1986 found no additional decline (Dodd 1986). Assessing the impact of the disease has been hampered by over-collecting. It is still difficult to assess the effect of the disease, if any, on the populations at this juncture.

D. The Inadequacy of Existing Regulatory Mechanisms

Legislation enacted by the Alabama legislature (May 21, 1984) prohibits the taking of flattened musk turtles. However, such laws prohibiting over-exploitation are extremely difficult to enforce. The Alabama law has a grandfather clause that causes particular enforcement problems and it does not prohibit incidental take as the Federal Act does. According to Guthrie (1986), commercial collecting is continuing. Protection under the Endangered Species Act will provide additional protection and reinforce Alabama's law.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Several biological characteristics of the flattened musk turtle increase its vulnerability to the threats discussed previously. This turtle does not mature sexually until 4–8 years of age, and normally deposits only two clutches of eggs per year with one to three eggs per clutch (Close 1982). This low reproductive rate reduces the ability of the species to recover rapidly from adverse habitat changes or to respond rapidly to conservation activities. Since the flattened musk turtle occurs only in the upper Black Warrior River Basin, it evidently has rather specific habitat requirements. This factor increases the likelihood of adverse impact from habitat modifications. Flattened musk turtles feed primarily on mollusks (Marion *et al.* 1986), which are particularly susceptible to siltation and water pollution. The turtles also feed and spend virtually all of their time at the stream bottom and thus are in almost constant contact with any toxic bottom sediments that may be present. Dodd *et al.* (1986) also pointed out that habitat fragmentation, which has already occurred and is expected to continue, is also a serious problem for the flattened musk turtle. The curtailment of the range of *S. depressus* because of hybridization was discussed above.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the flattened musk turtle in the Black Warrior Basin upstream from Bankhead Dam as threatened. While progress has been made in improving mining and water quality regulations and the State of Alabama has passed a law to restrict collection of the flattened musk turtle, the species remains vulnerable. The cumulative impact of all past and current activities and projected increases in some activities are still sources of concern. Stream recovery, if it is occurring, is a slow process and may not be clearly discernible for years. Over-collecting is a serious problem that compounds any losses from habitat degradation. The flattened musk turtle appears likely to become in danger of extinction within the foreseeable future throughout all or a significant portion of its range. Critical habitat is not being designated, for reasons discussed in the next section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. As discussed under Factor "B" in the above "Summary of Factors Affecting the Species," the flattened musk turtle is threatened by taking, an activity difficult to detect and prohibit. Publication of critical habitat descriptions would make this species even more vulnerable and increase enforcement problems. Therefore, it would not be prudent to determine critical habitat for the flattened musk turtle at this time.

Available Conservation Measures

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

Some of the recovery actions that may be initiated by the Service following listing are as follows: (1) Convene a work group of all involved parties including SCS, EPA, BLM, OSM, U.S. Forest Service (USFS), ASMC, and ADEM, to assist the Service in initiating and coordinating recovery efforts. (2) Increase law enforcement efforts with regard to commercial collecting of flattened musk turtles through section 9 of the Endangered Species Act and the

Alabama State law. (3) Conduct additional studies and seek remedies for the disease and recruitment problems that have been identified in flattened musk turtle populations. (4) Initiate information and education efforts with private landowners and the general public to increase awareness of recovery efforts needed for the flattened musk turtle.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal activities that could either positively or adversely affect the flattened musk turtle and its stream habitats in the Black Warrior River Basin upstream from Bankhead Dam include: U.S. Forest Service activities such as clear cutting, road building, land exchanges, and chemical application that could discharge silt and chemicals into the Black Warrior River system; mineral leases issued by the BLM; projects by the Federal Highway Administration that could discharge silt and chemicals into the Black Warrior River system; certain U.S. Army Corps of Engineers' projects and permits, such as dredging and spoil dispersal, that could alter flattened musk turtle habitat; projects funded by the U.S. Department of Agriculture through the Agricultural Stablization and Conservation Service and SCS; mining regulations under the Federal authority of OSM; and effluent limitations under the Federal authority of the Environmental Protection Agency. The Service will work cooperatively with all these agencies to insure the turtle's continued existance and accommodation of the listed activities to the maximum extent possible.

As discussed in the comment section (Issue 19) a section 7 no jeopardy opinion has been issued to OSM on the State of Alabama's mining program. The Service does not foresee any need for changes to that opinion, the current OSM regulations, or the existing procedures for individual mining permit review. Currently individual mining permits are informally reviewed by the Service to provide advice and technical assistance as established in the existing Memorandum of Understanding between the Service and OSM. The listing of the flattened musk turtle will not require any additional reviews beyond those currently established. The Service will continue to work cooperatively with OSM to minimize any impacts on listed species including the flattened musk turtle, while continuing to accommodate compliant mining. Similarly, the Alabama Forestry Commission has indicated that forest management activities conducted according to "best management practices" have negligible impact on soil erosion rates and stream sedimentation. If "best management practices" are followed and streamside management zones are set aside to protect water quality as indicated, forestry-related activities should not adversely affect stream habitats. The Service will continue to work with the USFS to minimize any impact on listed species including the flattened musk turtle, while continuing to accommodate forestry-related activities.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

The Service will review this species to determine whether it should be considered for placement on the appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora and on the Annex of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere.

National Environmental Policy Act

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

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A more complete list of references and associated documents not referenced here is available for inspection along with the remainder of the administrative record as indicated under the **ADDRESSES** section in this document.

Author

The primary author of this final rule is Mr. John J. Pulliam, III (see **ADDRESSES** section) at 601/965–4900, FTS 490–4900.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

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: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.11(h) by adding the following, in alphabetical order under "Reptiles," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
REPTILES							
Turtle, flattened musk	*Sternotherus depressus*	U.S.A. (AL)	Black Warrior River system upstream from Bankhead Dam.	T	272	NA	NA

Dated: June 4, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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