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WHAT IT IS AND HOW TO USE IT

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WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

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2. The relationship between the Federal Register and Code of Federal Regulations.
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4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Part 304

Freedom of Information Act Fee Schedule Revision

AGENCY: Administrative Conference of the United States.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule revises the fee schedule used by the Administrative Conference of the United States to process requests made under the Freedom of Information Act (FOIA), 5 U.S.C. 552. The rule amends 1 CFR Part 304 to bring the Conference's regulations into conformance with the Freedom of Information Reform Act of 1986, Pub. L. 99–570 1801–1804, and the Office of Management and Budget (OMB) fee schedule and guidelines published on March 27, 1987 (52 FR 10012).

Because of the short time available under the FOIA Reform Act for putting rules into effect, the Conference has determined that good cause exists for establishing interim rules upon which we seek public comment.

DATES: Interim rule effective June 19, 1987; written comments must be received by July 20, 1987.

ADDRESS: Comments should be sent to Michael W. Bowers, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Michael W. Bowers or Lisa Anouilh, telephone: (202) 254–7020.

SUPPLEMENTARY INFORMATION: Before amendment in 1986, the Freedom of Information Act (FOIA) provided for the charging of fees by an agency to recover its direct costs of document search and duplication in response to an information request. The FOIA further provided that such fees should be waived or reduced where the request could be considered as "primarily benefiting the general public," 5 U.S.C. 552(a)(4)(A)(1982).

The Freedom of Information Reform Act of 1986 amended the FOIA to establish three levels of fees that may be charged, depending on the identity of the requester and the anticipated use of the requested information. As amended the FOIA now provides for the charging of fees for document duplication alone for certain preferred categories of requesters (*e.g.*, representatives of the news media, and educational or noncommercial scientific institutions); fees for document search, duplication, *and* review for commercial requesters; and fees for search time and duplication for all other requesters, 5 U.S.C. 552(a)(4)(A)(ii).

The FOIA Reform Act also created a new statutory fee waiver standard, which provides for fee waiver or reduction where disclosure of the requested information is in the public interest because disclosure (1) is likely to contribute significantly to public understanding of the operations or activities of the government and (2) will not primarily further the commercial interests of the requester, 5 U.S.C. 552(a)(4)(A)(iii).

The FOIA Reform Act also requires each federal agency to promulgate FOIA fee regulations conforming to guidelines issued by the Office of Management and Budget, 5 U.S.C. 552(a)(4)(A)(i). OMB published a final fee schedule and guidelines on March 27, 1987 (52 FR 10012). Accordingly, the Administrative Conference sets forth below a revised fee schedule to comply with these new requirements.

List of Subjects in 1 CFR Part 304

Freedom of Information.

Title 1 of the CFR is amended as follows:

PART 304—[AMENDED]

1. The authority citation for Subpart A of 1 CFR Part 304 is revised to read, as follows:

Authority: 5 U.S.C. 552, as amended; 5 U.S.C. 571–576.

2. Section 304.3 is amended, as follows:

§ 304.3 Requests for records.

Revise § 304.3(a) to read as follows:

(a) It is the policy of the Administrative Conference to make records and documents in its possession available to the public to the greatest extent possible. All records of the Conference are available for public inspection and copying in accordance with this section except those records or portions of records which the Legal Counsel or his designee specifically determines to be exempt from disclosure under section 552(b) of the Freedom of Information Act.

* * * * *

Amend § 304.3(b) to replace "Executive Secretary" with "Legal Counsel";

Amend § 304.3(b) to replace "Executive Secretary" with "Legal Counsel";

Remove § 304.3(d) in its entirety;

Redesignate § 304.3(e) as § 304.3(d), and *revise* as follows:

* * * * *

(d) His right to appeal the determination in writing to the Chairman of the Administrative Conference, who shall render a decision on an appeal within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. The requester shall be notified promptly of the Chairman's decision and, if the appeal is denied, the reasons therefor and the requester's right to seek judicial review of such determination pursuant to the provisions of the Freedom of Information Act, 5 U.S.C. 552(a)(4).

3. Section 304.6 is revised as follows:

§ 304.6 Schedule of fees and methods of payment.

(a) *Definitions.* The following definitions apply in this section.

(1) "Direct costs" means those expenditures which the Conference actually incurs in searching for, duplicating and (in the case of commercial use requests) reviewing documents to respond to a FOIA request.

(2) "Search" means all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Line-by-line search will not be done when duplicating an entire document is a less expensive and quicker method of complying with a request. "Search" is distinguished from

"review" (*see* paragraph (a)(4) of this section).

(3) "Duplication" means the process of making a copy of a document available to a requester. Copies can take the form of paper copy, microfilm, audio-visual materials among others; however, copies will be provided in a form that is reasonably usable by requesters.

(4) "Review" means the process of examining documents located in response to an information request to determine whether any portion of any document is permitted to be withheld under FOIA. It also includes processing any documents for disclosure, *e.g.* doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(5) "Commercial use request" refers to a request from or made on behalf of one who seeks information to further the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, the Conference may request information concerning the use to which a requester will put the requested documents.

(6) "Educational institution" means a preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(7) "Non-commercial scientific institution" means an institution that is not operated on a "commercial" basis (as that term is defined in paragraph (a)(5) of this section) and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(8) "Representative of the news media" means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances where they qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the Conference may also look to the past publication record of a requester in making this determination.

(b) *Costs to be included in fees.* The agency costs included in fees will vary according to the following categories of requests:

(1) *Commercial use requests.* Fees will include the Conference's full direct costs of searching for, reviewing for release, and duplicating the requested records.

(2) *Educational and non-commercial scientific institution requests.* The Conference will provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages *(see* paragraph (e) of this section). To be eligible for inclusion in this category, requesters, must show that the request is being made under the auspices of a qualifying institution and that the records are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research.

(3) *Requests from representatives of the news media.* The Conference will provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages *(see* paragraph (e) of this section). To be eligible for inclusion in this category a requester must meet the criteria in paragraph (a)(8) of this section.

(4) *All other requests.* The Conference will charge requesters who do not fit into any of the categories in paragraphs (b)(1)–(3) of this section fees which cover the full direct costs of searching for and reproducing records that are responsive to the request, except for the first two hours of search time and the first 100 pages (*see* paragraph (e) of this section). However, requests from persons for records about themselves will continue to be treated under the fee provision of the Privacy Act of 1975 and § 304.25 of this Part.

(c) *Fee calculation.* The Conference will calculate fees as follows:

(1) *Manual search.* At the salary rate (basic pay plus 16 percent) of the employees(s) making the search.

(2) *Computer search.* At the actual direct cost of providing the search, including computer search time directly attributable to search for records responsive to the request, runs, and operator salary apportionable to the search.

(3) *Review (commercial-use requests only).* At the salary rate (basic pay plus 16 percent) of the employee(s) conducting the review. Only the review necessary at the initial administrative level to determine the applicability of any exemption, and not review at the administrative appeal level, will be included in the fee.

(4) *Duplication.* At 20 cents per page for paper copy. For copies of records prepared by computer (such as tapes or printouts), the actual cost of production, including operator time, will be charged.

(5) *Additional services.* Postage and other additional services that may be arranged for by the requester will be charged at actual cost.

(d) *Assessment of interest.* The Conference may begin assessing interest charges on the 31st day following the day the fee bill is sent. Interest will be at the rate prescribed in section 31 U.S.C. 3717.

(e) *Free search and duplication.* Except for commercial use requests, the Conference (in accordance with 5 U.S.C. 552(4)(A)(iv)) will provide the first 100 pages of duplication and the first two hours of search time to requesters without charge. In addition, the Conference will not impose a charge if the cost of collecting a fee will be equal to or greater than the fee itself. These provisions work together so that the Conference will not begin to assess fees until after providing the free search and reproduction. For example, if a request involves two hours and ten minutes of search time and duplication of 105 pages of documents, the Conference will charge only for the cost of 10 minutes of search time and five pages of reproduction. However, if the cost is equal to or less than the cost of processing the fee collected, no charge for request will be made.

(f) *Waiver or reduction of fees.* In accordance with 5 U.S.C. 552(4)(A)(iii), the Conference will furnish documents without charge, or at a reduced charge, where disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(g) *Remittances.* (1) Remittances shall be in the form of either a personal check or bank draft drawn on a bank in the United States, a money order, or cash.

(2) Remittances shall be made payable to the order of the Administrative Conference of the United States and mailed or delivered to the Administrative Officer, Administrative Conference of the United States, 2120 L

Street, N.W., Suite 500, Washington, DC 20037. The Conference will assume no responsibility for cash which is lost in the mail.

(3) A receipt for fees paid will be given only upon request.

(4) Where it is anticipated that the fees chargeable under this section will amount to more than $25.00, and the requester has not indicated in advance a willingness to pay fees as high as are anticipated, the requester will be notified of the amount of the anticipated fee. If the requester does not agree to pay the estimated fees, the Conference may suspend the search and processing of records or, when appropriate *(see* paragraph (h) of this section), require an advance deposit. Requesters may confer with Conference personnel in an attempt to formulate the request so as to meet their needs at lower cost.

(h) *Advance payment of fees.* (1) When the allowable charges that a requester will be required to pay are projected to exceed $250.00, the Conference may require the requester to make an advance payment of the entire fee, or a portion of the fee, before continuing to process the request.

(2) If a requester has previously failed to pay a fee charged in a timely fashion (*i.e.* within 30 days of the billing date), the Conference will require the requester to pay the full amount owed plus any applicable interest, and to make an advance payment of the full amount of the estimated fee before it begins to process a new request or a pending request from the requester.

(i) *Other provisions*—(1) *Charges for unsuccessful search.* The Conference may assess charges for time spent searching for requested records, even if the search fails to locate responsive records or the records are determined, after review, to be exempt from disclosure.

(2) *Aggregating requests to avoid fees.* When the Conference reasonably determines that a requester is attempting to break a single request down into a series of requests for the purpose of evading the assessment fees, the Conference will aggregate any such requests and charge the applicable fee.

(3) *Debt Collection Act.* The Debt Collection Act, including disclosure to consumer reporting agencies and use of collection agencies, will be used to encourage payment where appropriate.

Dated: June 11, 1987.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 87-13622 Filed 6-15-87; 8:45 am]

BILLING CODE 6110-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1207

Standards of Conduct

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: NASA is revising 14 CFR Part 1207, "Standards of Conduct," to reflect the current organizational structure and the current ethical standards of conduct required of NASA employees in carrying out their duties and responsibilities.

EFFECTIVE DATE: June 16, 1987.

ADDRESS: Office of the General Counsel, Code GG, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: George E. Reese, 202/453-2465.

SUPPLEMENTARY INFORMATION: These regulations have been approved by the Office of Government Ethics, Office of Personnel Management. They were first published in the **Federal Register** on October 21, 1967 (32 FR 14648-14659); Part B concerning the acceptance of gifts, gratuities, or entertainment was extensively revised on January 19, 1976, (41 FR 2631-2633) to clarify and generally restrict the exceptions to the general rule against the acceptance by a NASA employee from persons or firms doing or seeking business with NASA. These regulations were updated on January 29, 1985, (50 FR 3887) to ensure conformity to the Ethics in Government Act of 1978 regarding the public financial disclosure statement.

The National Aeronautics and Space Administration has determined that:

1. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, since it will not exert a significant economic impact on a substantial number of small entities.

2. This rule is not a major rule as defined in Executive Order 12291.

List of Subjects in 14 CFR Part 1207

Administrative practice and procedures, Conflict of interest.

For reasons set forth in the Preamble, 14 CFR Part 1207 is revised to read as follows:

PART 1207—STANDARDS OF CONDUCT

Subpart A—General Provisions

Sec.

Subpart B—Acceptance of Gifts

Subpart C—Outside Employment and Other Activity

Subpart D—Financial Interests and Investments

Authority: Ethics in Government Act of 1978, as amended by Pub. L. 96-19 and Pub. L. 96-28; EO 11222; 18 U.S.C. 201-219; 2 U.S.C. 44li; 5 CFR Parts 734, 735, 755, and 738.

Subpart A—General Provisions

§ 1207.100 Scope of part.

The provisions of this Part 1207 prescribe regulations for the maintenance of the high ethical standards of conduct required of NASA employees in carrying out their duties and responsibilities.

§ 1207.101 Applicability.

The provisions of this part are applicable to:

(a) All regular officers and employees of NASA (referred to as "employees").

(b) All civilian and military personnel of other Government agencies regularly detailed to NASA (also referred to as "employees"); however, disciplinary action may be effected against such civilian or military personnel only by the parent employing agency or military service.

§ 1207.102 Definitions.

(a) A "Key Official" is any officer or employee who is in a position that required the filing of a public financial disclosure report in accordance with Title II of the Ethics in Government Act of 1978 (see § 1207.404) or who is in one of the following positions: astronaut,

astronaut candidate, procurement officer, or chief counsel.

(b) The "Office of Government Ethics" is an office created within the Office of Personnel Management by statute (the Ethics in Government Act of 1978) and charged with the responsibility to oversee ethics matters in the Executive Branch.

(c) The term "particular matter" is not defined in the statutes, but is used in context as follows: ". . . any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest or other particular matter." See 5 CFR 737.5 for examples.

(d) The term "personally and substantially" is not defined in the statutes, but examples of personal and substantial involvement include participation "through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise . . . ."

(e) The term "official responsibility" is defined by statute to mean the "direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action."

§ 1207.103 General ethical standards of conduct.

(a) *Misuse of public position.* (1) Each employee will refrain from any use of official position which is motivated by, or has the appearance of being motivated by, the desire for private gain for himself/herself or other persons.

(2) If an employee acquires information in the course of performing Government duties that is not generally available to those outside the Government, the employee will not use this information to further a private interest or for the special benefit of a business or other entity in which the employee has a financial or other interest. See § 1207.402 for guidance on what constitutes a financial interest.

(3) An employee will not use a Government position in any way to coerce, or give the appearance of coercing, another person to provide any financial benefit to the employee or to other persons.

(4) An employee will avoid any action, whether or not specifically prohibited by law or regulation (including this regulation), which might result in or create the appearance of:

(i) Using public office for private gain;

(ii) Giving preferential treatment to any organization or person;

(iii) Impeding Government efficiency or economy;

(iv) Losing independence or impartiality of action;

(v) Making a Government decision outside official channels; or

(vi) Affecting adversely the confidence of the public in the integrity of the Government.

(b) *Use of government property.* An employee will not directly or indirectly use or allow the use of Government property of any kind, including property leased to the Government, for other than officially approved activities. An employee has an affirmative duty to protect and conserve Government property, including equipment, supplies, and other property entrusted or issued to the employee.

(c) *Indebtedness.* The indebtedness of NASA employees is considered to be essentially a matter of their own concern. Except as otherwise provided by law, NASA will not be placed in the position of acting as a collection agency or of determining the validity or amount of contested debts. Nevertheless, NASA employees are expected to honor in a proper and timely manner debts which are acknowledged by the employee to be valid or which have been reduced to final judgment by a court, and to make or adhere to satisfactory arrangements for the settlement of such debts. In accordance with Pub. L. 93–647 (42 U.S.C. 659), NASA may become involved in the attachment of NASA employees' wages or salary for enforcement of child support and alimony obligations. In accordance with 5 U.S.C. 5514, NASA may deduct indebtedness to the United States from employees' pay. Employees are also expected to meet their responsibilities for payment of Federal, state, and local taxes. For the purpose of this paragraph, "in a proper and timely manner" means in a manner which does not cause undue disruption to NASA operations and which NASA determines does not, under the circumstances, reflect adversely on NASA as the employing agency.

(d) *Gambling, betting, and lotteries.* While on Government owned or leased property, or while on duty for the Government, NASA employees will not participate in any gambling activity, including the operation of a gambling device; in conducting a lottery or pool; in participating in a game for money or property; or in selling or purchasing a numbers slip or ticket. However, participation in federally sponsored fund-raising activities conducted pursuant to Executive Order 10927, or in NASA-approved activities, and not otherwise prohibited by state criminal laws, is not precluded.

(e) *Autographs.* In response to autograph requests, although it is the prerogative of each employee to accept or refuse any and all requests, NASA employees should recognize their personal responsibilities for treating the public-at-large fairly and courteously. Accordingly, the following guidelines are to be observed: No autograph should be treated as a commercial commodity; nothing of value should be requested or accepted in exchange for an autograph; generally no more than two autographs for the same individual or concern should be given; autographs should not be provided when it is apparent that they will be used commercially by the requesting individual or concern. For further guidance, see paragraph 7h in NASA Management Instruction (NMI) 1380.6, "Conduct of Philatelic Activities and Services at NASA Installations."

(f) *General conduct prejudicial to the Government.* NASA employees will not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or any other conduct prejudicial to the Government.

(g) *Miscellaneous statutory provisions.* Each employee will become acquainted with the statutory provisions that relate to his/her ethical and other conduct, among which the following are particularly relevant:

(1) House Concurrent Resolution 175, 85th Congress, 2d Session, 72 Stat. B12, the "Code of Ethics for Government Service."

(2) Chapter 11 of Title 18, United States Code, relating to bribery, graft, and conflicts of interest, as appropriate to the employees concerned (see Appendix C).

(3) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(4) The prohibitions against disloyalty and striking (5 U.S.C. 7311; 18 U.S.C. 1918).

(5) The prohibition against the employment of a member of a Communist organization (50 U.S.C. 784).

(6) The prohibitions against:

(i) The disclosure of classified information (18 U.S.C. 798; 50 U.S.C. 783); and

(ii) The disclosure of private or proprietary information (18 U.S.C. 1905).

(7) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

(8) The prohibition against the misuse of a Government motor vehicle or aircraft (31 U.S.C. 1349(b)).

(9) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

(10) The prohibition against the use of deceit in an examination or personnel

action in connection with Government employment (18 U.S.C. 1917).

(11) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(12) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(13) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(14) The prohibitions against:

(i) Embezzlement of Government money or property (18 U.S.C. 641);

(ii) Failing to account for public money (18 U.S.C. 643); and

(iii) Embezzlement of the money or property of another person in the possession of an employee by reason of his/her employment (18 U.S.C. 654).

(15) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(16) The prohibitions against proscribed political activities ("The Hatch Act"—5 U.S.C. 7324–7327; 18 U.S.C. 602, 603, and 607).

(17) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

(18) The prohibition against a public official appointing, employing, promoting, or advancing a relative of the official in an agency, or advocating any such actions in an agency for such a relative (5 U.S.C. 3110).

(19) The prohibition against discrimination for or against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, handicapping condition, marital status or political affiliation (5 U.S.C. 2302(b)).

(20) The prohibition against:

(i) The disclosure of crop information and speculation thereon (18 U.S.C. 1902); and

(ii) The issuance of false crop reports (18 U.S.C. 2072).

(21) The prohibition against the acceptance of excessive honorariums (2 U.S.C. 441i) (see Appendix D). The foregoing statutes are available for review in the Chief Counsel's office at each installation.

§ 1207.104. Advisory service.

(a) When questions or problems arise concerning matters covered by this Part 1207, NASA employees may seek the advice and consultative services of the Designated Agency Ethics Official or a Deputy Ethics Official as designated in paragraph (c) of this section, or they may request a formal advisory opinion from the Office of Government Ethics in accordance with 5 CFR Part 738, Subpart C. Violation of any provision contained in this Part 1207 may be cause for appropriate disciplinary or remedial action. The latter includes, but is not limited to, divestiture by the employee of his/her conflicting interest, disqualification for particular assignments, or reassignment.

(b) The General Counsel of NASA is the Designated Agency Ethics Official and as such has the responsibilities, authorities, and duties as set forth in 5 CFR Part 738, Subpart B. The General Counsel shall act as the principal point of contact with the Office of Government Ethics and shall provide general oversight within NASA for the purpose of achieving uniform interpretation of this part.

(c) The following officials are designated as NASA Deputy Ethics Officials pursuant to 5 CFR 738.204(a):

(1) Deputy General Counsel;

(2) Associate General Counsel (General); also serves as Alternate Designated Agency Ethics Official;

(3) Chief Counsel at each NASA field or component installation.

(d) The Deputy Ethics Officials may carry out their responsibilities through designated subordinates; however, they shall retain ultimate responsibility for the functions assigned to them under this section.

(e) The Installation Personnel Officers shall:

(1) Maintain master lists of those employees who file public disclosure and confidential financial statements;

(2) Supply the appropriate employees with these forms;

(3) Receive the public disclosure and confidential financial statements and ensure that they are completely filled out;

(4) Maintain the confidential financial statements and forward the public disclosure financial statements to the Chief Counsel at the installations and to the Associate General Counsel (General) in the case of Headquarters,

(5) Compile the necessary information for the Installation Directors and the Director, Headquarters Administration Division, as required by paragraph 6 in NMI 1900.3, "Confidential Supplementary Statements of Employment and Financial Interests;" and

(6) Refer employees who request ethics counseling to the Chief Counsel at the installations or to the Associate General Counsel (General) at Headquarters.

(f) Any employee who has been solicited to commit, or who observes or receives an allegation of a possible violation of the provisions of Part 1207, shall, unless an allegation is based upon more gossip or rumor known to be false, promptly report such solicitation, observation or allegation to the Office of the Inspector General in accordance with the procedures of NMI 9950.1, "The NASA Investigations Program."

Subpart B—Acceptance of Gifts

§ 1207.200 Scope of subpart.

This subpart establishes NASA Policy with respect to the acceptance of gifts by NASA employees and their spouses and minor children. Violation of these regulations or any of the criminal statutes referred to in this subpart will subject the employee to administrative disciplinary action and/or criminal prosecution. The prohibitions of this subpart are in addition to statutory prohibitions relating to the corrupt solicitation or receipt of, or agreement to receive, anything of value in connection with an employee's performance of official duty (18 U.S.C. 201), and the unlawful solicitation or receipt of, or agreement to receive, compensation for services rendered by an employee in connection with matters affecting the Government (18 U.S.C. 203). Gifts from foreign governments and foreign governmental organizations are covered by NMI 1030.1, "Acceptance by Employees of Gifts or Decorations from Foreign Governments."

§ 1207.201 Definition.

The term "gift" as used in this subpart shall refer to the receipt of any gift, gratuity, entertainment (including food, refreshments, tickets, or invitations to performances and other events), favor, loan, transportation, accommodations, or any other thing of monetary value for which fair market value has not been paid. For purposes of this definition, participation in a carpool shall not be considered receipt of a gift.

§ 1207.202 Policy.

(a) It is NASA policy not to interfere in the private lives of NASA employees and their families. However, certain conduct involving acceptance of gifts must be regulated in view of the nature of the official duties of the employee and the special responsibilities that are assumed by a person who accepts Federal employment.

(b) Except as provided in this subpart, the direct or indirect solicitation or acceptance by a NASA employee or the spouse or minor child of a NASA employee of any gift from any person, corporation, or group is forbidden if the person, corporation, or group:

(1) Has, or is seeking to obtain, contractual or other business or financial relationships with NASA; or

(2) Has interests which may be substantially affected by such employee's performance or nonperformance of official duty; or

(3) Is in any way attempting to affect the employee's official action. For purposes of this subpart, the term corporation or group includes employees of such corporations or groups.

(c) There are certain exceptions to the foregoing general rule which are set forth in paragraph (d) of this section. Those exceptions are to be strictly construed. A reciprocal gift to a prohibited donor (such as alternating who pays for lunch) does not remove the prohibition on receiving the original gift. Reciprocity is not an exception to the gift rule. In determining whether one or more of the exceptions apply in any particular circumstance, each NASA employee shall avoid any situation which might bring discredit to or embarrass the Government or NASA, or which might reflect a real or apparent conflict of interest. NASA employees will so govern their conduct in light of this subpart as to have no difficulty in justifying their actions if required to do so.

(d) The following are exceptions to the general rule set forth in paragraph (b) of this section:

(1) Acceptance of food and nonalcoholic beverages of nominal value at a contractor's plant or place of business on an infrequent basis when the conduct of official business within the plant or place of business will be facilitated and when no provisions exist for individual payment. Acceptance of doughnuts and coffee or their equivalent is permitted when official business will be facilitated. An employee shall avoid all other situations (e.g., dining in private clubs or acceptance of food and beverages in excess of nominal value) where there is no opportunity for individual payment for the employee's food or refreshments at the time.

(2) Instances in which the interests of the Government are served by participation of a NASA employee in widely attended luncheons, dinners, and similar gatherings sponsored by industrial, educational, technical, or professional associations for the discussion of matters of mutual interest. Participation in such events is permitted only when the host is an association and not a private company and only when approved by the employee's supervisor. The Director of a Field or Component Installation and Officials-in-Charge of Headquarters Offices and those above may approve their own attendance at such functions when they are part of or related to official duties. Acceptance of gratuities, food, or refreshments from a private company in connection with such association's activities (e.g., "hospitality suites") is forbidden.

(3) Acceptance of gifts where there is a family or obvious personal relationship, including dating relationship, between the donor and the recipient (whether an employee, spouse, or dependent) where it is clear that it is the relationship instead of the business of the persons concerned that is the motivating factor for the gift and where it is reasonably clear from the circumstances that the gift is paid for by the donor and not either directly or by reimbursement by a corporation, group, or any other person described in paragraph (b) of this section.

(4) Purchase of articles at advantageous rates where such rates are offered to Government employees as a class or to NASA employees where, but for geographical separation from other federal facilities, they would have been offered to all Government employees.

(5) Acceptance by a spouse or dependent, for their use, of gifts where there is a business relationship between the recipient and the donor, where the circumstances make it clear that it is that business relationship which is the motivating factor for the gift.

(6) Acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans.

(7) Acceptance of unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, or other items of nominal value (i.e., items estimated to cost less than $10.00).

(8) Acceptance of contractor-provided transportation and lodging expenses for the purpose of a job interview at the prospective employer's site and/or a house hunting trip in the locale of the new employment, provided that the offer to pay such expenses and the stated purpose of the trip are reduced to writing in advance by the prospective employer, and the employee obtains in advance the written consent of the Designated Agency Ethics Official or the Official's Deputy. The employee is required to disqualify himself/herself from any matters pertaining to the prospective employer during the time he/she is actively considering the future employment opportunity. There is a criminal conflict of interest statute (18 U.S.C. 208) which prohibits an employee from participating personally and substantially in a particular matter in which he or she, or any person or organization with which the employee is negotiating or has any arrangement concerning prospective employment, has a financial interest.

(9) Special situations in which the Associate Administrator for Management, after consultation with the General Counsel, determines in advance in writing that the interest of the Government will be served by an employee's participation in the employee's official capacity and as a designated NASA representative, in a public ceremony or other event at the expense of a private entity, or public educational institution, not covered in any other exception.

(10) Acceptance of contractor-provided local or intrastate transportation while on official business when alternative arrangements are impracticable or where such acceptance will facilitate the conduct of official business. Acceptance of intrastate transportation is permitted only when specifically authorized in the employee's travel authorization, or otherwise authorized in writing by the employee's supervisor as being in the interest of the Government.

(11) Acceptance of transportation, accommodations, subsistence, or services furnished under a reimbursable arrangement with NASA, from an industrial, educational, technical, or professional association, or from a state or local government agency, when authorized in the employee's travel authorization as being in the interest of the Government. When transportation, accommodations, subsistence, or services are furnished in-kind by such an association or agency, appropriate deductions shall be made in the travel, per diem, and other allowances otherwise payable to the employee. When transportation, accommodations, subsistence, or services are provided under a cash reimbursable arrangement, the reimbursement must be paid directly to NASA by check payable to the National Aeronautics and Space Administration; the employee will be reimbursed for necessary expenses by NASA in accordance with applicable laws and regulations. In no case shall a NASA employee accept benefits which are, under prudent standards, extravagant or excessive in nature. Advance approval, in accordance with paragraph 2b(2) in NMI 9710.8, "Delegation of Authority—To Execute Reimbursable Arrangements Solely for Travel and Related Matters," must be obtained in writing from the Associate Administrator for Management, with the concurrence of the General Counsel,

prior to the acceptance of a reimbursable arrangement with individual private companies, universities, and colleges which fall within the scope of paragraph (b) of this section.

(12) Acceptance of transportation or other services provided by a private company in special situations in which the Associate Administrator for Management, with the concurrence of the General Counsel, determines in advance, in writing, that acceptance of such transportation or other services will facilitate the conduct of official business and be in the best interest of the Government. The model regulation (5 CFR 735.202(f)) prohibits an employee's acceptance of excessive and lavish in-kind reimbursements.

(13) Trophies, entertainment, prizes, or awards given for public service or achievement or given in games or contests which are clearly open to the public generally.

(14) Attendance at promotional vendor training or demonstration sessions. Acceptance of transportation, accommodations, subsistence, or other services provided by the vendor in connection with such training is subject to the requirements and limitations of this subpart.

(e) A gift which is prohibited under paragraph (b) of this section may be accepted on behalf of the agency only if (1) it is unconditional and voluntary; and (2) if refusal is not possible or practical. Such gifts shall be processed in accordance with NMI 1210.1, "Acceptance of Gifts by NASA." In particular, models and books on NASA programs may be accepted on behalf of NASA.

§ 1207.203 Gifts to superiors.

An employee will not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift presented as a contribution from another employee receiving less salary than the employee (5 U.S.C. 7351). The law requires that an employee who violates this provision shall be removed from Federal service. However, this paragraph does not prohibit the giving or acceptance of a voluntary gift of nominal value or a donation in a nominal amount made on a special occasion such as marriage, illness, death, or retirement.

Subpart C—Outside Employment and Other Activity

§ 1207.300 Scope of subpart.

(a) This subpart prescribes NASA policy and procedures regarding outside employment or other outside activity of NASA employees. The prohibitions of this subpart are in addition to statutory prohibitions relating to receiving, agreeing to receive, or asking, demanding, soliciting, or seeking compensation for services in connection with matters affecting the Government (18 U.S.C. 203); unlawfully acting as agent or attorney or sharing in the interest in prosecuting any claim against the United States (18 U.S.C. 205); receiving outside compensation for performance of official duties (18 U.S.C. 209); and receiving excessive honorariums (2 U.S.C. 441i).

(b) As used in this part, the term "outside employment or other outside activity" refers to any work, service, or other activity performed by an employee with or without compensation, other than in the performance of his/her official duties. It includes such activities as writing and editing, publishing, teaching, lecturing, consulting services, self-employment, and other work or services.

§ 1207.301 Policy.

(a) NASA employees may not engage in outside employment or other outside activity that is not compatible with the full and proper discharge of the duties and responsibilities of their Government employment. Guidelines for determining compatibility are set forth in § 1207.302.

(b) NASA employees are encouraged to participate as private citizens in the affairs of their communities provided that the limitations prescribed in this paragraph and by these regulations are observed. Among these activities may be the following:

(1) Speaking, writing, editing, and teaching.

(2) Participation in the affairs of charitable, religious, professional, social, fraternal, nonprofit educational and recreational, public service, or civic organizations, and the acceptance of an award for a meritorious public contribution or achievement from any such organization.

(3) Participation in the activities of national, state, and local political parties not proscribed by law. In this connection employees should be particularly aware of the restrictions imposed on their activities by the "Hatch Act" (5 U.S.C. 7321–7327).

§ 1207.302 Guidelines and limitations.

Outside employment or other outside activity is incompatible with the full and proper discharge of an employee's duties and responsibilities, and hence is prohibited if it would:

(a) Involve the violation of a federal or state statute, a local ordinance, Executive order, or regulation to which the employee is subject.

(b) Give rise to a real or apparent conflict of interest situation even though no violation of a specific statutory provision was involved.

(c) Involve acceptance of a fee, compensation, benefit, gift, payment of expense, or any other thing of monetary value in circumstances in which acceptance might result in, or create the appearance of, a conflict of interest.

(d) Constitute or create the appearance of using public office for private gain.

(e) Bring discredit upon, or could reasonably cause unfavorable criticism of, the Federal Government or NASA, or lead to relationships which might impair public confidence in the integrity of the Federal Government or NASA.

(f) Involve work with any contractor, subcontractor, or grantee which is connected with any work being performed by that entity for NASA, or, would otherwise involve work for any person or organization which may be in a position to gain advantage in its dealings with the Government through the employee's exercise of official duties.

(g) Identify NASA or its employees officially with any organization manufacturing, distributing, or advertising a product relating to work conducted by NASA, or could create the false impression that it is an official action of NASA, or represents an official point of view. In any permissible outside employment, care must be taken to ensure that names and/or titles are not used to give the impression that the activity or product is officially endorsed or approved by NASA or is part of NASA activities.

(h) Involve use of the employee's time during official working hours, although this does not preclude the use of approved leave for outside activities.

(i) Involve use by the employee of official facilities, (e.g., office space, office machines, telephones, supplies) or the services of other employees during duty hours.

(j) Be of such extent or nature as to interfere with the efficient performance of the employee's Government duties, or impair the employee's mental or physical capacity to perform them in an acceptable manner.

(k) Involve use of information obtained as a result of Government employment which is not freely available to the general public in that it either has not been made available to the general public or would not be made available on request. However, written authorization for the use of nonpublic

information may be given when the Director of the Field or Component Installation or, at NASA Headquarters, the Associate Administrator for Management, determines that such use would be in the public interest.

§ 1207.303 Distinction between official and nonofficial activities.

(a) In applying the provisions of this subpart, particularly with regard to writing, speaking, or editing activities, NASA employees must distinguish between official and nonofficial activities. Official activities are conducted as part of an employee's NASA duties, whereas nonofficial activities constitute outside employment that must be in compliance with this subpart. In connection with writing, speaking, or editing, an activity will normally be considered official if:

(1) It is the result of a request addressed to NASA to furnish a speaker, author, or editor or of an invitation addressed to an employee of NASA to perform activities which are, in fact, within the employee's official duties, rather than as a private individual;

(2) The activity is performed in conjunction with attendance at a meeting approved under the authority of 5 U.S.C. 4110 (formerly the Government Employees Training Act); or

(3) It involves a single article, speech, or lecture, or participation in a single seminar, symposium, forum, or similar activity, the content of which is devoted substantially to the individual's official duties or personal involvement in NASA's plans or programs, or United States aeronautical or space activities. Conversely, a series of lectures as part of a regularly scheduled course or lecturer program at an educational institution, regardless of the subject matter, is regarded as nonofficial and therefore is an outside activity. The fact that an activity is prepared for or is performed outside of duty hours is not determinative of whether it is official or nonofficial; however, official time and facilities shall not be used for nonofficial outside activities.

§ 1207.304 Compensation, honoraria, travel expenses.

(a) An employee may accept compensation or an honorarium for permissible outside employment or other outside activity which is nonofficial in character unless otherwise prohibited by this part. Under no circumstances may an honorarium be accepted for official activities. If an honorarium is offered for official activities of the employee, the employee should advise the donor that he/she cannnot legally accept it. If the donor insists, it should be explained that the honorarium will be accepted on behalf of NASA as an unconditional and voluntary gift in accordance with NMI 1210.1.

(b)(1) Except as provided in § 1207.202(d)(11), and in paragraph (b)(2) of this section, travel expenses will generally be borne by the Government when official activities of NASA employees are involved, including attendance at meetings of nongovernmental organizations although appropriate reimbursable agreements are permitted. Conversely, when nonofficial outside employment activities are involved, appropriated funds will not be utilized for travel or subsistence.

(2) In the course of official activities, contributions and awards incident to training in nongovernment facilities, and travel, subsistence, and other expenses incident to attendance at meetings may be accepted by NASA employees, provided that such contributions, awards, and payments are made by nonprofit organizations in connection with training under 5 U.S.C. 4111 (formerly the Government Employees Training Act) and that the employee has obtained specific written authorization from the Associate Administrator for Management or the Director of the Field or Component Installation to accept the contribution or award.

(3) No employee shall accept any honorarium of more than $2,000 (excluding amounts accepted for actual travel and subsistence expenses for such person and spouse or aide, and excluding amounts paid or incurred for agents' fees or commissions) for any appearance, speech, or article. The provisions of this paragraph apply whether the appearance, speech, or article is outside employment approved under this subpart, or pertains to the private interests of the employee.

§ 1207.305 Special conditions applicable to writing and editing.

(a) Subject to the limitations set forth in § 1207.302, NASA employees may serve as editors, as editorial consultants, or on editorial boards, and may contribute articles to publications issued by nonprofit organizations or by profit organizations involved in trade or news press publishing. Editing activities for profit organizations should be carefully appraised. Under no circumstances should the activity involve approval or disapproval of advertising.

(b) Writing and editing, with or without pay, which pertain to the private interests of employees regarding hobbies, sports, or cultural activities are permitted unless there are actual or apparent conflicts with their officially assigned duties.

§ 1207.306 Administrative approval.

(a) Aside from avoiding prohibited outside employment or other outside activity, each employee must also obtain administrative approval in accordance with paragraph (b) of this section before engaging in outside employment or other outside activity, with or without compensation, of the following types:

(1) Writing or editing except those activities set out in § 1207.305(b).

(2) Teaching and lecturing except as it relates to the private interests of employees regarding hobbies, sports, or cultural activities.

(3) Regular self-employment.

(4) Consulting services.

(5) Holding state or local public office.

(6) Outside employment or other outside activity involving a NASA contractor, subcontractor, or grantee.

(7) Membership on a committee, board, or other such body of a profit making organization.

(8) Engaging in outside activity which involves the practice of a NASA-owned invention, provided that necessary licenses are obtained from the Government, and provided that the employee is not responsible in his/her official capacity for further development, test, or study of that invention or similar NASA-owned inventions or any promotion of that invention or similar NASA-owned inventions on behalf of the Government.

(9) Any other outside work concerning the property of which an employee is uncertain.

Prior adminstrative approval may be required, on a case-by-case basis, by the supervisor or the Designated Agency Ethics Official for additional types of outside employment where, because of special considerations, such a requirement is considered desirable for the protection of employees or NASA.

(b) Procedures for permission to engage in outside employment or other outside activity. (1) *Form and content of request.* A request for administrative approval of outside employment or other outside activity shall be in writing and show:

(i) Employee's name and occupational title.

(ii) Nature of the activity: Full description of specific duties or services to be performed and time period involved.

(iii) Name and address of person and/or organization for which work will be done. In the case of self-employment in a professional capacity serving a large

number of individuals, instead of listing each client, the employee will indicate the type of services to be rendered and an estimate of the total number of clients anticipated during the next 6 months. Specific notification of the identity of any client known to have business with NASA should be given prior to the performance of the service.

(iv) Estimated total time that will be devoted to the activity. If on a continuing basis, the estimated time per year; if not, the anticipated ending date.

(v) Whether service can be performed entirely outside of usual duty hours; and if not, the estimated number of hours of absence from work that will be required.

(vi) The amount of remuneration and/or expenses, if any, to be received.

(vii) A statement that the employee has no official involvement with the outside employer and will disqualify himself/herself in any matters that could directly affect the outside employer in performance of the employee's NASA duties.

(2) *Routing.* The request for approval will be submitted in duplicate through the supervisor to the appropriate Official-in-Charge of a Headquarters Office or to the Director of the Field or Component Installation or to the person designated to act for them, as appropriate. While the exact approval procedure to be used is left to the discretion of the installation, prior to action on a request for approval, the request shall be reviewed by a Deputy Ethics Counselor. In the case of key officials as defined in § 1207.102(a), requests for approval shall be submitted to the appropriate Official-in-Charge of the Headquarters Office or the Director of the Field or Component Installation, who will add a recommendation and will forward the request through the General Counsel to the Associate Administrator for Management for a determination. Employees will be notified in writing of the actions taken on their requests. All approved requests will be maintained in the local Personnel Office.

(3) *Keeping record up to date.* If there is a significant change in the nature or scope of the duties or services performed either in the employee's NASA position or the outside position, or in the nature of the outside employer's business, the employee will submit a revised request for approval promptly. If the outside work is discontinued sooner than anticipated (not merely suspended temporarily), the employee will so notify the officer who approved the request.

(4) *Enforcement.* Failure to obtain written administrative approval for outside employment or other outside activity for which approval is required, may be ground for disciplinary action.

Subpart D—Financial Interests and Investments

§ 1207.400 Scope of subpart.

This subpart prescribes policies and procedures for the avoidance of conflicting financial interests in connection with an employee's Government position or in discharge of his or her official responsibilities and sets out the requirements for reporting financial interests and outside employment. It implements the requirement of Title II of the Ethics in Government Act of 1978 that certain employees file public financial disclosure reports, as well as implementing regulations of the Office of Government Ethics (5 CFR Parts 734 and 735) and sets forth the requirement for confidential financial and employment reports pursuant to Executive Orders 11222 and 12565.

§ 1207.401 General.

(a) Employees are subject to two types of controls in connection with apparent or actual conflicting financial interests. One is a criminal statute, 18 U.S.C. 208, which by its terms prohibits an employee's participation in certain official activities where the employee has a conflicting personal financial interest. The Office of Government Ethics regulation (5 CFR 735.204) prohibits the holding by an employee of a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with official duties. This regulation also prohibits direct or indirect participation by an employee in a financial transaction as a result of, or primarily relying on information obtained through Government employment. The other type of control is a financial disclosure requirement. The Ethics in Government Act of 1978 requires certain officers and employees to file public financial disclosure reports (the Executive Personnel Report). This requirement is explained in detail in § 1207.404. In addition, under Executive Order 11222 and Office of Government Ethics regulations, another group of employees occupying certain Government positions must report all personal financial interests and outside employment by filing a confidential statement of employment and financial interest. An employee will not be required to file both of these forms. The confidential disclosure requirement is explained in detail in § 1207.405. These requirements have the common objective of deterring the occurrence of conflicting financial interest situations, one by sanctions and the other by disclosure. While the statute prohibits and prescribes punishment, the statement of employment and financial interests is intended to help the employee and those who review the employee's statement to avoid conflicts through advice and counseling.

(b) The public disclosure report (Standard Form 278) and the confidential statement of employment and financial interests (NASA Form 1270) required under this subpart are in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order, or regulation. The submission of a statement by an employee does not permit the employee or any other person to participate in a matter in which the employee's or the other person's participation is prohibited by law, order, or regulation, unless the employee obtains a waiver under procedures set out in this subpart.

(c) Notwithstanding the requirement under this subpart for filing a statement of employment and financial interests, an employee shall avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of 18 U.S.C. 208(a) or of this part. See discussion in subpart (a) of 5 CFR 735.204.

§ 1207.402 Statutory prohibitions against acts affecting a personal financial interest.

(a) The provisions of 18 U.S.C. 208(a) prohibit any employee from participating personally and substantially in the course of the employee's Government duties in any judicial or other proceeding, application, request for a ruling, or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in relation to which matter, to the employee's knowledge, the following persons or organizations have a financial interest:

(1) The employee, or the employee's spouse, minor child, or partners;

(2) A business or nonprofit organization in which the employee is serving as an officer, director, trustee, partner, or employee; or

(3) A person or business or nonprofit organization with whom or with which the employee is negotiating, or has any arrangement with, concerning prospective employment. An employee is deemed to be negotiating when he/she has taken any step beyond that of sending a resume. The employee must disqualify himself/herself from any work involving the entity with which he/she is negotiating. The employee

shall immediately send a letter to his/her supervisor and to his/her Chief Counsel (or to the Associate General Counsel (General) at Headquarters) stating the circumstances of the employee's disqualification.

(b) The prohibitions in paragraph (a) of this section may be waived under certain circumstances which are set out in § 1207.403.

(c) Illustrative of the type of matters in which NASA employees commonly participate and which may fall within the prohibitions described in paragraph (a) of this section are the following:

(1) The negotiation, administration, or auditing of contracts or agreements;

(2) The selection or approval of contractors or known subcontractors under a NASA prime contract;

(3) The technical monitoring or direction of work under a contract;

(4) Participation on boards or committees of the type listed in § 1207.405(a)(2); or

(5) Project monitoring.

(d) Unless a waiver is granted pursuant to § 1207.403, no employee will participate personally and substantially in the course of the employee's Government duties in any particular matter of a type listed in paragraph (c) of this section, or in any other matter of a type referred to in paragraph (a) of this section if, to the employee's knowledge, any of the persons or organizations identified in paragraph (a) of this section have a financial interest relating to that particular matter.

§ 1207.403 Waiver of statutory prohibition.

(a) *Specific waiver available.* The prohibition of 18 U.S.C. 208(a) may be waived in connection with a specific matter of the type which comes under the statute if the employee makes a full disclosure in writing of the nature of the matter involved and of the financial interest relating thereto and receives, in advance of participation in such matter, a written determination that such financial interest is not so substantial as to affect the integrity of the employee's services and, therefore, that the employee may participate personally and substantially in that matter. The procedures set forth in paragraph (c) of this section will be followed in connection with granting a waiver as described in this section.

(b) *General waivers.* The prohibition of 18 U.S.C. 208(a) also may be waived by general regulation applicable to all NASA employees so as to permit an employee (including civilian and military personnel of other Government agencies regularly detailed to NASA) to participate personally and substantially in a specific matter, notwithstanding the existence of a financial interest relating to that matter, where it has been determined that such a financial interest is too remote or inconsequential to affect the integrity of the employee's governmental capacity. Such a determination has been made by the Administrator and published in the **Federal Register** with respect to the following categories of financial interest:

(1) The following exemptions apply to financial interests which are held directly by a NASA employee, or by the employee's spouse or minor child, whether jointly or individually, or by a NASA employee and the employee's partner or partners as joint assets of the partnership:

(i) Ownership of shares of common or preferred stocks, including warrants to purchase such shares, and of corporate bonds or other corporate securities, if the current aggregate market value of the stocks and other securities so owned in any single corporation does not exceed $5,000, and provided such stocks and securities are listed for public trading on a major stock exchange. This exemption extends also to any financial interests that the corporation whose stocks or other securities are so owned may have in other business entities. This exemption shall not apply to membership on boards or committees constituted as part of the NASA Source Evaluation Board (SEB) process unless specific written approval for such membership is obtained from the Designated Agency Ethics Official.

(ii) Ownership of bonds other than corporate bonds, regardless of the value of such interest. This exemption extends also to any financial interests that the organization whose bonds are so owned may have in other business entities.

(iii) Ownership of shares in a widely diversified mutual fund or regulated investment company regardless of the value of such interests. This exemption extends also to any financial interests that the mutual fund or investment company may have in other business entities.

(2) If a NASA employee or the employee's spouse or minor child has a present beneficial interest or a vested remainder interest under a trust, the ownership of stocks, bonds, or other corporated securities under the trust will be exempt to the same extent as provided in paragraph (a)(1)(i) of this section for the direct ownership of such securities. The ownership of bonds other than corporate bonds, or of shares in a mutual fund or regulated investment company, under the trust will be exempt to the same extent as provided under paragraphs (a)(1)(ii) and (a)(1)(iii) of this section for the direct ownership of such bonds or shares.

(3) If a NASA employee is an officer, director, trustee, or employee of an educational institution, or if the employee is negotiating for, or has an arrangement concerning prospective employment with such an institution, a direct financial interest which the institution has in any matter will not itself be exempt, but any financial interest that the institution may have in the matter through its holdings of securities issued by business entities will be exempt, provided the NASA employee is not serving as a member of the investment committee of the institution or is not otherwise advising it on its investment portfolio.

(4) If a NASA employee has continued to participate in a bona fide pension, retirement, group life, health or accident insurance plan, or other employee welfare or benefit plan that is maintained by a business or nonprofit organization of which the employee is a former employee, the employee's financial interest in that organization will be exempt, except to the extent that the welfare or benefit plan is a profit sharing or stock bonus plan. This exemption extends also to any financial interests that the organization may have in other business activities.

(c) Procedures for specific waiver.

(1) The written request for a waiver will describe the specific matter involved, the nature and extent of the employee's participation therein, and the exact nature and amount of financial interest relating to the specific matter.

(2) Employees who are key officials, or who are appointed under authority of section 203(c)(2)(A) ("NASA Excepted Positions") or section 203(c)(10) ("Alien Scientists") of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473(c)(2)(A) and 2473(c)(10)), or under 5 U.S.C. 3131 et seq. (Senior Executive Service), will forward the request to the Administrator. It shall be submitted through the appropriate Chief Counsel or General Counsel and the appropriate Director of a Field or Component Installation or Official-in-Charge of a Headquarters Office, who will transmit the request to the Administrator with comments and recommendations on the proposed waiver. The determination required by the statute will be made only by the Administrator or Deputy Administrator in the case of these employees.

(3) All other employees will forward their requests for a waiver through the appropriate Chief Counsel or General Counsel to the appropriate Director of a Field or Component Installation or

Official-in-Charge of a Headquarters Office. For Headquarters employees, the Associate Administrator for Management is authorized to make the determination required by the statute. For employees at an installation, the Directors of Field and Component Installations, and their Deputies are authorized to make the determination required by the statute. This authority may not be redelegated.

(4) A copy of waiver granted by the Director of a Field or Component Installation shall be forwarded to the Associate Administrator for Management, NASA Headquarters.

§ 1207.404 Executive personnel financial disclosure report.

(a) *Background.* The Ethics in Government Act of 1978 (Pub. L. 95–521) prescribes a public financial disclosure reporting requirement for certain officers and employees. The requirements and procedures are set forth in detail in the Act as well as in the implementing regulations of the Office of Government Ethics (5 CFR Part 734). This section will not reiterate these detailed requirements nor the instructions for filing that are contained in the Executive Personnel Financial Disclosure Report (SF 278).

(b) *Employees Required to File.* The NASA employees required to file the Executive Personnel Financial Disclosure Report (SF 278) are:

(1) Presidential nominees to positions requiring the advice and consent of the Senate.

(2) Officers and employees who have served in their position for 61 days or more during the preceding calendar year whose positions are classified or paid at GS–16 or above of the General Schedule, or whose basic rate of pay under other pay schedules is equal to or greater than the rate for GS–16. This category includes members of the Senior Executive Service.

(3) Officers or employees in any other position determined by the Director of the Office of Government Ethics to be of equal classification to the GS–16.

(4) Administrative law judges.

(5) Employees in the excepted service in positions which are of a confidential or policymaking character unless their positions have been excluded by the Director of the Office of Government Ethics.

(6) The Designated Agency Ethics Official.

(c) *Time of Filing*—(1) *Initial appointment.* Within 5 days after transmitted by the President to the Senate of the nomination to a position described in paragraph (b)(1) of this section or within 30 days after assuming a position described in paragraphs (b)(2), (3), (4), (5), and (6) of this section, an Executive Personnel Financial Disclosure Report (SF 278) must be filed.

(2) *Incumbents.* An Executive Personnel Financial Disclosure Report must be filed no later than May 15 annually by incumbents of any of the positions listed in paragraph (b) of this section. In certain cases an extension of up to 45 days for filing may be permitted by the Designated Agency Official. The Director of the Office of Government Ethics may grant an additional 45–day extension, for good cause shown.

(3) *Terminations.* No later than 30 days after an incumbent of a position listed in paragraph (b) of this section terminates that position, the inidividual shall file an Executive Personnel Financial Disclosure Report.

(d) *Place of Filing.* All reports required to be filed by this subpart by Headquarters employees, Directors, Deputy Directors and Chief Counsels of Field Installations shall be submitted on or before the due date to the Executive Personnel Management and Development Office, Code NPD, NASA Headquarters. Other field installation personnel required to file reports by this subpart shall submit such reports on or before the due date to the Field Installation Director of Personnel.

(e) *Review and Retention of Reports.* All reports required to be filed with the Executive Personnel Management and Development Office, Code NPD, NASA Headquarters, will be reviewed by the Designated or Alternate Agency Ethics Counselor, Office of the General Counsel. Reports required to be filed by field installation personnel with the Field Installation Director of Personnel, will be reviewed by the Field Installation Chief Counsel. All reports required to be filed by this subpart will be sent, after review, to the Executive Personnel Management and Development Office, Code NPD, NASA Headquarters, for retention. The reports will be available to the public.

(f) *Where to Seek Help.* To seek assistance in completing the Executive Personnel Financial Disclosure Report, contact the Chief Counsel at a Field Installation, or the Associate General Counsel (General) at Headquarters.

(g) *Failure to Submit Report.* Falsification of, or knowing or willful failure to file or report information required to be reported by section 202 of the Act may subject the individual to a civil penalty and to disciplinary action. Also, knowing or willful falsification of information under that section may subject the individual to criminal prosecution under 18 U.S.C. 1001, leading to a fine of not more than $10,000, or imprisonment for not more than 5 years, or both.

§ 1207.405 Confidential statements of employment and financial interests.

(a) The following criteria define the categories of types of employees, unless otherwise exempted pursuant to paragraph (b) of this section, who will file a Confidential Statement of Employment and Financial Interests, containing the kind of information described in detailed instructions on NASA Form 1270:

(1) Employees classified at the GM–13 or GS–13 level and above under 5 U.S.C. 5332, or at comparable pay levels under other authority, whose duties and responsibilities require the exercise of judgment in making a government decision or making government action in regard to:

(i) Contracting or procurement, including the evaluation or selection of contractors; the negotiation, approval, or award of contracts; the oversight of activities performed by contractors, including the administration, monitoring, audit, and inspection of contractors and contract activities; and the initiation or approval of requests to procure supplies, equipment, or services, other than those common items available from NASA or GSA inventories;

(ii) Administering or monitoring grants or subsidies or Space Act Agreements, including those with educational institutions and other non-Federal organizations;

(iii) Auditing financial transactions;

(iv) Using or disposing of excess or surplus property; or

(v) Establishing or enforcing safety standards and procedures.

(2) All employees, regardless of grade, serving as members, evaluators or advisers to the following Boards or Committees:

(i) Source Evaluation Boards or Committees;

(ii) Inventions and Contributions Boards;

(iii) Contract Adjustment Board;

(iv) Board of Contract Appeals;

(vi) Site Selection Boards;

(vii) Performance Evaluation Boards or Committees administering the award fee of a contract.

(3) Employees classified at the GM–13 or GS–13 level and above under 5 U.S.C. 5332, or at comparable pay levels under other authority, and who are identified at Headquarters by the Director, Headquarters Human Resources Management, or by the Director of Personnel at a Field or Component Installation as holding positions requiring the incumbent thereof to

exercise judgment in making Government decisions or taking actions where such decisions or actions may have an economic impact on the interest of any non-Federal enterprise.

(4) Employees classified below the GM–13 or GS–13 level under 5 U.S.C. 5332, or at a comparable pay level under other authority, and who are in positions which otherwise meet the criteria of § 1207.405(a)(1) or § 1207.404(a)(3), providing the Office of Government Ethics has approved the determination that the incumbents of such positions should be required to file statements of employment and financial interests in order to protect the integrity of the Government and to avoid the employee's involvement in a possible conflict of interest situation.

(b)(1) An employee required to file an Executive Personnel Financial Disclosure Report may elect to file a current copy of his/her Standard Form 278 in lieu of the report required under this section.

(2) An employee described in paragraph (a)(1) of this section may be exempted from the requirement for filing a statement of employment and financial interests when, at Headquarters, the Director, Headquarters Human Resources Management, or the Director of Personnel at the Field or Component Installation involved determines that the employee's duties are of such a nature, or are at such a level of responsibility and are subject to such a degree of supervision and review, that the possibility of the employee's becoming involved in a conflict of interest is remote.

(c) *Procedures for filing statements*—(1) *Time and place.* Each employee required to file a statement under this section will submit a completed NASA Form 1270 to the local Personnel Officer or other designated official as follows:

(i) Thirty days after entrance on duty;

(ii) Ten days after the employee's position is specifically identified as one requiring the incumbent thereof to file a financial statement;

(iii) After selection and before service on the boards or committees listed in § 1207.405(a)(2).

(2) *Annual Statements.* A statement shall be submitted by incumbents each year reflecting reportable interests held as of June 30. The statement must be filed during the month of July each year. No supplementary statement will be accepted for this annual filing.

(3) For purposes of this reporting requirement, the financial interest, including employment, of a spouse, minor child, or other members of an employee's immediate household is considered to be an interest of the employee and must be reported. "Members of an employee's immediate household" means those relations who are residents of the employee's household.

(4) If any information required to be included on a statement of employment and financial interests, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that the other person submit the information on his/her behalf. If the employee concerned should gain knowledge about such interests, he/she should report the information in order to prevent the possibility of invoking 18 U.S.C. 208.

(d) The following procedures will be followed with regard to the maintenance of Confidential Statements of Employment and Financial Interests. Each Field or Component Installation Personnel Director and, at Headquarters, the Director, Headquarters Human Resources Management, will maintain, on a current basis, a master list of employees required to file statements under this section. It will be these officials' responsibility to determine that the list includes all those employees falling within the criteria for reporting set forth in this section and that the requirement for filing statements is fully carried out on a timely basis. In the event of any question regarding the interpretation of these criteria, the official will consult the Deputy Ethics Counselor or the Designated Agency Ethics Official directly.

(e) An employee who fails or refuses to file a statement as required by this section, or who knowingly falsifies information in the statement, will be subject to appropriate disciplinary action.

(f) Employee statements filed under this section comprise a NASA System of Records under the Privacy Act of 1974, and will be protected accordingly. The file is NASA 10SCCF, "Standards of Conduct Counseling Case Files—NASA."

(g) This section does not require an employee to include in a statement of employment and financial interests any information relating to the employee's connection with, or interests in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization not conducted as a business enterprise. For the purpose of this section, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed "business enterprises" and are required to be included in an employee's financial interest statement.

(h) Information concerning financial interests which have been exempted from the prohibition of 18 U.S.C. 208(a), as set forth in § 1207.403(b), may be omitted from the statement of employment and financial interests, except that, notwithstanding the exemption set forth in § 1207.403(b)(1)(ii), the ownership of securities in any amount in a company doing business with NASA will be disclosed if the employee's duties and responsibilities require the exercise of judgment in making a Government decision, taking Government action in relation to that company, or serving on boards or committees constituted as part of the NASA SEB process. In such case, the employee should note if his or her interest is under or over $5,000.

James C. Fletcher,

Administrator.

June 5, 1987

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8143]

Income Tax; Limitation on the Use of the Cash Method of Accounting

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the limitation on the use of the cash methods of accounting. Changes to the law were made by the Tax Reform Act of 1986. These regulations affect taxpayers using the cash method of accounting and provide them with guidance needed to comply with the changes to the law. The text of the temporary regulations contained 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.**

DATES: The regulations contained in this document are effective for taxable years beginning after December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Ewan D. Purkiss of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111

Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T). Telephone 202–566–3238 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR Part 1) under section 448 of the Internal Revenue Code of 1986. These amendments are necessary to conform the regulations to section 801 of the Tax Reform Act of 1986 (Pub. L. 99–514, 100 Stat. 2085) (the Act).

Explanation of Provisions in General

Section 448 prohibits the use of the cash receipts and disbursements method of accounting (the cash method) by C corporations, partnerships with a C corporation partner, and tax shelters. For this purpose, a trust subject to tax under section 511(b) is treated as a C corporation with respect to its activities constituting an unrelated trade or business.

The following corporations and partnerships are excepted from the section 448 prohibition on the use of the cash method: (1) C corporations and partnerships with a C corporation partner with respect to any farming business engaged in by such entities, (2) C corporations with gross receipts of $5 million or less, (3) partnerships with a C corporation partner if the partnerships have gross receipts of $5 million or less, and (4) qualified personal service corporations., These exceptions do not apply to tax shelters.

Effect on Other Provisions

The legislative history of the Act provides that section 448 "does not change the rules of present law relating to what accounting methods clearly reflect income or the authority of the Secretary of the Treasury to require the use of an accounting method that clearly reflects income." H.R. Rep. No. 99–426, 99th Cong., 1st Sess. 606 (1985) (House Report). Pursuant to this statement of legislative intent, the regulations clarify that section 448 does not override other provisions of law, such as sections 446(b) and 447, that may prohibit the use of the cash method in certain cases. For example, a taxpayer excepted from the section 448 prohibition on the use of the cash method may still be prohibited from using the cash method under section 446 (b), if the cash method does not clearly reflect that taxpayer's income.

Definition of Farming Business

For purposes of section 448, the term "farming business" has the same meaning as given to such term in section 263A(e)(4). In addition, the term "farming business" includes the raising or harvesting of any tree described in section 263A(c)(5). Thus, the term includes the operation of a nursery or sod farm, the raising or harvesting of trees bearing fruits, nuts or other crops, and the raising or harvesting of timber and ornamental trees. The regulations clarify that the term "farming business" does not include the processing of agricultural commodities or products beyond those activities normally incident to the growing, raising or harvesting of such products.

Qualified Personal Service Corporations

A C corporation is a qualified personal service corporation if it meets both an ownership test and a function test. The ownership test is satisfied if substantially all the stock of the corporation, in value, is owned by (1) employees performing services for the corporation in eight qualifying fields (discussed more fully below), (2) retired employees who previously performed such services, (3) the estates of employees or retired employees who performed such services, or (4) persons who acquired their stock by reason of the death of an employee or a retired employee (but only for the 2-year period beginning on the date of death of the employee). For purposes of the ownership test, the term "substantially all" means an amount equal to at least 95 percent.

The function test is satisfied if substantially all the activities of the corporation involve the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, or consulting. For this purpose, substantially all the activities of the corporation involve the performance of services in the qualifying fields if 95 percent or more of the time spent by employees of the corporation (in their capacity as such) is devoted to the actual performance of services in one or more of the qualifying fields or activities incident to the actual performance of those services. For example, employee time devoted to personnel management incident to the performance of services in a qualifying field is considered the performance of services in that qualifying field.

The regulations provide guidance relating to the types of activities that qualify as services performed in the fields of health, performing arts and consulting. For example, the regulations clarify that the performance of services in the field of consulting means the performance of activities that involve the provision of advice and counsel. Thus, under section 448, the performance of other services such as sales or brokerage services, or economically similar services, is not considered the performance of services in the field of consulting.

Entities With $5 Million or Less of Gross Receipts

Section 448 does not apply to any C corporation or partnership with a C corporation partner for any taxable year if, for all its prior taxable years after December 31, 1985, the C corporation or partnership meets a $5 million gross receipts test. A C corporation meets the $5 million gross receipts test for a prior taxable year if its average annual gross receipts for the 3-taxable year period (or, if shorter, the period of existence) ending with such prior taxable year is $5 million or less. With respect to a partnership with a C corporation as a partner, the $5 million gross receipts test is applied only at the partnership level. For these purposes, gross receipts for a short taxable year are annualized. The regulations provide guidance relating to the calculation of gross receipts for purposes of section 448. For this purpose, gross receipts include amounts representing interest, dividends, rents, royalties or annuities, irrespective of whether such amounts are derived in the ordinary course of a trade or business. The regulations include these items in the definition of gross receipts because section 448 applies to income from all the activities of a taxpayer, as opposed to income from a particular trade or business.

Nonaccrual of Certain Accounts Receivable of Service Providers

Section 448 (d) (5) provides that taxpayers who use an accrual method of accounting need not accrue as income any amounts (accounts receivable) to be received from the performance of services if, on the basis of experience, such amounts will not be collected. This rule, however, does not apply to any amounts if interest or penalties for untimely payment are required to be paid on such amounts.

The regulations provide that this nonaccrual of amounts to be received by service providers is a method of accounting under the Code (the nonaccrual-experience method). The regulations provide guidance relating to the types of accounts receivable that may benefit from the nonaccrual-experience method. Under the regulations, an account receivable may be eligible for the nonaccrual-experience method if the amounts in

question would be properly recognized in income under an accural method of accounting without regard to the nonaccrual-experience method, *i.e.*, all the events have occurred which fix the right to receive such income and the amount thereof can be determined with reasonable accuracy. In addition, the regulations provide procedures to enable taxpayers to change their method of accounting to the nonaccrual-experience method.

Under the nonaccrual-experience method, the taxpayer determines, on the basis of experience, the amount of each account receivable that will be uncollectible. This estimated uncollectible portion is not accrued as gross income at the time the taxpayer would normally recognize the gross income with respect to the account receivable. Upon the collection of the account receivable, the difference between the amount collected and the income previously recognized with respect to the account receivable is accounted for by increasing, or decreasing, as the case may be, gross income by the appropriate amount. Moreover, no bad debt deduction under section 166 for a wholly or partially worthless account receivable is allowed for any amount not previously taken into income under the nonaccrual-experience method.

The regulations provide guidance relating to the manner in which a taxpayer determines, on the basis of experience, the portion of each account receivable that will be uncollectible. The legislative history of the Act provides that "[t]he amount of billings that, on the basis of experience, will not be collected is equal to the total amount billed, multiplied by a fraction whose numerator is the total amount of such receivables which were billed and determined not to be collectible within the most recent five taxable years of the taxpayer, and whose denominator is the total of such amounts billed within the same five year period." House Report at 608.

Based on this language, the regulations adopt a six-year moving average method similar to the experience method under § 1.585–2 (c) (1). The regulations provide that the six-year moving average method is the exclusive means for determining the uncollectible portion of accounts receivable under the nonaccrual-experience method. Thus, other methods of estimating uncollectible amounts which were available under section 166 are not available under the nonaccrual-experience method. *See, e.g.*, Rev. Rul. 76–362, 1976–2 C.B. 45; *Westchester Development Co.* v. *Commissioner*, 63 T.C. 198 (1974) *acq.*, 1975–2 C.B. 2.

The regulations provide that the nonaccrual-experience method is applied separately to each account receivable. The legislative history to the Act provides that "the Secretary of the Treasury may provide a periodic system of accounting for billings that, on the basis of experience, will not be collected where the periodic system results in the same taxable income as would be the case were each receivable recorded separately." House Report at 608. The regulations do not provide a system for applying the nonaccrual-experience method on the basis of such a periodic system. However, the Service specifically invites comment on the operation of a periodic system of applying the nonaccrual-experience method, and the manner in which a taxpayer using that system would account for wholly or partially worthless debts.

Effective Date; Transitional and Procedural Rules

Section 448 applies to taxable years beginning after December 31, 1986. Nevertheless, at the election of the taxpayer, section 448 does not apply to any transaction with a related party (within the meaning of section 267 (b) of the Internal Revenue Code of 1954 as in effect before enactment of the Act), loan, or lease if such transaction, loan, or lease was entered into before September 26, 1985. The regulations provide guidance relating to these transactions. In addition, section 448 does not apply to any contract for the acquisition or transfer of real property, or for services relating to the acquisition or development of real property if such contract was entered into before September 25, 1985, and the sole unperformed element of such contract as of September 25, 1985, is payment for the property or services.

In the case of any taxpayer required by section 448 to change its method of accounting, such change is treated as initiated by the taxpayer. Thus, no diminution in the amount of the section 481 (a) adjustment occurs by reason of amounts attributable to years preceding the effective date of the Internal Revenue Code of 1954. In addition, the regulations provide rules relating to the treatment of the section 481 (a) adjustment resulting from a change in accounting method required by section 448. The regulations also provide procedures for taxpayers to change their method of accounting as required by section 448.

Regulatory Flexibility Act

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, these temporary regulations are not subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Executive Order 12291

The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

The collection of information requirements contained in these regulations have been submitted to the Office of Mangement and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB.

Drafting Information

The principal author of these temporary regulations is Ewan D. Purkiss 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, on matters of both substance and style.

List of Subjects

26 CFR 1.441–1–1.483–2

Income taxes, Accounting, Deferred compensation plans.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the regulations

For the reasons set out in the preamble, Title 26, Chapter 1, Subchapter A, Part 1 and Subchapter H, Part 602 of the Code of Federal Regulations amended as set forth below:

PART 1—[AMENDED]

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

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

Par. 2. New § 1.448–1T and § 1.448–2T are added in the appropriate place.

§ 1.448–1T Limitation on the use of the cash receipts and disbursements method of accounting (temporary).

(a) *Limitation on accounting method*—(1) *In general.* This section

prescribes regulations under section 448 relating to the limitation on the use of the cash receipts and disbursements method of accounting (the cash method) by certain taxpayers.

(2) *Limitation rule.* Except as otherwise provided in this section, the computation of taxable income using the cash method is prohibited in the case of a—

(i) C corporation,

(ii) Partnership with a C corporation as a partner, or

(iii) Tax shelter.

A partnership is described in paragraph (a)(2)(ii) of this section, if the partnership has a C corporation as a partner at any time during the partnership's taxable year beginning after December 31, 1986.

(3) *Meaning of C corporation.* For purposes of this section, the term "C corporation" includes any corporation that is not an S corporation. For example, a regulated investment company (as defined in section 851) or a real estate investment trust (as defined in section 856) is a C corporation for purposes of this section. In addition, a trust subject to tax under section 511 (b) shall be treated, for purposes of this section, as a C corporation, but only with respect to the portion of its activities that constitute an unrelated trade or business. Similarly, for purposes of this section, a corporation that is exempt from federal income taxes under section 501 (a) shall be treated as a C corporation only with respect to the portion of its activities that constitute an unrelated trade or business. Moreover, for purposes of determining whether a partnership has a C corporation as a partner, any partnership described in paragraph (a)(2)(ii) of this section is treated as a C corporation. Thus, if partnership ABC has a partner that is a partnership with a C corporation, then, for purposes of this section, partnership ABC is treated as a partnership with a C corporation partner.

(4) *Treatment of a combination of methods.* For purposes of this section, the use of a method of accounting that records some, but not all, items on the cash method shall be considered the use of the cash method. Thus, a C corporation that uses a combination of accounting methods including the use of the cash method is subject to this section.

(b) *Tax shelter defined*—(1) *In general.* For purposes of this section, the term "tax shelter" means any—

(i) Enterprise (other than a C corporation) if at any time (including taxable years beginning before January 1, 1987) interests in such enterprise have been offered for sale in any offering required to be registered with any federal or state agency having the authority to regulate the offering of securities for sale,

(ii) Syndicate (within the meaning of paragraph (b)(3) of this section), or

(iii) Tax shelter within the meaning of section 6661 (b)(2)(C)(ii) (relating to (A) a partnership or other entity, (B) any investment plan or arrangement, or (C) any other plan or arrangement, whose principal purpose is the avoidance or evasion of Federal income tax).

(2) *Requirement of registration.* For purposes of paragraph (b)(1)(i) of this section, an offering is required to be registered with a federal or state agency if, under the applicable federal or state law, failure to register the offering would result in a violation of the applicable federal or state law (regardless of whether the offering is in fact registered). In addition, an offering is required to be registered with a federal or state agency if, under the applicable federal or state law, failure to file a notice of exemption from registration would result in a violation of the applicable federal or state law (regardless of whether the notice is in fact filed).

(3) *Meaning of syndicate.* For purposes of paragraph (b)(1)(ii) of this section, the term "syndicate" means a partnership or other entity (other than a C corporation) if more than 35 percent of the losses of such entity during the taxable year (for taxable years beginning after December 31, 1986) are allocated to limited partners or limited entrepreneurs. For purposes of this paragraph (b)(3), the term "limited entrepreneur" has the same meaning given such term in section 464 (e)(2). In addition, in determining whether an interest in a partnership is held by a limited partner, or an interest in an entity or enterprise is held by a limited entrepreneur, section 464 (c)(2) shall apply in the case of the trade or business of farming (as defined in paragraph (d)(2) of this section), and section 1256 (e)(3)(C) shall apply in any other case. Moreover, for purposes of this paragraph (b) (3), the losses of a partnership, entity, or enterprise (the enterprise) means the excess of the deductions allowable to the enterprise over the amount of income recognized by such enterprise under the enterprise's method of accounting used for federal income tax purposes (determined without regard to this section). For this purpose, gains or losses from the sale of capital assets or section 1221 (2) assets are not taken into account.

(4) *Presumed tax avoidance.* For purposes of paragraph (b)(1)(iii) of this section, marketed arrangements in which persons carrying on farming activities using the services of a common managerial or administrative service will be presumed to have the principal purpose of tax avoidance if such persons use borrowed funds to prepay a substantial portion of their farming expenses (*e.g.*, payment for farm supplies that will not be used or consumed until a taxable year subsequent to the taxable year of payment).

(5) *Taxable year tax shelter must change accounting method.* A partnership, entity, or enterprise that is a tax shelter must change from the cash method for the later of (i) the first taxable year beginning after December 31, 1986, or (ii) the taxable year that such partnership, entity, or enterprise becomes a tax shelter.

(c) *Effect of section 448 on other provisions.* Nothing in section 448 shall have any effect on the application of any other provision of law that would otherwise limit the use of the cash method, and no inference shall be drawn from section 448 with respect to the application of any such provision. For example, nothing in section 448 affects the requirement of section 447 that certain corporations must use an accrual method of accounting in computing taxable income from farming, or the requirement of § 1.446–1(c)(2) that an accrual method be used with regard to purchases and sales of inventory. Similarly, nothing in section 448 affects the authority of the Commissioner under section 446(b) to require the use of an accounting method that clearly reflects income, or the requirement under section 446(e) that a taxpayer secure the consent of the Commissioner before changing its method of accounting. For example, a taxpayer using the cash method may be required to change to an accrual method of accounting under section 446(b) because such method clearly reflects that taxpayer's income, even though the taxpayer is not prohibited by section 448 from using the cash method. Similarly, a taxpayer using an accrual method of accounting that is not prohibited by section 448 from using the cash method may not change to the cash method unless the taxpayer secures the consent of the Commissioner under section 446(e), and, in the opinion of the Commissioner, the use of the cash method clearly reflects that taxpayer's income under section 446(b).

(d) *Exception for farming business*—(1) *In general.* Except in the case of a tax shelter, this section shall not apply

to any farming business. A taxpayer engaged in a farming business and a separate nonfarming business is not prohibited by this section from using the cash method with respect to the farming business, even though the taxpayer may be prohibited by this section from using the cash method with respect to the nonfarming business.

(2) *Meaning of farming business.* For purposes of paragraph (d) of this section, the term "farming business" means—

(i) The trade or business of farming as defined in section 263A(e)(4) (including the operation of a nursery or sod farm, or the raising or harvesting of trees bearing fruit, nuts, or other crops, or ornamental trees), or

(ii) The raising, harvesting , or growing of trees described in section 263A(c)(5) (relating to trees raised, harvested, or grown by the taxpayer other than trees described in paragraph (d)(2)(i) of this section).

Thus, for purposes of this section, the term "farming business" includes the raising of timber. For purposes of this section, the term "farming business" does not include the processing of commodities or products beyond those activities normally incident to the growing, raising or harvesting of such products. For example, assume that a C corporation taxpayer is in the business of growing and harvesting wheat and other grains. The taxpayer processes the harvested grains to produce breads, cereals, and similar food products which it sells to customers in the course of its business. Although the taxpayer is in the farming business with respect to the growing and harvesting of grain, the taxpayer is not in the farming business with respect to the processing of such grains to produce food products which the taxpayer sells to customers. Similarly, assume that a taxpayer is in the business of raising poultry or other livestock. The taxpayer uses the livestock in a meat processing operation in which the livestock are slaughtered, processed, and packaged or canned for sale to customers. Although the taxpayer is in the farming business with respect to the raising of livestock, the taxpayer is not in the farming business with respect to the meat processing operation. However, under this section the term "farming business" does include processing activities which are normally incident to the growing, raising or harvesting of agricultural products. For example, assume a taxpayer is in the business of growing fruits and vegetables. When the fruits and vegetables are ready to be harvested, the taxpayer picks, washes, inspects, and packages the fruits and vegetables for sale. Such activities are normally incident to the raising of these crops by farmers. The taxpayer will be considered to be in the business of farming with respect to the growing of fruits and vegetables, and the processing activities incident to the harvest.

(e) *Exception for qualified personal service corporation*—(1) *In general.* Except in the case of a tax shelter, this section does not apply to a qualified personal service corporation.

(2) *Certain treatment for qualified personal service corporation.* For purposes of paragraph (a)(2)(ii) of this section (relating to whether a partnership has a C corporation as a partner), a qualified personal service corporation shall be treated as an individual.

(3) *Meaning of qualified personal service corporation.* For purposes of this section, the term "qualified personal service corporation" means any corporation that meets—

(i) The function test paragraph (e)(4) of this section, and

(ii) The ownership test of paragraph (e)(5) of this section.

(4) *Function test*—(i) *In general.* A corporation meets the function test if substantially all the corporation's activities for a taxable year involve the performance of services in one or more of the following fields—

(A) Health,
(B) Law,
(C) Engineering (including surveying and mapping),
(D) Architecture,
(E) Accounting,
(F) Actuarial science,
(G) Performing arts, or
(H) Consulting.

Substantially all of the activities of a corporation are involved in the performance of services in any field described in the preceding sentence (a qualifying field), only if 95 percent or more of the time spent by employees of the corporation, serving in their capacity as such, is devoted to the performance of services in a qualifying field. For purposes of determining whether this 95 percent test is satisfied, the performance of any activity incident to the actual performance of services in a qualifying field is considered the performance of services in that field. Activities incident to the performance of services in a qualifying field include the supervision of employees engaged in directly providing services to clients, and the performance of administrative and support services incident to such activities.

(ii) *Meaning of services performed in the field of health.* For purposes of paragraph (e)(4)(i)(A) of this section, the performance of services in the field of health means the provision of medical services by physicians, nurses, dentists, and other similar healthcare professionals. The performance of services in the field of health does not include the provision of services not directly related to a medical field, even though the services may purportedly relate to the health of the service recipient. For example, the performance of services in the field of health does not include the operation of health clubs or health spas that provide physical exercise or conditioning to their customers.

(iii) *Meaning of services performed in the field of performing arts.* For purposes of paragraph (e)(4)(i)(G) of this section, the performance of services in the field of the performing arts means the provision of services by actors, actresses, singers, musicians, entertainers, and similar artists in their capacity as such. The performance of services in the field of the performing arts does not include the provision of services by persons who themselves are not performing artists (*e.g.*, persons who may manage or promote such artists, and other persons in a trade or business that relates to the performing arts). Similarly, the performance of services in the field of the performing arts does not include the provision of services by persons who broadcast or otherwise disseminate the performances of such artists to members of the public (*e.g.*, employees of a radio station that broadcasts the performances of musicians and singers). Finally, the performance of services in the field of the performing arts does not include the provision of services by athletes.

(iv) *Meaning of services performed in the field of consulting*—(A) *In general.* For purposes of paragraph (e)(4)(i)(H) of this section, the performance of services in the field of consulting means the provision of advice and counsel. The performance of services in the field of consulting does not include the performance of services other than advice and counsel, such as sales or brokerage services, or economically similar services. For purposes of the preceding sentence, the determination of whether a person's services are sales or brokerage services, or economically similar services, shall be based on all the facts and circumstances of that person's business. Such facts and circumstances include, for example, the manner in which the taxpayer is compensated for the services provided

(*e.g.*, whether the compensation for the services is contingent upon the consummation of the transaction that the services were intended to effect).

(B) *Examples.* The following examples illustrate the provisions of paragraph (e)(4)(iv)(A) of this section. The examples do not address all types of services that may or may not qualify as consulting. The determination of whether activities not specifically addressed in the examples qualify as consulting shall be made by comparing the service activities in question to the types of service activities discussed in the examples. With respect to a corporation which performs services which qualify as consulting under this section, and other services which do not qualify as consulting, see paragraph (e)(4)(i) of this section which requires that substantially all of the corporation's activities involve the performance of services in a qualifying field.

Example (1). A taxpayer is in the business of providing economic analyses and forecasts of business prospects for its clients. Based on these analyses and forecasts, the taxpayer advises its clients on their business activities. For example, the taxpayer may analyze the economic conditions and outlook for a particular industry which a client is considering entering. The taxpayer will then make recommendations and advise the client on the prospects of entering the industry, as well as on other matters regarding the client's activities in such industry. The taxpayer provides similar services to other clients, involving, for example, economic analyses and evaluations of business prospects in different areas of the United States or in other countries, or economic analyses of overall economic trends and the provision of advice based on these analyses and evaluations. The taxpayer is considered to be engaged in the performance of services in the field of consulting.

Example (2). A taxpayer is in the business of providing services that consist of determining a client's electronic data processing needs. The taxpayer will study and examine the client's business, focusing on the types of data and information relevant to the client and the needs of the client's employees for access to this information. The taxpayer will then make recommendations regarding the design and implementation of data processing systems intended to meet the needs of the client. The taxpayer does not, however, provide the client with additional computer programming services distinct from the recommendations made by the taxpayer with respect to the design and implementation of the client's data processing systems. The taxpayer is considered to be engaged in the performance of services in the field of consulting.

Example (3). A taxpayer is in the business of providing services that consist of determining a client's management and business structure needs. The taxpayer will study the client's organization, including, for example, the departments assigned to perform specific functions, lines of authority in the managerial hierarchy, personnel hiring, job responsibility, and personnel evaluations and compensation. Based on the study, the taxpayer will then advise the client on changes in the client's management and business structure, including, for example, the restructuring of the client's departmental systems or its lines of managerial authority. The taxpayer is considered to be engaged in the performance of services in the field of consulting.

Example (4). A taxpayer is in the business of providing financial planning services. The taxpayer will study a particular client's financial situation, including, for example, the client's present income, savings and investments, and anticipated future economic and financial needs. Based on this study, the taxpayer will then assist the client in making decisions and plans regarding the client's financial activities. Such financial planning includes the design of a personal budget to assist the client in monitoring the client's financial situation, the adoption of investment strategies tailored to the client's needs, and other similar services. The taxpayer is considered to be engaged in the performance of services in the field of consulting.

Example (5). A taxpayer is in the business of executing transactions for customers involving various types of securities or commodities generally traded through organized exchanges or other similar networks. The taxpayer provides its clients with economic analyses and forecasts of conditions in various industries and businesses. Based on these analyses, the taxpayer makes recommendations regarding transactions in securities and commodities. Clients place orders with the taxpayer to trade securities or commodities based on the taxpayer's recommendations. The taxpayer's compensation for its services is typically based on the trade orders. The taxpayer is not considered to be engaged in the performance of services in the field of consulting. The taxpayer is engaged in brokerage services. Relevant to this determination is the fact that the compensation of the taxpayer for its services is contingent upon the consummation of the transaction the services were intended to effect (i.e., the execution of trade orders for its clients).

Example (6). A taxpayer is in the business of studying a client's needs regarding its data processing facilities and making recommendations to the client regarding the design and implementation of data processing systems. The client will then order computers and other data processing equipment through the taxpayer based on the taxpayer's recommendations. The taxpayer's compensation for its services is typically based on the equipment orders made by the clients. The taxpayer is not considered to be engaged in the performance of services in the field of consulting. The taxpayer is engaged in the performance of sales services. Relevant to this determination is the fact that the compensation of the taxpayer for its services it contingent upon the consummation of the transaction the services were intended to effect (i.e., the execution of equipment orders for its clients).

Example (7). A taxpayer is in the business of assisting businesses in meeting their personnel requirements by referring job applicants to employers with hiring needs in a particular area. The taxpayer may be informed by potential employers of their need for job applicants, or, alternatively, the taxpayer may become aware of the client's personnel requirements after the taxpayer studies and examines the client's management and business structure. The taxpayer's compensation for its services is typically based on the job applicants, referred by the taxpayer to the clients, who accept employment positions with the clients. The taxpayer is not considered to be engaged in the performance of services in the field of consulting. The taxpayer is involved in the performance of services economically similar to brokerage services. Relevant to this determination is the fact that the compensation of the taxpayer for its services is contingent upon the consummation of the transaction the services were intended to effect (i.e., the hiring of a job applicant by the client).

Example (8). The facts are the same as in example (7), except that the taxpayer's clients are individuals who use the services of the taxpayer to obtain employment positions. The taxpayer is typically compensated by its clients who obtain employment as a result of the taxpayer's services. For the reasons set forth in example (7), the taxpayer is not considered to be engaged in the performance of services in the field of consulting.

Example (9). A taxpayer is in the business of assisting clients in placing advertisements for their goods and services. The taxpayer analyzes the conditions and trends in the client's particular industry, and then makes recommendations to the client regarding the types of advertisements which should be placed by the client and the various types of advertising media (e.g., radio, television, magazines, etc.) which should be used by the client. The client will then purchase, through the taxpayer, advertisements in various media based on the taxpayer's recommendations. The taxpayer's compensation for its services is typically based on the particular orders for advertisements which the client makes. The taxpayer is not considered to be engaged in the performance of services in the field of consulting. The taxpayer is engaged in the performance of services economically similar to brokerage services. Relevant to this determination is the fact that the compensation of the taxpayer for its services is contingent upon the consummation of the transaction the services were intended to effect (i.e., the placing of advertisements by clients).

Example (10). A taxpayer is in the business of selling insurance (including life and casualty insurance), annuities, and other similar insurance products to various individual and business clients. The taxpayer will study the particular client's financial situation, including, for example, the client's present income, savings and investments, business and personal insurance risks, and anticipated future economic and financial

needs. Based on this study, the taxpayer will then make recommendations to the client regarding the desirability of various insurance products. The client will then purchase these various insurance products through the taxpayer. The taxpayer's compensation for its services is typically based on the purchases made by the clients. The taxpayer is not considered to be engaged in the performance of services in the field of consulting. The taxpayer is engaged in the performance of brokerage or sales services. Relevant to this determination is the fact that the compensation of the taxpayer for its services is contingent upon the consummation of the transaction the services were intended to effect (i.e., the purchase of insurance products by its clients).

(5) *Ownership test*—(i) *In general.* A corporation meets the ownership test, if at all times during the taxable year, substantially all the corporation's stock, by value, is held, directly or indirectly, by—

(A) Employees performing services for such corporation in connection with activities involving a field referred to in paragraph (e)(4) of this section,

(B) Retired employees who had performed such services for such corporation,

(C) The estate of any individual described in paragraph (e)(5)(i) (A) or (B) of this section, or

(D) Any other person who acquired such stock by reason of the death of an individual described in paragraph (e)(5)(i) (A) or (B) of this section, but only for the 2-year period beginning on the date of the death of such individual.

For purposes of this paragraph (e)(5) of this section, the term "substantially all" means an amount equal to or greater than 95 percent.

(ii) *Definition of employee.* For purposes of the ownership test of this paragraph (e)(5) of this section, a person shall not be considered an employee of a corporation unless the services performed by that person for such corporation, based on the facts and circumstances, are more than de minimis. In addition, a person who is an employee of a corporation shall not be treated as an employee of another corporation merely by reason of the employer corporation and the other corporation being members of the same affiliated group or otherwise related.

(iii) *Attribution rules.* For purposes of this paragraph (e)(5) of this section, a corporation's stock is considered held indirectly by a person if, and to the extent, such person owns a proportionate interest in a partnership, S corporation, or qualified personal service corporation that owns such stock. No other arrangement or type of ownership shall constitute indirect ownership of a corporation's stock for purposes of this paragraph (e)(5) of this section. Moreover, stock of a corporation held by a trust is considered held by a person if, and to the extent, such person is treated under subpart E, part I, subchapter J, chapter 1 of the Code as the owner of the portion of the trust that consists of such stock.

(iv) *Disregard of community property laws.* For purposes of this paragraph (e)(5) of this section, community property laws shall be disregarded. Thus, in determining the stock ownership of a corporation, stock owned by a spouse solely by reason of community property laws shall be treated as owned by the other spouse.

(v) *Treatment of certain stock plans.* For purposes of this paragraph (e)(5) of this section, stock held by a plan described in section 401 (a) that is exempt from tax under section 501 (a) shall be treated as held by an employee described in paragraph (e)(5)(i)(A) of this section.

(vi) *Special election for certain affiliated groups.* For purposes of determining whether the stock ownership test of this paragraph (e)(5) of this section has been met, at the election of the common parent of an affiliated group (within the meaning of section 1504 (a)), all members of such group shall be treated as one taxpayer if substantially all (within the meaning of paragraph (e)(4)(i) of this section) the activities of all such members (in the aggregate) are in the same field described in paragraph (e)(4)(i)(A)–(H) of this section. For rules relating to the making of the election, see 26 CFR 5h.5 (temporary regulations relating to elections under the Tax Reform Act of 1986).

(vii) *Examples.* The following examples illustrate the provisions of paragraph (e) of this section:

Example (1). (i) X, a Corporation, is engaged in the business of providing accounting services to its clients. These services consist of the preparation of audit and financial statements and the preparation of tax returns. For purposes of section 448, such services consist of the performance of services in the field of accounting. In addition, for purposes of section 448, the supervision of employees directly preparing the statements and returns, and the performance of all administrative and support services incident to such activities (including secretarial, janitorial, purchasing, personnel, security, and payroll services) are the performance of services in the field of accounting.

(ii) In addition, X owns and leases a portion of an office building. For purposes of this section, the following types of activities undertaken by the employees of X shall be considered as the performance of services in a field other than the field of accounting: (A) services directly relating to the leasing activities, e.g., time spent in leasing and maintaining the leased portion of the building; (B) supervision of employees engaged in directly providing services in the leasing activity; and (C) all administrative and support services incurred incident to services described in (A) and (B). The leasing activities of X are considered the performance of services in a field other than the field of accounting, regardless of whether such leasing activities constitute a trade or business under the Code. If the employees of X spend 95% or more of their time in the performance of services in the field of accounting, X satisfies the function test of paragraph (e)(4) of this section.

Example (2). Assume that Y, a C corporation, meets the function test of paragraph (e)(4) of this section. Assume further that all the employees of Y are performing services for Y in a qualifying field as defined in paragraph (e)(4) of this section. P, a partnership, owns 40%, by value, of the stock of Y. The remaining 60% of the stock of Y is owned directly by employees of Y. Employees of Y have an aggregate interest of 90% in the capital and profits of P. This, 96% of the stock of Y is held directly, or indirectly, by employees of Y performing services in a qualifying field. Accordingly, Y meets the ownership test of paragraph (e)(5) of this section and is a qualified personal service corporation.

Example (3). The facts are the same as in example (2), except that 40% of the stock of Y is owned by Z, a C corporation. The remaining 60% of the stock is owned directly by the employees of Y. Employees of Y own 90% of the stock, by value, of Z. Assume that Z independently qualifies as a personal service corporation. The result is the same as in example (2), i.e., 96% of the stock of Y is held, directly or indirectly, by employees of Y performing services in a qualifying field. Thus, Y is a qualified personal service corporation.

Example (4). The facts are the same as in example (3), except that Z does not independently qualify as a personal service corporation. Because Z is not a qualified personal service corporation, the Y stock owned by Z is not treated as being held indirectly by the Z shareholders. Consequently, only 60% of the stock of Y is held, directly or indirectly, by employees of Y. Thus, Y does not meet the ownership test of paragraph (e)(5) of this section, and is not a qualified personal service corporation.

Example (5). Assume that W, a C corporation, meets the function test of paragraph (e)(4) of this section. In addition, assume that all the employees of W are performing services for W in a qualifying field. Nominal legal title to 100% of the stock of W is held by employees of W. However, due solely to the operation of community property laws, 20% of the stock of W is held by spouses of such employees who themselves are not employees of W. In determining the ownership of the stock, community property laws are disregarded. Thus, Y meets the ownership test of paragraph (e)(5) of this section, and is a qualified personal service corporation.

Example (6). Assume that 90% of the stock of T, a C corporation, is directly owned by the employees of T. Spouses of T's employees directly own 5% of the stock of T. The spouses are not employees of T, and their ownership does not occur solely by operation of community property laws. In addition, 5% of the stock of T is held by trusts (other than a trust described in section 401(a) that is exempt from tax under section 501(a)), the sole beneficiaries of which are employees of T. The employees are not treated as owners of the trusts under subpart E, part I, subchapter J, chapter 1 of the Code. Since a person is not treated as owning the stock of a corporation owned by that person's spouse, or by any portion of a trust that is not treated as owned by such person under subpart E, only 90% of the stock of T is treated as held, directly or indirectly, by employees of T. Thus, T does not meet the ownership test of paragraph (e)(5) of this section, and is not a qualified personal service corporation.

Example (7). Assume that Y, a C corporation, directly owns all the stock of three subsidiaries, F, G, and H. Y is a common parent of an affiliated group within the meaning of section 1504(a) consisting of Y, F, G, and H. Y is not engaged in the performance of services in a qualifying field. Instead, Y is a holding company whose activities consist of its ownership and investment in its operating subsidiaries. Substantially all the activities of F involve the performance of services in the field of engineering. In addition, a majority of (but not substantially all) the activities of G involve the performance of services in the field of engineering; the remainder of G's services involve the performance of services in a nonqualifying field. Moreover, a majority of (but not substantially all) the activities of H involve the performance of services in the field of engineering; the remainder of H's activities involve the performance of services in the field of architecture. Nevertheless, substantially all the activities of the group consisting of Y, F, G, and H, in the aggregate, involve the performance of services in the field of engineering. Accordingly, Y elects under paragraph (e)(5)(vi) of this section to be treated as one taxpayer for determining the ownership test of paragraph (e)(5) of this section. Assume that substantially all the stock of Y (by value) is held by employees of F, G, or H who perform services in connection with a qualifying field (engineering or architecture). Thus, for purposes of determining whether any member corporation is a qualified personal service corporation, the ownership test of paragraph (e)(5) of this section has been satisfied. Since F and H satisfy the function test of paragraph (e)(4) of this section, F and H are qualified personal service corporations. However, since Y and G each fail the function test of paragraph (e)(4) of this section, neither corporation is a qualified personal service corporation.

Example (8). The facts are the same as in example (7), except that less than substantially all the activities of the group consisting of Y, F, G, and H, in the aggregate, are performed in the field of engineering. Substantially all the activities of the group consisting of Y, F, G, and H, are, in the aggregate, performed in two fields, the fields of engineering and architecture. Y may not elect to have the affiliated group treated as one taxpayer for purposes of determining whether group members meet the ownership test of paragraph (e)(5) of this section. The election is available only if substantially all the activities of the group, in the aggregate, involve the performance of services in only one qualifying field. Moreover, none of the group members are qualified personal service corporations. Y fails the function test of paragraph (e)(4) of this section because less than substantially all the activities of Y are performed in a qualifying field. In addition, F, G, and H fail the ownershp test of paragraph (e)(5) of this section because substantially all their stock is owned by Y and not by their employees. The owners of Y are not deemed to indirectly own the stock owned by Y because Y is not a qualified personal service corporation.

Example (9). (i) The facts are the same as in example (8), except Y itself satisfies the function tests of paragraph (e)(4) of this section because substantially all the activities of Y involve the performance of services in the field of engineering. In addition, assume that all employees of Y are involved in the performance of services in the field of engineering, and that all such employees own 100% of Y's stock. Moreover, assume that one-third of all the employees of Y are separately employed by F. Similarly, another one-third of the employees of Y are separately employed by G and H, respectively. None of the employees of Y are employed by more than one of Y's subsidiaries. Also, no other persons except the employees of Y are employed by any of the subsidiaries.

(ii) Y is a personal service corporation under section 448 because Y satisfies both the function and the ownership test of paragraphs (e) (4) and (5) of this section. As in example (8), Y is unable to make the election to have the affiliated group treated as one taxpayer for purposes of determining whether group members meet the ownership test of paragraph (e)(5) of this section because less than substantially all the activities, in the aggregate, of the group members are performed in one of the qualifying fields. However, because Y is a personal service corporation, the stock owned by Y is treated as indirectly owned, proportionately, by the owners of Y. Thus, the employees of F are collectively treated as owning one-third of the stock of F, G, and H. The employees of G and H are similarly treated as owning one-third of each subsidiary's stock.

(iii) F, G, and H each fail the ownership test of paragraph (e)(5) of this section because less than substantially all of each corporation's stock is owned by the employees of the respective corporation. Only one-third of each corporation's stock is owned by employees of that corporation. Thus, F, G, and H are not qualified personal service corporations.

Example (10). (i) Assume that Y, a C corporation, directly owns all the stock of three subsidiaries, F, G, and Z. Y is a common parent of an affiliated group within the meaning of section 1504(a) consisting of Y, F, and G. Z is a foreign corporation and is excluded from the affiliated group under section 1504. Assume that Y is a holding company whose activities consist of its ownership and investment in its operating subsidiaries. Substantially all the activities of F, G, and Z involve the performance of services in the field of engineering. Assume that employees of Z own one-third of the stock of Y and that none of these employees are also employees of Y, F, or G. In addition, assume that Y elects to be treated as one taxpayer for determining whether group members meet the ownership tests of paragraph (e)(5) of this section. Thus, Y, F, and G are treated as one taxpayer for purposes of the ownership test.

(ii) None of the members of the group are qualified personal service corporations. Y, F, and G fail the ownership test of paragraph (e)(5) of this section because less than substantially all the stock of Y is owned by employees of either Y, F, or G. Moreover, Z fails the ownership test of paragraph (e)(5) of this section because substantially all its stock is owned by Y and not by its employees.

(6) *Application of function and ownership tests.* A corporation that fails the function test of paragraph (e)(4) of this section for any taxable year, or that fails the ownership test of paragraph (e)(5) of this section at any time during any taxable year, shall change from the cash method effective for the year in which the corporation fails to meet the function test or the ownership test. For example, if a personal service corporation fails the function test for taxable year 1987, such corporation must change from the cash method effective for taxable year 1987. A corporation that fails the function or ownership test for a taxable year shall not be treated as a qualified personal service corporation for any part of that taxable year.

(f) *Exception for entities with gross receipts of not more than $5 million*—(1) *In general.* Except in the case of a tax shelter, this section shall not apply to any C corporation or partnership with a C corporation as a partner for any taxable year if, for all prior taxable years beginning after December 31, 1985, such corporation or partnership (or any predecessor thereof) meets the $5,000,000 gross receipts test of paragraph (f)(2) of this section.

(2) *The $5,000,000 gross receipts test*—(i) *In general.* A corporation meets the $5,000,000 gross receipts test of this paragraph (f)(2) for any prior taxable year if the average annual gross receipts of such corporation for the 3 taxable years (or, if shorter, the taxable years during which such corporation was in existence) ending with such prior taxable year does not exceed $5,000,000. In the case of a C corporation exempt from federal income taxes under section

501(a), or a trust subject to tax under section 511(b) that is treated as a C corporation under paragraph (a)(3) of this section, only gross receipts from the activities of such corporation or trust that constitute unrelated trades or businesses are taken into account in determining whether the $5,000,000 gross receipts test is satisfied. A partnership with a C corporation as a partner meets the $5,000,000 gross receipts test of this paragraph (f)(2) for any prior taxable year if the average annual gross receipts of such partnership for the 3 taxable years (or, if shorter, the taxable years during which such partnership was in existence) ending with such prior year does not exceed $5,000,000. The gross receipts of the corporate partner are not taken into account in determining whether the partnership meets the $5,000,000 gross receipts test.

(ii) *Aggregation of gross receipts.* For purposes of determining whether the $5,000,000 gross receipts test has been satisfied, all persons treated as a single employer under section 52 (a) or (b), or section 414 (m) or (o) (or who would be treated as a single employer under such sections if they had employees) shall be treated as one person. Gross receipts attributable to transactions between persons who are treated as a common employer under this paragraph shall not be taken into account in determining whether the $5,000,000 gross receipts test is satisified.

(iii) *Treatment of short taxable year.* In the case of any taxable year of less than 12 months (a short taxable year), the gross receipts shall be annualized by (A) multiplying the gross receipts for the short period by 12 and (B) dividing the result by the number of months in the short period.

(iv) *Determination of gross receipts*—(A) *In general.* The term "gross receipts" means gross receipts of the taxable year in which such receipts are properly recognized under the taxpayer's accounting method used in that taxable year (determined without regard to this section) for federal income tax purposes. For this purpose, gross receipts include total sales (net of returns and allowances) and all amounts received for services. In addition, gross receipts include any income from investments, and from incidental or outside sources. For example, gross receipts include interest (including original issue discount and tax-exempt interest within the meaning of section 103), dividends, rents, royalties, and annuities, regardless of whether such amounts are derived in the ordinary course of the taxpayer's trade of business. Gross receipts are not reduced by cost of goods sold or by the cost of property sold if such property is described in section 1221 (1), (3), (4) or (5). With respect to sales of capital assets as defined in section 1221, or sales of property described in 1221 (2) (relating to property used in a trade or business), gross receipts shall be reduced by the taxpayer's adjusted basis in such property. Gross receipts do not include the repayment of a loan or similar instrument (*e.g.*, a repayment of the principal amount of a loan held by a commercial lender). Finally, gross receipts do not include amounts received by the taxpayer with respect to sales tax or other similar state and local taxes if, under the applicable state or local law, the tax is legally imposed on the purchaser of the good or service, and the taxpayer merely collects and remits the tax to the taxing authority. If, in contrast, the tax is imposed on the taxpayer under the applicable law, then gross receipts shall include the amounts received that are allocable to the payment of such tax.

(3) *Examples.* The following examples illustrate the provisions of paragraph (f) of this section:

Example (1). X, a calendar year C corporation, was formed on January 1, 1986. Assume that in 1986 X has gross receipts of $15 million. For taxable year 1987, this section applies to X because in 1986, the period during which X was in existence, X has average annual gross receipts of more than $5 million.

Example (2). Y, a calendar year C corporation that is not a qualified personal service corporation, has gross receipts of $10 million, $9 million, and $4 million for taxable years 1984, 1985, and 1986, respectively. In taxable year 1986, X has average annual gross receipts for the 3-taxable-year period ending with 1986 of $7.67 million ($10 million + 9 million + 4 million ÷ 3). Thus, for taxable year 1987, this section applies and Y must change from the cash method for such year.

Example (3). Z, a C corporation which is not a qualified personal service corporation, has a 5% partnership interest in ZAB partnership, a calendar year cash method taxpayer. All other partners of ZAB partnership are individuals. Z corporation has average annual gross receipts of $100,000 for the 3-taxable-year period ending with 1986 (*i.e.*, 1984, 1985 and 1986). The ZAB partnership has average annual gross receipts of $6 million for the same 3-taxable-year period. Since ZAB fails to meet the $5,000,000 gross receipts test for 1986, this section applies to ZAB for its taxable year beginning January 1, 1987. Accordingly, ZAB must change from the cash method for its 1987 taxable year. The gross receipts of Z corporation are not relevant in determining whether ZAB is subject to this section.

Example (4). The facts are the same as in example (3), except that during the 1987 taxable year of ZAB, the Z corporation transfers its partnership interest in ZAB to an individual. Under paragraph (a)(1) of this section, ZAB is treated as a partnership with a C corporation as a partner. Thus, this section requires ZAB to change from the cash method effective for its taxable year 1987. If ZAB later desires to change its method of accounting to the cash method for its taxable year beginning January 1, 1988 (or later), ZAB must comply with all requirements of law, including sections 446(b), 446(e), and 481, to effect the change.

Example (5). X, a C corporation that is not a qualified personal service corporation, was formed on January 1, 1986, in a transaction described in section 351. In the transaction, A, an individual, contributed all of the assets and liabilities of B, a trade or business, to X, in return for the receipt of all the outstanding stock of X. Assume that in 1986 X has gross receipts of $4 million. In 1984 and 1985, the gross receipts of B, the trade or business, were $10 million and $7 million respectively. The gross receipts test is applied for the period during which X and its predecessor trade or business were in existence. X has average annual gross receipts for the 3-taxable-year period ending with 1986 of $7 million ($10 million + $7 million + $4 million ÷ 3). Thus, for taxable year 1987, this section applies and X must change from the cash method for such year.

(g) *Treatment of accounting method change and timing rules for section 481(a) adjustment*—(1) *Treatment of change in accounting method.* In the case of any taxpayer required by this section to change its method of accounting for any taxable year, such change shall be treated as initiated by the taxpayer and made with the consent of the Commissioner. Thus, the adjustments required under section 481(a) with respect to the change in method of accounting of such a taxpayer shall not be reduced to amounts attributable to taxable years preceding the Internal Revenue Code of 1954. See paragraph (h) of this section for rules to effect the change in accounting method.

(2) *Timing rules for section 481(a) adjustment*—(i) *In general.* Except as otherwise provided in paragraph (g)(2)(ii) and (g)(3) of this section, a taxpayer required by this section to change from the cash method shall take the section 481(a) adjustment into account ratably (beginning with the year of change) over a shorter of—

(A) The number of taxable years the taxpayer uses the cash method, or

(B) 4 taxable years.

(ii) *Hospital timing rules*—(A) *In general.* In the case of a hospital required by this section to change from the cash method, the section 481(a) adjustment shall be taken into account ratably (beginning with the year of change) over 10 years.

(B) *Definition of hospital.* For purposes of paragraph (g) of this section, a hospital is an institution—

(*1*) Accredited by the Joint Commission of Accreditation of Hospitals (the JCAH) (or accredited or approved by a program of the qualified governmental unit in which such institution is located if the Secretary of Health and Human Services has found that the accreditation or comparable approval standards of such qualified governmental unit are essentially equivalent to those of the JCAH);

(*2*) Used primarily to provide, by or under the supervision of physicians, to inpatients diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons;

(*3*) Requiring every patient to be under the care and supervision of a physician; and

(*4*) Providing 24-hour nursing services rendered or supervised by a registered professional nurse and having a licensed practical nurse or registered nurse on duty at all times.

For purposes of this section, an entity need not be owned by or on behalf of a governmental unit or by a section 501(c)(3) organization, or operated by a section 501(c)(3) organization, in order to be considered a hospital. In addition, for purposes of this section, a hospital does not include a rest or nursing home, continuing care facility, daycare center, medical school facility, research laboratory, or ambulatory care facility.

(C) *Dual function facilities.* With respect to any taxpayer whose operations consist both of a hospital, and other facilities not qualifying as a hospital, the portion of the adjustment required by section 481(a) that is attributable to the hospital shall be taken into account in accordance with the rules of paragraph (g)(2) of this section relating to hospitals. The portion of the adjustment required by section 481(a) that is not attributable to the hospital shall be taken into account in accordance with the rules of paragraph (g)(2) of this section not relating to hospitals.

(3) *Special timing rules for section 481(a) adjustment*—(i) *One-third rule.* If, during the period the section 481(a) adjustment is to be taken into account, the balance of the taxpayer's accounts receivable as of the last day of each of two consecutive taxable years is less than 66⅔ percent of the taxpayer's accounts receivable balance at the beginning of the first year of the section 481(a) adjustment, the balance of the section 481(a) adjustment (relating to accounts receivable) not previously taken into account shall be included in income in the second taxable year. This paragraph (g)(3)(i) shall not apply to any hospital (within the meaning of paragraph (g)(3)(ii) of this section).

(ii) *Cooperatives.* Notwithstanding paragraph (g)(2)(i) of this section, if a taxpayer is a cooperative within the meaning of section 1381(a), the entire section 481(a) adjustment may, at the taxpayer's option, be taken into account in the year of change.

(iii) *Cessation of trade or business.* If a taxpayer ceases to engage in the trade or business to which the section 481(a) adjustment relates prior to the expiration of the adjustment period described in paragraph (g)(2) (i) or (ii) of this section, the taxpayer must take into account, in the year of such cessation, the balance of the adjustment not previously taken into account in computing taxable income. If the taxpayer is acquired in a transaction to which section 381 applies, and the acquiring corporation continues to engage in the trade or business to which the section 481(a) adjustment relates, the acquiring taxpayer shall continue to take into account the section 481(a) adjustment as if it were the distributor or transferor taxpayer.

(4) *Additional rules relating to section 481(a) adjustment.* In addition to the rules set forth in paragraph (g) (2) and (3) of this section, the following rules shall apply in taking the section 481(a) adjustment into account—

(i) Any net operating loss and tax credit carryforwards will be allowed to offset any positive section 481(a) adjustment,

(ii) Any net operating loss arising in the year of change or in any subsequent year that is attributable to a negative section 481(a) adjustment may be carried back to earlier taxable years in accordance with section 172, and

(iii) For purposes of determining estimated income tax payments under sections 6654 and 6655, the section 481(a) adjustment will be recognized in taxable income ratably throughout a taxable year.

(5) *Outstanding section 481(a) adjustment from previous change in method of accounting.* If a taxpayer changed its method of accounting to the cash method for a taxable year prior to the year the taxpayer was required by this section to change from the cash method (the section 488 year), any section 481(a) adjustment from such prior change in method of accounting that is outstanding as of the section 488 year shall be taken into account in accordance with the provisions of this paragraph (g)(5). A taxpayer shall account for any remaining portion of the prior section 481(a) adjustment outstanding as of the section 488 year by continuing to take such remaining portion into account under the provisions and conditions of the prior change in method of accounting, or, at the taxpayer's option, combining or netting the remaining portion of the prior section 481(a) adjustment with the section 481(a) adjustment required under this section, and taking into account under the provisions of this section the resulting net amount of the adjustment. Any taxpayer chosing to combine or net the section 481(a) adjustments as described in the preceding sentence shall indicate such choice on the Form 3115 required to be filed by such taxpayer under the provisions of paragraph (h) of this section.

(6) *Examples.* The following examples illustrate the provisions of paragraph (g) of this section.

Example (1). Y is required by this section to change from the cash method of accounting for its taxable year beginning January 1, 1987. Y changes to an overall accrual method. The adjustment required by section 481(a) to effect the change is $10,000. Y has been using the cash method for the 10-year period preceding the year of change. Y is required by paragraph (g)(2)(i) of this section to include the section 481(a) adjustment in taxable income ratably over four consecutive taxable years, beginning with 1987, i.e., $2,500 of the section 481(a) adjustment should be included in income for each of the four years.

Example (2). The facts are the same as in example (1), except that Y is required to change from the cash method and changes to an overall accrual method of accounting for its taxable year beginning January 1, 1989. The result is the same as in example (1), except that the four-year period for ratably taking the section 481(a) adjustment into account begins with the 1989 taxable year.

Example (3). Assume that X is required by this section to change from the cash method and that it changes to an overall accrual method for its taxable year beginning January 1, 1987. The adjustment required by section 481 (a) to effect the change is $10,000. X was formed on January 1, 1986, and began business operations during that year. Since X only used the cash method for one year, X is required by paragraph (g)(2)(i) of this section to include all ($10,000) of the section 481(a) adjustment in taxable income for the 1987 taxable year.

Example (4). The facts are the same as in example (1). In addition, Y previously changed from an accrual method of accounting to the cash method for its taxable year beginning January 1, 1983. As a result of that prior change, Y was required to take into account a $5,000 negative section 481(a) adjustment ratably over a ten-year period, beginning with the 1983 taxable year.

As of the beginning of the 1987 taxable year $3,000 of that adjustment had not been taken into account. Y may continue to take the remaining negative $3,000 section 481(a) adjustment into account ratably over the remaining adjustment period for the prior change in method of accounting (*i.e.*, six remaining years). Alternatively, Y may combine or net the negative $3,000 adjustment with the positive $10,000 section 481(a) adjustment required by this section, and include the resulting $7,000 amount in taxable income ratably over four consecutive taxable years, beginning with 1987. Y is not allowed to take the entire unamortized amount of the prior section 481(a) adjustment into account for its 1987 taxable year.

(h) *Procedures for change in method of accounting*—(1) *Applicability.* Paragraph (h) of this section applies to taxpayers who change from the cash method as required by this section. Paragraph (h) of this section does not apply to a change in accounting method required by any Code section (or regulations thereunder) other than this section.

(2) *Automatic rule for changes to an overall accrual method.* Taxpayers to whom paragraph (h) of this section applies who desire to change to an overall accrual method must make that change under the provisions of this paragraph (h)(2). The consent of the Commissioner to the change in method of accounting is granted to taxpayers who change to an overall accrual method under this paragraph (h)(2). A taxpayer changing to an accrual method under this paragraph (h)(2) shall complete and file a current Form 3115. The Form 3115 shall be filed no later than the due date (including extension) of the taxpayer's federal income tax return for the year of change and shall be attached to that return. In addition, the taxpayer must set forth on a statement accompanying the Form 3115 the period over which the section 481(a) adjustment will be taken into account and the basis for such conclusion. Moreover, the taxpayer shall type or legibly print the following statement at the top of page 1 on Form 3115: "Automatic Change to Accrual Method—Section 448."

(3) *Changes to a method other than overall accrual method*—(i) *In general.* Taxpayers to whom paragraph (h) of this section applies who desire to change to a special method of accounting must make that change under the provisions of this paragraph (h)(3). Such taxpayers include taxpayers who change to an accrual method of accounting and a special method of accounting such as a long-term contract method. Taxpayers who change their accounting method under this paragraph (h)(3) shall submit an application for change in accounting method under the applicable administrative procedures in effect at the time of change, including the applicable procedures regarding the time and place of filing the application for change in method. Moreover, taxpayers who change their accounting method under this paragraph (h)(3) shall type or legibly print the following statement on the top of page 1 of Form 3115: "Change to a Special Method of Accounting-Section 448." The filing of a Form 3115 by any taxpayer requesting a change of method of accounting under this paragraph (h)(3) for its taxable year beginning in 1987 shall not be considered late if such form is filed with the appropriate office of the Internal Revenue Service on or before the later of (A) the date that is the 180th day of the taxable year of change; or (B) September 14, 1987. If the Commissioner approves the taxpayer's application for change in method of accounting, then the timing of the adjustment required under section 481(a), if applicable, shall be determined under the provisions of paragraph (g)(2) of this section. If the Commissioner denies the taxpayer's application for change in accounting method, or the taxpayer's application is untimely, the taxpayer must change to an overall accrual method of accounting under the provisions of paragraph (h)(1) of this section for the taxable year of the taxpayer's request to change from the cash method.

(ii) *Extension of filing deadline.* Notwithstanding paragraph (h)(3)(i) of this section, if the events or circumstances which under section 448 disqualify a taxpayer from using the cash method occur after the time prescribed under applicable procedures for filing the Form 3115, the filing of such form shall not be considered late if such form is filed on or before 30 days after the close of the taxable year.

(i) *Effective date*—(1) *In general.* Except as provided in paragraph (i)(2) of this section, this section applies to any taxable year beginning after December 31, 1986.

(2) *Election out of section 448*—(i) *In general.* A taxpayer may elect not to have this section apply to any (A) transaction with a related party (within the meaning of section 267(b) of the Internal Revenue Code of 1954, as in effect on October 21, 1986), (B) loan, or (C) lease, if such transaction, loan, or lease was entered into on or before September 25, 1985. Any such election described in the preceding sentence may be made separately with respect to each transaction, loan, or lease. For rules relating to the making of such election, see 26 CFR 5h.5 (temporary regulations relating to elections under the Tax Reform Act of 1986). Notwithstanding the provisions of this paragraph (i)(2), the gross receipts attributable to a transaction, loan, or lease described in this paragraph (i)(2) shall be taken into account for purposes of the $5,000,000 gross receipts test described in paragraph (f) of this section.

(ii) *Special rules for loans.* If the taxpayer makes an election under paragraph (i)(2)(i) of this section with respect to a loan entered into on or before September 25, 1985, the election shall apply only with respect to amounts that are attributable to the loan balance outstanding on September 25, 1985. The election shall not apply to any amounts advanced or lent after September 25, 1985, regardless of whether the loan agreement was entered into on or before such date. Moreover, any payments made on outstanding loan balances after September 25, 1985, shall be deemed to first extinguish loan balances outstanding on September 25, 1985, regardless of any contrary treatment of such loan payments by the borrower and lender.

§ 1.448-2T Nonaccrual of certain amounts by service providers (temporary).

(a) *In general.* Except as otherwise provided, this section applies to any person using an accrual method of accounting with respect to amounts to be received from the performance of services by such person. This section applies to such persons regardless of whether such persons changed their method of accounting from the cash method under section 448. For example, this section applies to a taxpayer who used an overall accrual method of accounting in taxable years prior to 1987.

(b) *Nonaccrual-experience method; treatment as method of accounting.* Any person to whom this section applies is not required to accrue any portion of amounts to be received from the

performance of services which, on the basis of experience, will not be collected. This nonaccrual of amounts to be received for the performance of services shall be treated as a method of accounting under the Code (the nonaccrual-experience method).

(c) *Method not available if interest charged on amounts due*—(1) *In general.* The nonaccrual-experience method of accounting may not be used with respect to amounts due for which interest is required to be paid, or for which there is any penalty for failure to timely pay any amounts due. For this purpose, interest or penalties for late payment will be deemed to be charged by a taxpayer if such treatment is in accordance with the economic substance of a transaction, regardless of the characterization of the transaction by the parties, or the treatment of the transaction under state or local law. However, the offering of a discount for early payment of an amount due will not be regarded as the charging of interest or penalties for late payment under this section, if (i) the full amount due is otherwise accrued as gross income by the taxpayer at the time the services are provided, and (ii) the discount for early payment is treated as an adjustment to gross income in the year of payment, if payment is received within the time required for allowance of such discount.

(2) *Example.* The provisions of this paragraph (c) may be illustrated by the following example:

Example. X uses an accrual method of accounting for amounts to be received from the provision of services. For such amounts, X has two billing methods. Under one method, for amounts that are more than 90 days past due, X charges interest at a market rate until such amounts (together with interest) are paid. Under the other billing method, X charges no interest for amounts past due. X cannot use the nonaccrual-experience method of accounting with respect to any of the amounts billed under the method that charges interest on amounts that are more than 90 days past due. X may, however, use the nonaccrual-experience method with respect to the amounts billed under the method that does not charge interest for amounts past due.

(d) *Method not available for certain receivables.* The nonaccrual-experience method of accounting may be used only with respect to amounts earned by the taxpayer and otherwise recognized in income (an account receivable) through the performance of services by such taxpayer. For example, the nonaccrual-experience method may not be used with respect to amounts owed to the taxpayer by reason of the taxpayer's activities with respect to (1) lending money; (2) selling goods; or (3) acquiring receivables or other rights to receive payment from other persons (including persons related to the taxpayer) regardless of whether those other persons earned such amounts through the provision of services.

(e) *Use of experience to estimate uncollectible amounts*—(1) *In general.* In determining the portion of any amount due which, on the basis of experience, will not be collected, the formula prescribed by paragraph (e)(2) of this section shall be used by the taxpayer with respect to each separate trade or business of the taxpayer. No other method or formula may be used by a taxpayer in determining the uncollectible amounts under this section.

(2) *Six-year moving average*—(i) *General rule.* For any taxable year the uncollectible amount of a receivable is the amount which bears the same ratio to the accounts receivable outstanding at the close of the taxable year as (A) the total bad debts with respect to accounts receivable sustained during the period consisting of the taxable year and the five preceding taxable years (or, with the approval of the Commissioner, a shorter period), adjusted for recoveries of bad debts during such period, bears to (B) the sum of the accounts receivable at the close of such six (or fewer) taxable years. Accounts receivable described in paragraphs (c) and (d) of this section are not taken into account in computing the ratio.

(ii) *Period of less than six years.* A period shorter than six years generally will be appropriate only if there is a change in the type of a substantial portion of the outstanding accounts receivable such that the risk of loss is substantially increased. A decline in the general economic conditions in the area, which substantially increases the risk of loss, is a relevant factor in determining whether a shorter period is appropriate. However, approval to use a shorter period will not be granted unless the taxpayer supplies specific evidence that the loans outstanding at the close of the taxable years for the shorter period requested are not comparable in nature and risk to loans outstanding at the close of the six taxable years. A substantial increase in a taxpayer's bad debt experience, is not, by itself, sufficient to justify the use of a shorter period. If approval is granted to use a shorter period, the experience for the excluded taxable years shall not be used for any subsequent year. A request for approval to exclude the experience of a prior taxable year shall be made in accordance with the applicable procedures for requesting a letter ruling and shall include a statement of the reasons such experience should be excluded. A request will not be considered unless it is sent to the Commissioner at least 30 days before the close of the first taxable year for which such approval is requested.

(iii) *Special rule for new taxpayers.* In the case of any current taxable year which is preceded by less than 5 taxable years, paragraph (e)(2)(i) of this section shall be applied by using the experience of the current year and the actual number of preceding taxable years. However, for this purpose, experience from preceding taxable years of a predecessor trade or business may be used in applying paragraph (e)(2)(i) of this section.

(3) *Mechanics of nonaccrual-experience method.* The nonaccrual-experience method shall be applied with respect to each account receivable of the taxpayer which is eligible for such method. With respect to a particular account receivable, the taxpayer will determine, in the manner prescribed in paragraph (e) of this section, the amount of such account receivable that is not expected to be collected. Such determination shall be made only once with respect to each account receivable, regardless of the term of such receivable. The estimated uncollectible amount shall not be recognized as gross income. Thus, the amount recognized as gross income shall be the amount that would otherwise be recognized as gross income with respect to the account receivable, less the amount which is not expected to be collected. Upon the collection of the account receivable, additional gross income shall be recognized with respect to the collection of any amount not initially expected to be collected. Similarly, no bad debt deduction under section 166 for a wholly or partially worthless account receivable shall be allowed for any amount not previously taken into income under the nonaccrual-experience method.

(4) *Examples.* The following examples illustrate the provisions of paragraph (e) of this section:

Example (1). X is a calender year service provider that uses an accrual method of accounting with respect to the amounts (accounts receivable) to be received from the provision of services. X does not require the payment of interest or penalties with respect to past due accounts receivable. Assume that under this section, X adopts for taxable year 1987 the nonaccrual-experience method of accounting with respect to its accounts receivable. Further, assume that X's accounts receivable and bad debt experience with respect to those receivables for the current and five preceding taxable years is as follows:

Years	Accounts receivable	Bad debts adjusted for recoveries
1982	$30,000	$5,700
1983	40,000	7,200
1984	50,000	11,000
1985	60,000	10,200
1986	70,000	14,000
1987	80,000	16,800
	$330,000	$64,900

Thus, the ratio of the bad debts (adjusted for recoveries) for the current and five preceding taxable years to the total accounts receivable over the same period is 19.67% ($64,900/$330,000). Assume that the $80,000 of the accounts receivable outstanding as of the close of the tax year 1987 consist of sixteen separate accounts receivable. The noncollectible amount of each receivable is 19.67%. The amount of these accounts receivable and the noncollectible amount of each is as follows:

	Accounts receivable	Applicable ratio	Uncollectible amount
1.	$5,200	.1967	$1,022.84
2.	7,300	.1967	1,435.91
3.	3,200	.1967	629.44
4.	4,300	.1967	845.81
5.	1,700	.1967	334.39
6.	4,000	.1967	786.80
7.	6,300	.1967	1,239.21
8.	8,000	.1967	1,573.60
9.	3,200	.1967	629.44
10.	6,100	.1967	1,199.87
11.	2,700	.1967	531.09
12.	8,000	.1967	1,573.60
13.	900	.1967	177.03
14.	10,000	.1967	1,967.00
15.	7,100	.1967	1,396.57
16.	2,000	.1967	393.40
	$80,000	.....	$15,736.00

For taxable year 1987, X will not accrue as income $15,736 of its total accounts receivable of $80,000.

Example (2). The facts are the same as in example (1). In 1988 the entire amount of account receivable number 8 becomes wholly worthless. Since in 1987 X did not accrue as income under the nonaccrual-experience method $1,573.60 of that account receivable, no deduction under section 166 is allowable with respect to that amount of the account receivable; a deduction of $6,426.40 under section 166 is allowable for 1988.

Example (3). The facts are the same as in example (1). In 1988 X collects, in full, account receivable number 5. Accordingly, in 1988 X must recognize additional gross income of $334.39, the amount of the account receivable that was initially considered uncollectible.

(f) [Reserved].

(g) *Coordination of change in accounting method with section 481*—(1) *Taxpayers required to change their method of accounting under section 448.* The provisions of this paragraph (g)(1) apply to taxpayers who under § 1.448–1T(h) change from the cash method as required by section 448 and who also change under paragraph (h) of this section to a method of accounting that includes the nonaccrual-experience method. With respect to such taxpayers, the section 481(a) adjustment resulting from the change in method of accounting to the nonaccrual-experience method shall be combined or netted with the section 481(a) adjustment applicable to the change in method of accounting required under section 448. The resulting amount shall then be taken into account in accordance with the provisions of § 1.448–1T(g) applicable to the change in method of accounting required by section 448.

(2) *Taxpayers not required to change their method of accounting under section 448.* The provisions of this paragraph (g)(2) apply to taxpayers who are not required by section 448 to change their method of accounting (*e.g.*, taxpayers who were using an accrual method of accounting for taxable years preceding 1987) and who change to the nonaccrual-experience method under paragraph (h)(3) of this section. With respect to such taxpayers, the section 481(a) adjustment resulting from the change in method of accounting to the nonaccrual-experience method shall be taken into account ratably over four taxable years. The provisions of this paragraph (g)(2) shall apply to any taxpayer regardless of whether such taxpayer was required to change its method of accounting for bad debts under section 805 of the Tax Reform Act of 1986.

(h) *Changes in method of accounting to nonaccrual-experience method*—(1) *Automatic changes to overall accrual method.* The provisions of this paragraph (h)(1) apply to taxpayers who change from the cash method as required by section 448, and change to an overall accrual method of accounting under the automatic change provisions of § 1.448–1T(h)(2). Taxpayers to whom this paragraph (h)(1) applies may automatically change their method of accounting to the nonaccrual-experience method under this paragraph (h)(1), if they otherwise qualify under this section for the use of such method. Taxpayers changing to the nonaccrual-experience method under this paragraph (h)(1) shall comply with the provisions of § 1.448–1T(h)(2). Moreover, such taxpayers shall type or legibly print the following statement at the top of page 1 of Form 315: "Automatic Change to Nonaccrual Experience Method—Section 448." The consent of the Commissioner to the change in method of accounting is granted to taxpayers changing to the nonaccrual-experience method under this paragraph (h)(1).

(2) *Changes to a method other than overall accrual method.* The provisions of this paragraph (h)(2) apply to taxpayers who change from the cash method as required by section 448 and who also change to a permissible special method of accounting under § 1.448–1T(h)(3). Taxpayers to whom this paragraph (h)(2) applies may change their method of accounting to the nonaccrual-experience method under this paragraph (h)(2). Taxpayers changing to the nonaccrual-experience method under this paragraph (h)(2) shall comply with the provisions of § 1.448–1T(h)(3). Moreover, such taxpayers shall type or legibly print the following statement on the top of page 1 of Form 3115: "Change to Nonaccrual-Experience Method and Special Method of Accounting-Section 448." The consent of the Commissioner to the change in method of accounting is granted to taxpayers changing to the nonaccrual-experience method under this paragraph (h)(2).

(3) *Taxpayers not required to change their method of accounting under section 448.* The provisions of this paragraph (h)(3) apply to taxpayers who are not required by section 448 to change their method of accounting for the taxable year in which such taxpayers desire to adopt the nonaccrual-experience method (*e.g.*, taxpayers who were using an accrual method of accounting for taxable years preceding 1987). Such taxpayers may automatically change their method of accounting to the nonaccrual-experience method under the provisions of this paragraph (h)(3), for their taxable year beginning in 1987, if they otherwise qualify under the provisions of this section for the use of such method. Taxpayers changing to the nonaccrual-experience method for their taxable year beginning in 1987 shall complete and file a current Form 3115. The Form 3115 shall be filed no later than the due date (including extension) of the taxpayer's federal income tax return for the year of change and shall be attached to that return. Moreover, the taxpayer shall type or legibly print the following statement at the top of page 1 of Form 3115: "Automatic Change to Nonaccrual Experience Method—Taxpayer not Required to Change Method of Accounting Under Section 448." The consent of the Commissioner to the change in method of accounting is granted to taxpayers changing to the nonaccrual-experience method for their

taxable year beginning in 1987 under this paragraph (h)(3). With respect to taxpayers described in this paragraph (h)(3) who desire to change to the nonaccrual-experience method for a taxable year beginning after December 31, 1987, such taxpayers shall submit an application for change in accounting method under the administrative procedures applicable to taxpayers at the time of change, including the applicable procedures regarding the time and place of filing the application for change in method. Taxpayers described in the preceding sentence include taxpayers who were required to change their method of accounting under section 448 for an earlier taxable year, but who did not change to the nonaccrual-experience method at that time.

(i) *Effective date.* This section applies to any taxable year beginning after December 31, 1986.

PART 602—[AMENDED]

Par. 3. The authority for Part 602 continues to read:

Authority: 26 CFR Part 7805.

§ 602.106 [Amended]

Par. 4. Section 602.106(c) is amended by inserting in the appropriate place in the table "§ 1.448–1T(h) (2) and (3) . . . 1545–0152," "§ 1.448–2T(e)(2)(i) . . . 1545–0152," and § 1.448–2T(h) (1), (2) and (3) . . . 1545–0152."

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason it is impracticable to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: May 29, 1987.

J. Roger Mentz,

Assistant Secretary of the Treasury.

[FR Doc. 87–13718 Filed 6–12–87; 8:45 am]

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DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission is amending a rule of procedure that bars the Commission from considering criminal charges that have resulted in a verdict of not guilty. The amendment is intended to resolve the question of whether, under this rule, the Commission is precluded from considering evidence that has resulted in inconsistent verdicts (guilty and not guilty) rendered by the same jury or by different juries in different criminal trials. The amendment now makes clear the Commission's original intent that a verdict of not guilty does not preclude consideration of a prisoner or parolee's underlying criminal behavior, when the same evidence that resulted in the acquittal has also resulted in an inconsistent verdict of guilty.

EFFECTIVE DATE: July 16, 1987.

FOR FURTHER INFORMATION CONTACT: Sharon A Gervasoni, Attorney, Office of the General Counsel, United States Parole Commission, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815. Telephone: (301) 492–5959.

SUPPLEMENTARY INFORMATION: 28 CFR 2.19(c) describes the procedure by which disputed issues of fact in a parole proceeding are to be resolved. The rule, originally published at 44 FR 26549 (May 4, 1979), contains a general bar to consideration of charges that have resulted in a not guilty verdict. The original rule, however, did not address the problem of inconsistent or contradictory jury verdicts of guilty and not guilty on different charges arising from the same conduct. For example, a state jury may acquit a defendant of assault and extortion charges when the same criminal conduct was the sole predicate for a federal RICO conviction.

Some parole applicants have taken the position that § 2.19(c) was intended to preclude the Commission from reliance upon any evidence resulting in a verdict of not guilty, notwithstanding the existence of an inconsistent verdict of guilty rendered by the same or another jury on the same evidence. This interpretation is not correct.

The Commission considers that this amendment reflects its original intent that the procedural bar to consideration of charges that have resulted in a verdict of not guilty should apply only to a charge of criminal conduct that would otherwise have to be established in the parole proceeding by a finding based on a preponderance of the evidence. A conviction establishes the defendant's guilt as a matter of law, and the rule at § 2.19(c) does not require the Commission to regard an inconsistent verdict of not guilty as the controlling determination.

The Commission's policy represents, in its view, the best approach to a problem that admits of no perfect solution. In *United States* v. *Powell*, ___ U.S. ___, 105 S.Ct. 471, 477 (1984), the Supreme Court recognized that inconsistent jury verdicts can result from "mistake, compromise, or lenity," and that such inconsistencies are certainly the product of some error, albeit not appealable by either party. The use of multiple count indictments has been suggested as a cause of "lenity" when the jury ". . . is using its power to prevent the punishment from getting too far out of line with the crime." See *United States* v. *Maybury*, 274 F.2d 899, 902 (2d Cir. 1959).

Such decisions lead the Commission to reject the two possible alternatives to its present policy.

First, a rigid interpretation of the bar to consideration of charges resulting in not guilty verdicts would require the Commission to ignore an indication of guilt carrying no less legal weight than the not guilty verdict. In some cases, the verdict of guilty would be the very conviction for which the parole applicant's current sentence was imposed.

Second, it has been suggested that the Commission is obliged to assume that a jury that rendered inconsistent verdicts in the same case must have adopted an alternative theory of guilt even if that theory is not reasonably supported by the evidence introduced at trial. Reconciliation of inconsistent verdicts on this basis would not be consistent with the presumption that the jury found the defendant guilty, beyond a reasonable doubt, on the basis of the evidence before it. Furthermore, speculation into a jury's motives is avoided by the courts, *Powell, supra*, 105 S.Ct. at 478, and the Commission is even less able to discover a jury's motives.

In sum, the alternatives to the interpretation now being codified would result in the compounding of jury errors in parole decision-making, and would make it impossible for the Commission to discharge its statutory duty to consider fully the "nature and circumstances" surrounding each parole applicant's criminal offense. 18 U.S.C. 4206(a) (1976).

This rule change will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

PART 2—[AMENDED]

28 CFR Part 2 is amended as follows:

1. The authority citation for 28 CFR Part 2 continues to read:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).)

2. 28 CFR 2.19 is amended to add the following new paragraph (c)(3) and paragraphs (c)(1) and (c)(2) are reprinted for the convenience of the reader:

§ 2.19 Information considered.

* * * * *

(c) * * * However, the Commission shall not consider in any determination charges upon which a prisoner was found not guilty after trial unless: (1) Reliable evidence is presented that was not introduced at trial (*e.g.*, a subsequent admission or other clear indication of guilt); or (2) the prisoner was found not guilty by reason of his mental condition; or (3) the acquittal is contradicted by, or inconsistent with, a conviction by the same or another trial jury.

Dated: June 8, 1987.

Benjamin F. Baer,

Chairman, United States Parole Commission.

[FR Doc. 87-13639 Filed 6-15-87; 8:45 am]

BILLING CODE 4410-01-M

POSTAL SERVICE

39 CFR Part 265

Release of Information; Implementation of Freedom of Information Reform Act

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends the Freedom of Information Act (FOIA) regulations of the Postal Service to incorporate the changes made by the Freedom of Information Reform Act of 1986, relating to FOIA requests for law enforcement records.

EFFECTIVE DATE: July 16, 1987.

FOR FURTHER INFORMATION CONTACT: Martha J. Smith, (202) 268-2931.

SUPPLEMENTARY INFORMATION: On April 16, 1987, the Postal Service published for comment in the **Federal Register** a proposed rule concerning access under the FOIA to law enforcement records. 52 FR 12434. In the same document the Postal Service published proposed changes to its FOIA fee regulations, and the comment deadline for both rules was May 15, 1987. At the time the fee regulations were adopted in final form, effective April 25, 1987 (before the end of the comment period because of a statutory deadline), the deadline for receipt of comments on the fee regulations and law enforcement records was extended to May 18, 1987. 52 FR 13667. The comment period has expired, and no comments have been received on either proposal. Accordingly, no additional changes in the fee regulations are being made, and the law enforcement provisions are hereby adopted without change by amending 39 CFR Part 265 as follows:

List of Subjects in 39 CFR Part 265

Release of information, Postal Service.

PART 265—RELEASE OF INFORMATION

1. The authority citation for Part 265 continues to read as follows:

Authority: 39 U.S.C. 401; 5 U.S.C. 552.

2. Paragraph (c) of § 265.6 is revised to read as follows:

§ 265.6 Availability of records.

* * * * *

(c) *Records or information compiled for law enforcement purposes.* (1) Investigatory files compiled for law enforcement purposes, whether or not considered closed, are exempt by statute from mandatory disclosure except to the extent otherwise available by law to a party other than the Postal Service, 39 U.S.C. 410(c)(6). As a matter of policy, however, the Postal Service will normally make records or information compiled for law enforcement purposes available upon request unless the production of these records:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority (such as the Postal Inspection Service) in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(2) Whenever a request is made which involves access to records described in § 265.6(c)(1)(i), and

(i) The investigation or proceeding involves a possible violation of criminal law; and

(ii) There is reason to believe that,

(A) The subject of the investigation or proceeding is not aware of its pendency, and

(B) Disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the Postal Service may, during only such time as that circumstance continues, treat the records as not subject to the requirements of the Freedom of Information Act.

(3) Whenever informant records maintained by a criminal law enforcement agency (such as the Postal Inspection Service) under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the records may be treated as not subject to the requirements of the Freedom of Information Act unless the informant's status as an informant has been officially confirmed.

(4) Authority to disclose records or information compiled for law enforcement purposes to persons outside the Postal Service must be obtained from the Chief Postal Inspector, U.S. Postal Serivce, Washington, DC 20260-2100, or designee.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 87-13701 Filed 6-15-87; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

[TN-042; -049; -050; A-4-FRL-3216-6]

40 CFR Part 52

Approval and Promulgation of Implementation Plans; Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today, EPA approves as State Implementation Plan (SIP) revisions Tennessee Air Pollution Control Board Orders 23–86 and 36–86, the deletion of operating permits for Tennessee Eastman Company from the SIP; 24–86, the name change of Interstate Paving Company to Jones and Jones Contractors, Incorporated on the SIP permits; and 34–86, a one-year variance from opacity control for the No. 6 carbon brick press at the Union Carbide Corporation's Lawrenceburg, Tennessee facility. These Board Orders were submitted to EPA for approval on October 7, 1986, and December 30, 1986, with additional information submitted on January 5, 1987. The effect of these variances is to allow these sources to meet the relaxed requirements of regulations which are not yet State effective.

DATES: This action will be effective on August 17, 1987, unless notice is received by July 16, 1987, that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the materials submitted by the State may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365

Division of Air Pollution Control, Tennessee Department of Health and Environment, Customs House, 4th Floor, 701 Broadway, Nashville, Tennessee 37219

FOR FURTHER INFORMATION CONTACT: Ms. Rosalyn D. Hughes, Air Programs Branch, EPA Region IV, at the above address and telephone number (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: Board Order 24–86 reflects the change in ownership of the process emission sources at Interstate Paving Company to Jones and Jones Contractors, Incorporated. Since the allowable emissions are not changed by the revision, no effect on air quality is anticipated.

Board Orders 23–86 and 36–86 delete four operating permits for Tennessee Eastman Company from the SIP. These process emission sources recently received construction permits to allow for source modifications. New source review was performed to assure maintenance of air quality.

Board Order 34–86 is a one-year variance for the Union Carbide Corporation's Lawrenceburg, Tennessee facility from opacity control (Tennessee Rule 1200–3–5–.01(1)) for the No. 6 carbon brick press. This press was installed in 1977. The latest source sampling report showed the average emissions as 1.6 lbs/hour. The other five carbon presses were constructed prior to April 3, 1972. The No. 6 press is similar to older presses with like control devices. Several different control technologies were attempted on this source with no consistent success at a cost of $280,000. Since the press meets the mass emission standards (which equate to attainment of the total suspended particulate (TSP) ambient standards) but not the opacity standards (which do not always relate to the TSP ambient standards), the variance was granted while the State develops a solution, such a regulatory revision or another control measure.

Final Action

Since Board Orders 23–86, 24–86, 34–86 and 36–86 are consistent with EPA policy and requirements, they are hereby approved. The public should be advised that this action will be effective 60 days from the date of this Federal Register notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 17, 1987. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

The Office of Management and Budget has exempted this rule from requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

Note.—Incorporation by reference of the Tennessee State Implementation Plan for the State of Tennessee was approved by the Director of the Federal Register on July 1, 1982.

Dated: June 5, 1987.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40, of the Code of Federal Regulations, is amended as follows:

Subpart RR—Tennessee

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.2220 is amended by adding paragraph (c)(76) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(76) Board Orders 23–86, 24–86, 34–86 and 36–86 were submitted on October 7, 1986 and December 30, 1986, respectively by the Tennessee Department of Health and Environment.

(i) Incorporation by reference.

(A) Board Order 23–86, which became State-effective on September 17, 1986.

(B) Board Order 24–86, which became State-effective on September 17, 1986.

(C) Board Order 34–86, which became State-effective on November 20, 1986.

(D) Board Order 36–86, which became State-effective on November 20, 1986.

(ii) Other material—none.

[FR Doc. 87–13334 Filed 6–15–87; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 60

[AD–FRL–3218–9]

Standards of Performance for New Stationary Sources; Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels); Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule on standards of performance for new stationary sources for volatile organic liquid (VOL) storage vessels (including petroleum liquid storage vessels) that appeared at page 11420 in the Federal Register of Wednesday, April 8, 1987, (52 FR 11420).

FOR FURTHER INFORMATION CONTACT: Doug Bell or Laura Butler, Standards Development Branch, ESED (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–5568 or (919) 541–5267.

This action is necessary to correct an inadvertent inclusion of a delegable function in the list of nondelegable functions in § 60.117b of the regulation that was published in the **Federal Register** on April 8, 1987 (52 FR 11420).

Dated: June 9, 1987.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

PART 60—[AMENDED]

For reasons set out in the preamble, 40 CFR Part 60, § 60.117b(b), is amended as follows:

1. The authority citation for Part 60 continues to read as follows:

Authority: 42 U.S.C. 7411, 7414, and 7601(a).

2. Section 60.117b is amended by revising paragraph (b) to read as follows:

§ 60.117b Delegation of authority.

* * * * *

(b) Authorities which will not be delegated to States: Sections 60.111b(f)4), 60.114b, 60.116b(e)(3)(iii), 60.116b(e)(3)(iv), and 60.116b(f)(2)(iii).

[FR Doc. 87-13706 Filed 6-15-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6754]

Suspension of Community Eligibility; Connecticut et al.

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register.**

EFFECTIVE DATES: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et. seq.). Accordingly, the communities will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register.** In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

The authority citation for Part 64 continues to read as follows:

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

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community [1]	Current effective map date	Date [2]
Region I				
Connecticut: Sherman, town of, Fairfield County	090166	July 25, 1975, Emerg.; June 18, 1987, Reg.; June 18, 1987, Susp.	June 18, 1987	June 18, 1987.
Massachusetts:				
Methuen, town of, Essex County	250093	June 25, 1974, Emerg.; July 2, 1980, Reg.; June 18, 1987, Susp.	June 18, 1987	Do.
Norton, town of, Bristol County	250060	March 2, 1974, Emerg.; June 1, 1979, Reg.; June 18, 1987, Susp.	June 18, 1987	Do.
Taunton, city of, Bristol County	250066	June 18, 1980, Emerg.; June 18, 1980, Reg.; June 18, 1987, Susp.	June 18, 1987	Do.
Region II				
New Jersey: Randolph, township of Morris County	340358	June 23, 1973, Emerg.; Dec. 18, 1979, Reg.; June 18, 1987, Susp.	June 18, 1987	Do.
New York:				
Carmel, town of, Putnam County	360669	March 21, 1975, Emerg.; June 18, 1987, Reg.; June 18, 1987, Susp.	June 18, 1987	Do.
Philipstown, town of, Putnam County	361028	March 21, 1975, Emerg.; June 18, 1987, Reg.; June 18, 1987, Susp.	June 18, 1987	Do.
Region III				
Maryland: Prince George's County. Unincorporated Areas.	245208	August 7, 1970, Emerg.; August 4, 1972, Reg.; June 18, 1987, Susp.	June 18, 1987	Do.
Pennsylvania: South Buffalo, township of Armstrong County.	421210	April 17, 1975, Emerg.; June 18, 1987, Reg.; June 18, 1987, Susp.	June 18, 1987	Do.
West Virginia: Putnam County. Unincorporated Areas.	540164	May 11, 1976, Emerg.; June 18, 1987, Reg.; June 18, 1987, Susp.	June 18, 1987	Do.
Region IV				
Florida:				
Blountstown, city of, Calhoun County	120060	March 17, 1975, Emerg.; May 1, 1980, Reg.; June 18, 1987, Susp.	June 18, 1987	Do.
Calhoun County. Unincorporated Areas	120403	May 14, 1975, Emerg.; June 18, 1987, Reg.; June 18, 1987, Susp.	June 18, 1987	Do.
Region V				
Indiana: Largo, town of, Wabash County	180268	Aug. 15, 1975, Emerg.; June 18, 1987, Reg.; June 18, 1987, Susp.	June 18, 1987	Do.
Region VI				
Texas: Montgomery County. Unincorporated Areas.	480483	Oct. 15, 1973, Emerg.; Aug. 1, 1980, Reg.; June 18, 1987, Susp.	June 18, 1987	Do.
Region IX				
California:				
Lodi, city of, San Joaquin County	060300	Mar. 24, 1972, Emerg.; Mar. 1, 1978, Reg.; June 18, 1987, Susp.	June 18, 1987	Do.
Moreno Valley, city of, Riverside County	060711	June 14, 1986, Emerg.; June 18, 1987, Reg.; June 18, 1987, Susp.	June 18, 1987	Do.
Oceanside, city of, San Diego County	060294	June 30, 1975, Emerg.; Sept. 5, 1984, Reg.; June 18, 1987, Susp.	June 18, 1987	Do.
Palmdale, city of, Los Angeles County	060144	October 3, 1975, Emerg.; Jan. 6, 1982, Reg.; June 18, 1987, Susp.	June 18, 1987	Do.
Tracy, city of, San Joaquin County	060303	June 29, 1973, Emerg.; Dec. 22, 1980, Reg.; June 18, 1987, Susp.	June 18, 1987	Do.
Region X				
Washington: Rockford, town of, Spokane County	530181	Mar. 15, 1976, Emerg.; Oct. 2, 1979, Reg.; June 18, 1987, Susp.	June 18, 1987	Do.
Minimal Conversions				
Region II				
New York: Decatur, town of, Otsego County	361417	Feb. 4, 1976, Emerg.; June 18, 1987, Reg.; June 18, 1987, Susp.	June 18, 1987	Do.
Region III				
Pennsylvania: Dushore, Borough of, Sullivan County.	420810	Mar. 11, 1975, Emerg.; June 18, 1987, Reg.; June 18, 1987, Susp.	June 18, 1987	Do.
West Virginia: Petersburg, town of, Grant County	540039	Apr. 18, 1975, Emerg.; June 18, 1987, Reg.; June 18, 1987, Susp.	June 18, 1987	Do.

[1] Code for reading third column: Emerg.—Emegency Reg.—Regular Susp.—Suspension.
[2] Date certain Federal assistance no longer available in special flood hazard areas.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 87-13636 Filed 6-15-87; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-89; RM-5159]

Radio Broadcasting Services; Panama City Beach, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 286C2 to Panama City Beach, Florida, as a second FM channel, at the request of John C. Drombosky. The allotment requires a site restriction 7.1 kilometers (4.4 miles) west of the city to meet the spacing requirement of the Rules. With this action, this proceeding is terminated.

DATES: Effective Date: July 23, 1987; The window period for filing applications will open on July 24, 1987, and close on August 24, 1987.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-89, adopted April 24, 1987, and released June 10, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of Allotments in the entry for Panama City Beach, Florida, Channel 286C2 is added.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-13642 Filed 6-15-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-75; RM-5002]

Radio Broadcasting Services; Clayton, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 281A to Clayton, Georgia, as a first FM service at the request of Richard J. Turner Jr. The allocation is contingent on Station WAGQ(FM), Athens, Georgia relocating its transmitter. When Station WAGQ is licensed at the new site, a filing window will be announced for Channel 281A at Clayton, Georgia. With this action this proceeding is terminated.

EFFECTIVE DATE: July 23, 1987.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-75, adopted May 4, 1987, and released June 10, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citations for Part 73 continues to read as follows:

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of Allotments for the entry, Clayton, Georgia, Channel 281A is added.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-13643 Filed 6-15-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-281; RM-4960]

Radio Broadcasting Services; Osceola, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 295C2 for Channel 296A at Osceola, Iowa and modifies the license of Station KJJC(FM), Osceola to specify the new channel at the request of J.B. Broadcast, Inc. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 24, 1987.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-281, adopted April 24, 1987, and released June 10, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended by substituting Channel 295C2 of Channel 296A at the entry for Osceola, Iowa.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-13644 Filed 6-15-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-370; RM-5309]

Radio Broadcasting Services; Versailles, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates Channel 236A to Versailles, Missouri, as that community's first broadcast service, in response to a petition filed by Mid-Mo Broadcasting Company, Inc. Supporting comments were filed by the petitioner. A site restriction 2.6 kilometers northeast of the community is necessary for the allocation of Channel 236A at Versailles. In § 73.202(b), the Table of Allotments is amended under Missouri, by adding Channel 236A at Versailles. With this action, this proceeding is terminated.

DATES: Effective date: July 23, 1987; The window period for filing applications will open on July 24, 1987, and close on August 24, 1987.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-370, adopted May 5, 1987, and released June 10, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended by adding Channel 236A at Versailles, Missouri.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-13645 Filed 6-15-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-312; RM-5325]

Radio Broadcasting Services; Las Vegas, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of S. Carl Mark Revocable Trust, substitutes Channel 264C2 for Channel 265A at Las Vegas, New Mexico, and modifies the license of Station KLVF-FM to specify operation on the higher powered channel. Channel 264C2 can be allocated to Las Vegas in compliance with the Commission's minimum distance separation requirements and used at Station KLVF-FM's present transmitter location. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 23, 1987.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-312, adopted May 4, 1987, and released June 10, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Las Vegas, New Mexico is amended by adding Channel 264C2 and deleting Channel 265A.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-13646 Filed 6-15-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-380; RM-5433]

Radio Broadcasting Services; Los Lunas, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 273C2 for Channel 272A at Los Lunas, New Mexico, at the request of Brasher Broadcasting Co. and modifies its permit for Station KBBU to specify the higher powered channel. Channel 273C2 can be allocated to Los Lunas in compliance with the Commission's minimum distance separation requirements and used at Station KBBU's transmitter site. With this action, this preceeding is terminated.

EFFECTIVE DATE: July 24, 1987.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-380, adopted May 18, 1987, and released June 10, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. the complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Los Lunas, New Mexico is amended by adding Channel 273C2 and deleting Channel 272A.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-13647 Filed 6-15-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-178; RM-5175, RM-5512; RM-5513]

Radio Broadcasting Services; Southern Pines, Ellerbe and Hoffman, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates Channel 273A to Southern Pines, NC, as the community's second local FM service, at the request of LRE Communications Co. Channel 273A can be allocated to Southern Pines in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The counterproposal of ERC Radio to allocate Channel 273A to Ellerbe, NC, as the community's first local FM service, has been withdrawn and no other party expressed an interest in use of the channel, if allocated. The counterproposal of York David Anthony to allocate Channel 273A to Hoffman, NC, as the community's first local FM service, is not considered herein since petitioner failed to serve LRE with a copy of its counterproposal as required by § 1.420 of the Commission's Rules. However, the Commission has determined that another non-conflicting channel can be allocated to Hoffman, and it will be the subject of a separate Notice of Proposed Rule Making.

DATES: Effective date: July 24, 1987; The window period for filing applications will open on July 27, 1987, and close on August 24, 1987.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-178, adopted May 6, 1987, and released June 10, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC.

The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202(b) [Amended]

2. Section 73.202(b), the Table of FM Allotments for North Carolina is amended by adding Channel 273A to the entry for Southern Pines.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–13648 Filed 6–15–87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86–199; RM–5258]

Radio Broadcasting Services; Broken Bow, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of Harold E. Cochran, substitutes Channel 291C2 for Channel 292A at Broken Bow, Oklahoma, and modifies the license of Station KKBI–FM to specify the higher powered channel. The allotment requires the imposition of an 18.1 kilometer (11.2 mile) northwest site restriction to avoid a short-spacing to three of the seven pending applications for Channel 292A at Texarkana, Arkansas. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 23, 1987.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–199, adopted May 4, 1987, and released June 10, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 72.202(b), the Table of FM Allotments for Broken Bow, Oklahoma, is amended by deleting Channel 292A and adding Channel 291C2. .

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–13649 Filed 6–15–87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86–132; RM–5145; RM–5371]

Television Broadcasting Services; Warner Robins and Cordele, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document (1) allots UHF television Channel 35 to Warner Robins, Georgia, at the request of Steven D. King and (2) allots Channel 55 to Cordele, Georgia, in response to a petition filed by Composite Communications Corporation. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 27, 1987.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–132, adopted May 4, 1987, and released June 9, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

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

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

§ 73.606 [Amended]

2. Section 73.606(b) is amended for Georgia by adding Channel 35– to Warner Robins and adding Channel 55+ to Cordele.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–13652 Filed 6–15–87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 84–709; RM–4756; RM–4867]

Television Broadcasting Services; Columbia, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates VHF Television Channel 11 to Columbia, Louisiana as that community's first commercial television service at the request of Betty Robinson et al. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 23, 1987.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 84–709, adopted April 24, 1987, and released June 10, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

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

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

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Allotments in the entry for Columbia, Louisiana, Channel 11+ is added.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-13653 Filed 6-15-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-351; RM-5338]

Television Broadcasting Services; Slidell, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots UHF Television Channel 54 to Slidell, Louisiana as that community's first television channel in response to a petition filed by Ron Hunter/ Northshore Television. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 23, 1987.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-351, adopted April 27, 1987, and released June 10, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

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

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

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Allotments is amended by adding the entry of Channel 54+ to Slidell, Louisiana.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-13654 Filed 6-15-87; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 52, No. 115
Tuesday, June 16, 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 Part 39

[Docket No. 87-CE-19-AD]

Airworthiness Directives; Beech 200 and 300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to certain Models of the Beech 200 and 300 Series airplanes. This AD would supersede AD 84-24-01 and require repetitive inspection and repair of wing fuel bay upper skin panels. Entry of moisture through blind fastener rivets in the outer skin of the panels causes corrosion which results in debonding of these panels. Structural integrity of the panel may be impaired. The one-time actions of AD 84-24-01 are inadequate to insure safety, since repaired panels can also deteriorate.

DATE: Comments must be received on or before July 20, 1987.

ADDRESSES: Beech Service Bulletin No. 2040, Rev. 1, dated March, 1987, and Beech Service Instructions No. C-12-0094, Rev. 1, dated February, 1987, applicable to this AD may be obtained from Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201; Telephone (316) 681-9111, or the Rules Docket at the address below. Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 87-CE-19-AD, Room 558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Don Campbell, Aerospace Engineer, Airframe Branch, ACE-120W, Wichita Aircraft Certification Office, (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4409.

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 or notice 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 Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 87-CE-19-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

AD 84-24-01 was issued on November 23, 1984, requiring a one-time inspection for and repair of a debond condition of wing upper skin panels in the area bounded by the fuselage, nacelle, front spar, and rear spar on Beech 200 and 300 Series airplanes. The area in question is a one piece all-aluminum bonded honeycomb sandwich which serves as the fuel bay upper cover, as well as a load-carrying structural member. The debonding is caused by moisture leaking into the honeycomb via blind fasteners (rivets) in the outer face sheet of the panel. The moisture causes corrosion to form inside the honeycomb, which attacks the face sheet bonds. Without corrective maintenance, the debonding can progress to a point where safe flight is jeopardized.

A large portion of the fleet has been inspected and repaired in accordance with AD 84-24-01, which is a one-time inspection. The inspection consisted basically of searching for debonded areas by the "coin tap" method. If debonding was detected, the panel was repaired by potting-in extra fasteners provided in Beech service kits designed for this purpose. To preclude entry of moisture into the honeycomb area, it is necessary to seal each blind fastener in the upper surface of the fuel bay upper skin panels on all affected airplanes.

Subsequent to the issuance of AD 84-24-01, some complying airplanes experienced a recurrence of debonding. Out of the total of 44 aircraft reporting delamination, 20 had to have repeat repairs, and 19 cases of delamination occurred subsequent to the initial inspection. Additionally, some airplanes not subject to AD 84-24-01 have experienced debonding. Beech has revised the pertinent service information to call for repetitive inspections and expand the model effectivity. Improved skin panels are available which, if installed, eliminate the need for continued inspection.

Since the condition described is likely to exist or develop in other Beech 200 and 300 Series airplanes of the same design, the proposed AD would require repetitive inspections and repair of wing center section upper skin panels on Beech 200 and 300 Series airplanes in accordance with Beech Service Bulletin No. 2040, Rev. 1, dated March, 1987, or Beech Service Instructions No. C-12-0094, Rev. 1, dated February, 1987, as applicable. These inspections may be discontinued after installation of the appropriate replacement skin panels as described in the service information. The FAA has determined that there are approximately 682 airplanes affected by the proposed AD. The cost of inspecting each airplane in accordance with the proposed AD is estimated to be $480 annually. The total cost is estimated to be $327,360 each year to the private sector. The only significant cost to small entities will occur whenever repair at a cost of $1,800 per airplane is not feasible and wing skin panel replacement is

necessary at a cost of $10,700. It is estimated that less than 7 percent of the panels will require replacement. Few, if any, small entities own more than one of these airplanes. Therefore, a substantial number of small entities cannot receive a significant economic impact from this mandatory action.

Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES".**

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

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 FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Beech

Applies to 200 and 300 Series (all serial numbers) airplanes which have wing center section fuel bay upper skin panels of bonded construction with blind fasteners in the three areas shown on Figure 1 of this AD.

Note 1.—The subject panels may have been installed as original equipment or as replacement spares. The Beech Service Bulletins referenced in this AD contain explanatory material relating to this topic.

Compliance

Required as indicated after the effective date of this AD.

To assure the continued structural integrity of the wing fuel bay upper skin panels, accomplish the following:

(a) Within the next 75 hours time-in-service (TIS) or six calendar months, whichever occurs first, unless previously accomplished within the last 75 hours TIS or six calendar months per AD 84-24-01, and thereafter at intervals not to exceed 300 hours TIS or six calendar months, whichever occurs first, inspect the wing center section fuel bay upper skin panels for possible debonding in accordance with Beech Service Bulletin No. 2040, Rev. 1, dated March, 1987, (for civil registered airplanes) or Beech Service Instructions No. C-12-0094, Rev. 1, dated February, 1987, (for military airplanes).

(1) If no debonding is detected, prior to further flight accomplish the actions of paragraph (b) below.

(2) If debonding is detected in either panel, prior to further flight modify the discrepant panel by installation of Kit No. 101-4032-1 (L.H.) or 101-4032-3 (R.H.), and the accomplishments of the actions of paragraph (b) below, or by installation of replacement skin panel P/N 101108-603 (L.H.) or -604 (R.H.).

(3) If debonding is detected in a panel which was previously repaired per paragraph (a)(2) above, prior to further flight remove the discrepant panel and install a replacement skin panel P/N 101108-603 (L.H.) or -604 (R.H.) as applicable.

(b) Seal all accessible blind rivets in both wing center section fuel bay upper skin panels as described in Service Bulletin No. 2040, Rev. 1, dated March, 1987, or Service Instructions No. C-12-0094, Rev. 1, dated February, 1987, (as applicable).

Note 2.—Resealing of these blind rivets is recommended anytime paint is removed from this area.

(c) The requirements of this AD are no longer required when skin panels P/N 101108-603 (L.H.) or -604 (R.H.) have been installed.

(d) Airplanes may be flown in accordance with FAR 21.197 to a location where the AD may be accomplished.

(e) An equivalent means of compliance with this AD may be used, if approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4400.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Beech Aircraft Corporation, Commercial Service, Department 52, Wichita, Kansas 67201-0085, or examined at FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This AD supersedes AD 84-24-01; Amendment 39-4958.

Issued in Kansas City, Missouri, on June 4, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

BILLING CODE 4910-13-M

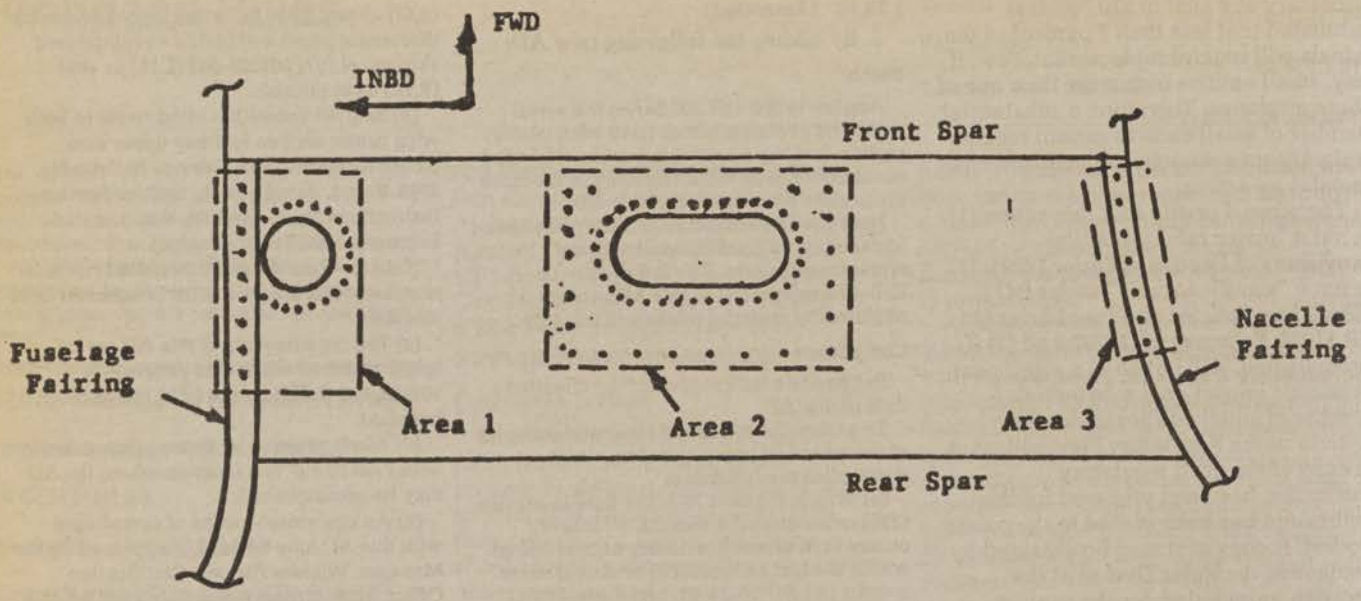

FIGURE 1

Showing Areas where Blind Fasteners may be Located (Upper Surface) (RH Wing Shown)

[FR Doc. 87-13626 Filed 6-15-87; 8:45 am]
BILLING CODE 4910-13-C

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 852 3121]

New Medical Techniques, Inc.; Proposed Consent Agreement with Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a Mystic, Connecticut manufacturer and distributor of countertop water distillers to refrain from falsely representing that the water purification devices are approved or endorsed by any person or organization. Respondent would also be required to possess scientific data before making any claims that its water purification devices will provide pure water, project users from particular health hazards, or remove contaminants or chemicals from water.

DATE: Comments must be received on or before August 17, 1987.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., Nw., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: FTC/S–4002, Joel Winston, Washington, DC 20580, (202) 326–3153.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Water distillers, Water purification devices, Trade practices.

Before Federal Trade Commission

[File No. 852 3121]

Agreement Containing Consent Order to Cease and Desist

In the Matter of New Medical Techniques, Inc., a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of New Medical Techniques, Inc., a corporation, and is now appearing that New Medical Techniques, Inc., is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between New Medical Techniques, Inc., its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent New Medical Techniques, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its office and principal place of business located in Mystic, Connecticut, and its mailing address at Post Office Box 429, Broadway Extension, Mystic, Connecticut 06335.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify respondents, which even it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, an if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final uopon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, respresentation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further under stand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it become final.

Order

For the purposes of this order, the following definitions shall apply:

A. "Aquaspring" shall mean the Aquaspring Home Water Distiller Models 1.5, 4, and 5 offered for sale, sold, or distributed by New Medical Techniques, Inc., a Connecticut corporation, under the Aquaspring trade name or any other trade name, including but not limited to "Medi-Tech" and "The Home Water Still."

B. "Water purification device" shall mean any product or construct which is designed to be used for the removal or reduction, by any method, of any

impurities or contaminants from water intended for human consumption.

C. "Volatile organic chemical" shall mean any synthetic or naturally occurring organic chemical which, when present in water, generally will evaporate when the water is heated to a temperature at or less than 100 degrees Celsius.

D. "Competent and reliable scientific test" shall mean a test in which persons with skill and expert knowledge in the field to which the test pertains conduct the test and evaluate its results in an objective manner using testing, evaluation, and analytical procedures that ensure accurate, reliable, and reproducible results.

I

It is ordered that respondent New Medical Techniques, Inc., a corporation; its successors and assigns; and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of Aquaspring or any other water purification device in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, directly or by implication, that:

A. Any such device has been tested, approved, or endorsed by any person, firm, organization, or government agency;

B. Any such device will protect the user from any health hazard associated with any water-borne contaminant; and

C. Any such device (1) is capable of removing any impurity or contaminant from water, (2) will provide absolutely pure water or will remove all contaminants from water, or (3) is capable of removing all chemicals or any specific chemical from water.

II

It is further ordered that respondent New Medical Techniques, Inc., a corporation; its successors and assigns; and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of Aquaspring or any other water purification device in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

A. Any such device will protect the user from any health hazard associated with any water-borne contaminant, unless, at the time the presentation is made, respondent possesses and relies upon a reasonable basis consisting of competent and reliable scientific evidence that substantiates the representation; and

B. Any such device (1) is capable of removing any impurity or contaminant from water, (2) will provide absolutely pure water or will remove all contaminants from water, or (3) is capable of removing all chemicals or any specific chemical from water, unless, at the time the representation is made, respondent possesses and relies upon a reasonable basis consisting of a competent and reliable scientific test that substantiates the representation.

III

It is further ordered that respondent; its successors and assigns; and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution or Aquaspring or any other water purification device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, any performance or efficacy characteristic of any water purification device, unless, at the time the presentation is made, respondent possesses and relies upon a reasonable basis consisting of competent and reliable scientific evidence that substantiates the representation.

IV

It is further ordered that for three years from the date that the representations to which they pertain are last disseminated, respondent shall maintain and upon request make available to the Federal Trade Commission or its staff for inspection and copying:

A. All materials relied upon to substantiate any claim or representation covered by this Order; and

B. All test reports, studies, surveys or other materials in its possession or control or of which it has knowledge that contradict, qualify or call into question such representation or the basis upon which respondent relied for such representation, including complaints from consumers.

V

It is further ordered that respondent shall include the following notice in all advertising and promotional materials for the Aquaspring or any other water purification device that does not substantially remove volatile organic chemicals from water, it that advertising or promotional material represents, directly or by implication, that the device will remove any chemical contaminant from water or will protect the user from any health hazard associated with any water-borne contaminant:

Notice.—This device is not designed to remove potentially hazardous volatile orgnic chemicals from water.

Provided, however, that the above notice shall not be required where the representation is limited solely to an itemization of those contaminants that the device will substantially remove. Nothing contrary to, inconsistent with, or in mitigation of the above required language shall be used in any such advertising or promotional material. In pring advertising and promotional material, the above required language shall appear in at least ten-point bold type print, in close conjuction with the representation. In any television advertising, film, videotape or slide promotional material, the above required language shall be included both orally and visually in a manner designed to ensure clarity and prominence. In radio advertising, the above required language shall be read in a clear manner.

VI

It is further ordered that respondent shall deliver by certified mail or in person a copy of this Order to all present and future distributors of Aquaspring, and instruct said distributors in writing not to make any of the representations, directly or by implication, prohibited by this Order. Delivery shall be made within thirty (30) days after the date of service of this Order to all present distributors. For all future distributors, delivery shall be made prior to the time said distributors begin distribution of the product.

VII

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergency of a successor corporation, the creation of dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the Order.

VIII

It is further ordered that respondent shall, within sixty (60) days after service of this Order upon it, and at such other

times as the Commission may require, file with the Commission a written report setting forth in detail the manner and form in which it has complied or intends to comply with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, and agreement to enter a proposed consent order from New Medical Techniques, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

This matter concerns the Aquaspring Home Water Distiller, an appliance designed to remove contaminants from water by the process of distillation, *i.e.*, boiling and recondensing the water. The Commission's complaint charges New Medical Techniques with falsely representing in advertisements and promotional materials for the Aquaspring that the device will: (a) Remove all impurities or contaminants from water, (b) remove all chemical impurities or contaminants, (c) remove chloroform and (d) protect users from all diseases or conditions caused by hazardous contaminants in water. In fact, according to the complaint, these representations are false and misleading because the Aquaspring will not remove volatile organic chemicals, a class of toxic and potentially carcinogenic chemicals, from water. The complaint also charges the company falsely claimed that the Aquaspring has been tested, approved and endorsed by the U.S. Public Health Service and the Duke University Medical Center.

The complaint further alleges that New Medical Techniques falsely represented that it had a reasonable basis for its claims as listed above. Finally, the complaint charges that the company failed to disclose to consumers that the Aquaspring does not remove volatile organic chemicals from water, which are potentially hazardous to health. The failure to disclose this information, in light of the representations made, is alleged to be a deceptive practice.

The consent order contains provisions designed to remedy the violations charged and to prevent New Medical Techniques from engaging in similar acts and practices in the future. Part I of the Order prohibits the company from misrepresenting that any water purification device: (a) Has been tested, approved or endorsed by any person, firm, organization or government agency; (b) will protect users from health hazards associated with water-borne contaminants; or (c) will remove any or all contaminants from water, provide absolutely pure water, or remove any or all chemicals.

Part II of the Order prohibits New Medical Techniques from representing that a water purification device will protect users from health hazards from water-borne contaminants unless it has competent and reliable scientific evidence to substantiate the claim. Part II also requires the company to have a competent and reliable scientific test to substantiate any representation that a water purification device can remove any or all contaminants, provide absolutely pure water, or remove any or all chemicals from water.

Part III of the Order provides that New Medical Techniques must possess competent and reliable scientific evidence to substantiate any representations it makes about the performance or efficacy of any water treatment device. Part IV requires the company to maintain the materials it uses to support any representations covered by the Order, and any materials which contradict or qualify those representations.

Part V of the Order provides that whenever the company makes a representation that a water purification device will remove any chemical contaminant from water or will protect users from health hazards from any water-borne contaminant, and that device does not substantially remove volatile organic chemicals, it must include the following disclosure:

Notice.—This device is not designed to remove potentially hazardous volatile organic chemicals from water.

The disclosure is not required, however, when the representation is limited solely to an itemization of those contaminants the device will remove.

The Order also contains provisions requiring dissemination of copies of the Order to all present and future distributors of the Aquaspring (Part VI), notification to the Commission of changes in the company's corporate structure (Part VII), and the submission of a report to the Commission on the company's compliance with the terms of the Order (Part VIII).

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and order or to modify in any way their terms.

Emily H. Rock,

Secretary.

[FR Doc. 87-13641 Filed 6-15-87; 8:45 am]

BILLING CODE 6750-01-M

UNITED STATES INFORMATION AGENCY

22 CFR Part 526

Freedom of Information Reform Act of 1986; Regulations for the National Endowment for Democracy

AGENCY: United States Information Agency.

ACTION: Proposed rule.

SUMMARY: These proposed regulations comply with Pub. L. 99-570 entitled the "Freedom of Information Reform Act of 1986," which requires each agency subject to the Freedom of Information Act to promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under the Freedom of Information Act (hereinafter "FOIA") and establishing procedures and guidelines for determining when such fees should be waived or reduced. Pursuant to Pub. L. 99-93 of August 16, 1985, amending the National Endowment for Democracy Act, 22 U.S.C. 441, *et seq.*, the National Endowment for Democracy (hereinafter "NED") must comply with FOIA, notwithstanding it is not an agency or establishment of the United States government. NED must make available to the Director of the United States Information Agency (hereinafter "USIA") such records and information as necessary to comply with the provisions of FOIA, and the Director shall cause such records and information to be published in the Federal Register.

DATE: Comments must be received on or before July 16, 1987.

ADDRESS: Comments may be mailed to the Office of the General Counsel, Freedom of Information Branch, Room M-10, United States Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Charles Jones, Jr., Freedom of Information/Privacy Acts Coordinator, Office of the General Counsel, United States Information Agency, (202) 485-7499.

SUPPLEMENTARY INFORMATION:

Background

The Freedom of Information Reform Act of 1986, 5 U.S.C. 552(a)(4)(A)(i), requires each agency to promulgate regulations that specify the schedule of fees applicable to the processing of FOIA requests. It also requires agencies to conform their fee schedules to the guidelines promulgated by the Office of Management and Budget ("OMB"). NED's regulations regarding the schedule of applicable fees conform to the OMB guidelines as required by the Act. The regulations differ only to reflect that NED is not an agency of the federal government. Hence, certain aspects of the OMB Guidelines, such as the application of the Debt Collection Act of 1982, Pub. L. 97–365, do not apply to NED, and terminology relating to agencies has been altered to relate to NED, a private, not-for-profit corporation, as appropriate.

The Freedom of Information Reform Act of 1986 also requires agencies to promulgate regulations establishing procedures and guidelines for determining when fees should be waived or reduced. The Department of Justice, Office of Legal Policy, published a memorandum with recommended factors to consider in applying the fee waiver standard contained in 5 U.S.C. 552(a)(4)(A)(iii). With few exceptions, NED's regulations follow the Department of Justice's recommended considerations. The NED regulations differ from the Department of Justice suggestions because of NED's status as a private, not-for-profit corporation as opposed to a government agency. NED has added the requirement that a requester seeking a fee waiver or reduction must disclose any commercial interest the requester has in obtaining the information. The requirement enhances NED's ability to determine whether the requester meets the statutorily-imposed standard.

List of Subjects in 22 CFR Part 526

Freedom of Information.

Dated: April 24, 1987.

John A. Lindburg,

Acting General Counsel, United States Information Agency.

Title 22, Part 526 is proposed to be amended as follows:

PART 526—[AMENDED]

1. The authority citation for Part 526 is revised to read as follows:

Authority: 22 U.S.C. 4411 *et seq.;* Pub L. No. 99–570, Secs. 1801–1804, 100 Stat. 3207–48 (1986).

2. Section 526.5 is amended by revising paragraphs (c) and (d) and by adding paragraphs (e), (f), (g), (h) and (i), as follows:

§ 526.5 Availability of NED records.

* * * * *

(c) *Definitions governing schedule of standard fees and fee waivers.* For purposes of these regulations governing fees and fee waivers:

(1) All of the terms defined in FOIA apply;

(2) A "statute specifically providing for setting the level of fees for particular types of records" means any statute that specifically requires the NED to set the level of fees for particular types of records;

(3) The term "direct costs" means those expenditures that NED actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents, photographs, drawings or any other material to respond to a FOIA request. (Direct costs include the salary of the employee performing the work (the basic rate of pay for the employee plus 16% of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, any heating or lighting, the facility in which the records are stored);

(4) The term "search" includes all time spent looking for material that is responsive to a request, including page by page or line by line identification of material within documents. Searches shall be conducted to ensure that they are undertaken in the most efficient and least expensive manner so as to minimize costs for both NED and the requester. "Search" is distinguished from "review" of material in order to determine whether the material is exempt from disclosure (*see* paragraph (c)(6) of this section);

(5) The term "duplication" refers to the process of making a copy of a document, drawing, photograph, or any other material necessary to respond to a FOIA request. The copy provided by NED will be in a form that is reasonably usable by requesters;

(6) The term "review" refers to the process of examining documents that are located in response to a request that is for a commercial use (*see* paragraph (c)(7) of this section) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, *e.g.,* doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions;

(7) The term " 'commerical use' requests" refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, NED will determine the use to which a requester will put the documents requested. Where NED has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, NED will seek additional clarification before assigning the request to a specific category;

(8) The term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, that operates a program or programs of scholarly study and/or research;

(9) The term "non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis as that term is referenced in paragraph (c)(7) of this section and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry;

(10) The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations that broadcast to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. In the case of "free-lance" journalists, such journalists may be regarded as working for a new organization if they can demonstrate a solid basis for expecting publication through that organization even though they are not actually employed by a news organization. A publication contract would be the clearest proof, but NED will also look to the past

publication record of a requester in making this determination.

(d) *Fees to be charged—general.* NED shall charge fees that recoup the full allowable direct costs it incurs. NED shall use the most efficient and least costly methods to comply with requests for documents, drawings, photographs, and any other materials made under the FOIA.

(e) *Specific fees.* The specific fees for which NED shall charge the requester when so required by the FOIA are as follows:

(1) *Manual searches for records.* $8.00 per hour for clerical personnel; $15.00 per hour for supervisory personnel;

(2) *Computer searches for records.* In any case where a computer search is possible and the most efficient means by which to conduct a search, NED will charge the cost of operating the central processing unit for that portion of operating time that is directly attributable to searching for records responsive the a FOIA request and the operator-programmer salary apportionable to the search. The charge for the cost of the operator-programmer time shall be based on the salary of the operator-programmer plus 16 percent;

(3) *Review of records.* Requesters who seek documents for commercial use shall be charged for the time NED spends reviewing records to determine whether such records are exempt from mandatory disclosure. These charges shall be assessed only for the initial review; *i.e.*, the review undertaken the first time NED analyzes the applicability of a specific exemption to a particular record or portion of a record. Neither NED nor the United States Information Agency will charge for review at the administrative appeal level for an exemption already applied. However, NED will charge for review of records or portions of records withheld in full under an exemption that is subsequently determined not to apply. The fee for review as that term is used in these regulations shall be $15.00 per hour;

(4) *Duplication of records.*

(i) Making photocopies—15¢ per page;

(ii) For copies prepared by computer, such as tapes or printouts, NED shall charge the actual cost, including operator time, of production of the tape or printout;

(iii) For other methods of reproduction or duplication, NED shall charge the actual direct costs of producing the document(s);

(5) *Other charges.*

(i) There shall be no fee for a signed statement of non-availability of a record;

(ii) NED will not incur expenses arising out of sending records by special methods such as express mail;

(6) *Restrictions on assessing fees.* With the exception of requesters seeking documents for a commercial use, section (a)(4)(A)(iv) of the Freedom of Information Act, as amended, requires NED to provide the first 100 pages of duplication and the first two hours of search time without charge. NED shall not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself. NED will not begin to assess fees until it has first provided the above-referenced free search and reproduction. The elements to be considered in determining the "cost of collecting a fee" are the administrative costs to NED of receiving and recording a requester's remittance and processing the fee for deposit in NED's account. For purposes of these restrictions on assessment of fees, the word "pages" refers to paper copies of a standard size, which will normally be 8½ x 11 or 11 x 14. Thus, for example, requesters shall not be entitled to 100 microfiche or 100 computer disks without charge.

(f) *Fees to be charged—categories of requesters.* There are four categories of FOIA requesters: Commercial use requesters; educational and non-commercial scientific institutions; representatives of the news media; and all other requesters. The fees to be charged each of these categories of requesters are as follows:

(1) *Commercial use requesters.* When NED receives a request for documents for commercial use, it shall assess charges that recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial use requesters are entitled to neither two hours of free search time nor 100 free pages of reproduction of ducuments. NED shall recover the cost of searching for the reviewing records even if there is ultimately no disclosure of records. Requesters must reasonably describe the records sought;

(2) *Educational and non-commercial scientific institution requesters.* NED shall provide documents to educational and non-commerical scientific institution requesters for the cost of reproduction alone, excluding charges for the first 100 pages of duplication. To be eligible for inclusion in this category, requesters must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. Requesters must reasonably describe the records sought;

(3) *Requesters who are representatives of the news media.* NED shall provide documents to requesters who are representatives of the news media for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must meet the criteria in paragraph (c)(10) of this section, and the request must not be made for a commercial use. A request for records supporting the news-dissemination function of the requester shall not be considered to be a request that is for a commercial use. Requesters must reasonably describe the records sought;

(4) *All other requesters.* NED shall charge requesters who do not fit into any of the above categories those fees that recover the full reasonable direct costs of searching for and reproducting records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. Requesters must reasonably describe the records sought.

(g) *Assessment and collection of fees.* (1) NED shall assess interest charges on an unpaid bill starting on the 31st day following the day on which the billing was sent. The fact that the fee has been received by NED, even if not processed, will suffice to stay the accrual of interest. Interest will be at the rate prescribed in section 3717 of Title 31 of the United States Code and will accrue from the date of the billing.

(2) *Charges for unsuccessful searches.* If NED estimates that search charges are likely to exceed $25.00, it shall notify the requester of the estimated amount of fees unless the requester has indicated in advance a willingness of pay fees as high as those anticipated. Such notice shall offer the requester the opportunity to confer with agency personnel with the object of reformulating the request to meet the requester's needs at a lower cost. Dispatch of such a notice of request shall suspend the running of the period for response by NED until a reply is received from the requester.

(3) *Aggregating requests.* Except for requests that are for a commercial use, NED shall not charge for the first two hours of search time or for the first 100 pages of reproduction. However, a requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When NED reasonably believes that a

requester or a group of requesters acting in concert are attempting to divide a request into a series of requests for the purpose of evading the assessment of fees, NED shall aggregate any such requests and charge accordingly. One element to be considered in determining whether a belief would be reasonable is the time period in which the requests have been made. Before aggregating requests from more than one requester, NED must have a concrete basis on which to conclude that the requesters are acting in concert and are acting specifically to avoid payment of fees. In no case shall NED aggregate multiple requests on unrelated subjects from one requester.

(4) *Advance payments.* NED shall not require payment for fees before work has commenced or continued on a request unless:

(i) NED estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250.00. In this event, NED shall notify the requester of the likely cost and may require an advance payment of an amount up to the full amount of estimated charges; or.

(ii) A requester has previously failed to pay a fee charged within 30 days of the date of billing. In this event, NED shall require the requester to pay the full amount owed plus any applicable interest as provided above or demonstrate that he or she has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before NED begins to process a new request or a pending request from that requester.

(iii) When NED acts under paragraphs (g)(4) (i) or (ii) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA will begin only after NED has received fee payments described above.

(5) *Form of payment.* Remittances shall be in the form of a personal check or bank draft drawn on any bank in the United States, a postal money order, or cash. Remittances shall be made payable to the order of: National Endowment for Democracy. NED will assume no responsibility for cash lost in the mail.

(h) *Fee waiver or reduction.* NED shall furnish documents without charge or at a charge reduced below the fees established by these regulations if disclosure of the information is in the public interest because the disclosure of the information is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester. In making a determination under this subsection, NED shall consider these factors in the following order:

(1) Whether the subject of the request for documents concerns the operations or activities of the government. For purposes of determining whether this factor is met:

(i) Records generated by a non-government entity are less likely to respond to a request for documents concerning the operations or activities of the government;

(ii) Records that are sought for their intrinsic informational content apart from their informative value with respect to specific activities or operations of government are less likely to meet this factor.

(2) Whether the information requested is likely to contribute to an understanding of government operations or activities. For purposes of determining whether the request meets this factor:

(i) NED will consider the extent to which the information requested already exists in the public domain;

(ii) NED will consider the extent to which the value of the information relates to an understanding of government operations or activities as opposed to the extent to which the information relates to other subjects.

(3) Whether the information requested will contribute to public understanding of government operations or activities. For purposes of determining whether the request meets this factor:

(i) NED will consider whether the disclosure will contribute to the understanding of the public at large as opposed to the individual understanding of the requester or a small segment of interested persons;

(ii) NED will consider the identity of the requester to determine whether such requester is in a position to contribute to public understanding through disclosure of the information. Requesters shall describe their qualifications to satisfy this consideration;

(iii) NED will consider the expertise of the requester and the extent to which the expertise will enable the requester to extract, synthesize and convey the information to the public at large. Requesters shall describe their qualifications to satisfy this consideration;

(4) Whether the contribution to public understanding will be significant. In determining whether this factor has been met:

(i) NED will consider whether the general public's understanding of the subject matter in question is likely to be enhanced by the disclosure of information by a significant extent;

(ii) NED will compare the likely level of public understanding of the subject matter of the request before and after disclosure.

(5) After NED is satisfied that factors in paragraph (h)(1) through (4) of this section have been met, it will consider whether the requested disclosure is primarily in the commercial interest of the requester.

(i) For purposes of this paragraph, "commercial interest" is one that furthers a commercial, trade, or profit interest as those terms are commonly understood. All requesters who seek a fee waiver under paragraph (h) of this section must disclose any and all commercial interests that would be furthered by the requested disclosure. NED shall use this information, information in its possession, reasonable inferences drawn from the requester's identity, and the circumstances surrounding the request to determine whether the requester has any commercial interest that would be furthered by the disclosure. If information that NED obtains from a source other than the requester or reasonable inferences or other circumstances are used in making a determination under this paragraph (h)(5) of this section, NED shall inform the requester of the information, inferences or circumstances that were used in its initial determination. The requester may, prior to filing an appeal of the initial determination with the President of NED or his designee under paragraph (a)(2) of this section, provide further information to rebut such reasonable inferences, or to clarify the circumstances of the request to the person responsible for the initial determination. Such action by the requester must occur within 20 days of the initial determination by NED. Within 10 days of receipt of such further information, clarification, or rebuttal, NED shall respond to the additional information, reverse or affirm its original position and state the reasons for the reversal or affirmation. Receipt of an affirmation by the requester shall constitute an initial denial of a request for purposes of the appeal process described in paragraphs (a) and (b) of this section.

(ii) NED shall consider the magnitude of the requester's commercial interest. In making a determination under this factor, NED shall consider the role that the disclosed information plays with respect to the requester's commercial interests and the extent to which the disclosed information serves the range of commercial interests of the requester.

(iii) NED shall weigh the magnitude of the identified commercial interest of the requester against the public interest in disclosure in order to determine whether the disclosure is primarily in the commercial interest of the requester. If the magnitude of the public interest in disclosure is greater than the magnitude of the requester's commercial interest, NED shall grant a full or partial fee waiver.

(7) In determining whether to grant a full or partial fee waiver, NED shall, to the extent possible, identify the portion of the information sought by the requester that satisfies the standard governing fee waivers set forth in FOIA, as amended, 5 U.S.C. 552(a)(4)(A)(iii), and in paragraphs (h)(1) through (6) of this section, and grant a fee waiver with respect to those documents. Fees for reproduction of documents that do not satisfy these standards shall be assessed as provided in paragraphs (c) and (g) of this section.

(i) Except as provided in paragraph (h)(5)(i) of this section, a requester may appeal a determination of the fees to be charged or waived under these regulations as he or she would appeal an initial determination of documents to be disclosed under paragraphs (a) and (b) of this § 526.5.

[FR Doc. 87-11206 Filed 6-15-87; 8:45 am]
BILLING CODE 8230-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-122-86]

Income Tax; Limitation on the Use of the Cash Method of Accounting

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary amendments to the income tax regulations relating to the limitation on the use of the cash method of accounting. Changes to the law were made by the Tax Reform Act of 1986. The text of those temporary regulations also serves as the comment document for this proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered or mailed by August 17, 1987.

ADDRESS: Send comments and requests for public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-122-86), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Ewan D. Purkiss of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T) (202-566-3238, not a too-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations (designated by a T following the section citation) in the Rules and Regulations portion of this issue of the **Federal Register** amend Part 1 of Title 26 of the Code of Federal Regulations. These amendments reflect the provisions of section 448 of the Internal Revenue Code of 1986 as added by section 801 of the Tax Reform Act of 1986 (Pub. L. 99-514, 100 Stat. 2085). For the text of the temporary regulations, see FR Doc. 87-13718 (T.D. 8143) published in the Rules and Regulations portion of this issue of the **Federal Register**. A general discussion of the temporary regulations is contained in the preamble to the regulations. The final regulations, which this document proposes to base on the temporary regulations, would amend Part 1 of Title 26 of the Code of Federal Regulations.

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required. Although this document is a notice of proposed rulemaking that solicits public comments, the Internal Revenue Service has concluded that the proposed regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Requests for a Public Hearing

Before adopting these proposed 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 to the Commissioner by any person who submitted comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504 (h) of the Paperwork Reduction Act. Comments on the requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of those comments to the Service.

Drafting Information

The principal author of these proposed regulations is Ewan D. Purkiss of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR 1.441-1-1.483-2

Income taxes, Accounting, Deferred compensation plans.

Lawrence B. Gibbs,
Commissioner of Internal Revenue.

[FR Doc. 87-13719 Filed 6-12-87; 8:45 am]
BILLING CODE 4830-01-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 16

[Order No. 1195-87]

Fee Regulation Implementing Fee and Fee Waiver Provisions of Freedom of Information Reform Act of 1986

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

ACTION: Proposed rule.

SUMMARY: This notice sets forth a proposed revision of a procedural regulation of the Department of Justice, 28 CFR 16.10, setting forth the fees to be charged under the Freedom of Information Act ("FOIA"), 5 U.S.C. 552. It is proposed that this provision be amended to implement the new fee provisions of the Freedom of Information Reform Act of 1986 (Pub. L.

No. 99–570, section 1803), in conjunction with the Uniform Freedom of Information Act Fee Schedule and Guidelines promulgated by the Office of Management and Budget, 52 FR 10011 (March 27, 1987). Additionally, as is required by the amended Act, this proposed revision contains procedures and guidelines for determining when such fees should be waived or reduced.

DATE: Comments must be received on or before July 16, 1987.

ADDRESS: Comments should be directed to: Richard L. Huff or Daniel J. Metcalfe, Co-Directors, Office of Information and Privacy, United States Department of Justice, Room 7238, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Richard L. Huff or Daniel J. Metcalfe, Co-Directors, Office of Information and Privacy, United States Department of Justice, Room 7238, Washington, DC 20530 ((202) 633–3642).

SUPPLEMENTARY INFORMATION: These revisions to 28 CFR 16.10 conform to the OMB Uniform Freedom of Information Act Fee Schedule and Guidelines. Record search fees are proposed to be revised according to a three-tier schedule based upon the hourly salary of the person ordinarily expected to do the work, plus 16% for benefits. The clerical schedule is based generally on the hourly salary of a person at GS–6 step 1, which is approximately the same as GS–4 step 9 and GS–5 step 4. The professional schedule is based generally on the hourly salary of a person at GS–12 step 1, which is approximately the same as GS–10 step 10 and GS–11 step 7. The managerial schedule is based generally on the hourly salary of a person at GS–15 step 1, which is approximately the same as GS–14 step 6. The new record review fees provided for in the amended Act are to be set according to the same fee schedule. The minimum charge of $8.00 set forth in § 16.10(c)(3) is based on the estimated cost of processing a check.

These rules do not constitute "major rules" within the meaning of Executive Order No. 12291 (improving Government Regulations). The requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b), do not apply.

List of Subjects in 28 CFR Part 16

Freedom of information.

PART 16—[AMENDED]

Accordingly, under the authority vested in me by 28 U.S.C. 509 and 510, and 5 U.S.C. 301 and 552, Part 16 of Chapter I of Title 28 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for Part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 9701.

2. Section 16.10 is revised to read as follows:

§ 16.10 Fees.

(a) *In general.* Fees pursuant to 5 U.S.C. 552 shall be assessed according to the schedule contained in paragraph (b) of this section for services rendered by components in responding to and processing requests for records under this subpart. All fees so assessed shall be charged to the requester, except where the charging of fees is limited under paragraph (c) of this section or where a waiver or reduction of fees is granted under paragraph (d) of this section. A component shall collect all applicable fees before making copies of requested records available to a requester. Requesters shall pay fees by check or money order made payable to the Treasury of the United State.

(b) *Charges.* In responding to requests under this subpart, the following fees shall be assessed, unless a waiver or reduction of fees has been granted pursuant to paragraph (d) of this section:

(1) *Search.* (i) No search fee shall be assessed with respect to requests by educational institutions, noncommercial scientific institutions, and representatives of the news media (as defined in paragraphs (j)(6), (j)(7) and (j)(8) of this section, respectively). Search fees shall be assessed with respect to all other requests, subject to the limitations of paragraph (c) of this section. Components may assess fees for time spent searching even if they fail to locate any responsive record or where records located are subsequently determined to be entirely exempt from disclosure.

(ii) For each quarter hour spent by clerical personnel in searching for and retrieving a requested record, the fee shall be $2.25. Where a search and retrieval cannot be performed entirely by clerical personnel—for example, where the identification of records within the scope of a request requires the use of professional personnel—the fee shall be $4.50 for each quarter hour of search time spent by such professional personnel. Where the time of managerial personnel is required, the fee shall be $7.50 for each quarter hour of time spent by such managerial personnel.

(iii) For computer searches of records, which may be undertaken through the use of existing programming, requesters shall be charged the actual direct costs of conducting the search. This shall include the cost of operating a central processing unit for that portion of operating time that is directly attributable to searching for records responsive to a request, as well as the direct costs of operator/programmer salary apportionable to the search (at no more than $4.50 per quarter hour of time so spent). A component is not required to alter or develop programming to conduct a search.

(2) *Duplication.* Duplication fees shall be assessed with respect to all requesters, subject to the limitations of paragraph (c) of this section. For a paper photocopy of a record (no more than one copy of which need be supplied), the fee shall be $0.10 per page. For copies produced by computer, such as tapes or printouts, components shall charge the actual direct costs, including operator time, of producing the copy. For other methods of duplication, components shall charge the actual direct costs of duplicating a record.

(3) *Review.* (i) Review fees shall be assessed with respect to only those requesters who seek records for a commercial use, as defined in paragraph (j)(5) of this section. For each quarter hour spent by agency personnel in reviewing a requested record for possible disclosure, the fee shall be $4.50, except that where the time of managerial personnel is required, the fee shall be $7.50 for each quarter hour of time spent by such managerial personnel.

(ii) Review fees shall be assessed only for the initial record review, *i.e.*, all of the review undertaken when a component analyzes the applicability of a particular exemption to a particular record or record portion at the initial request level. No charge shall be assessed for review at the administrative appeal level of an exemption already applied. However, records or record portions withheld pursuant to an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs of such a subsequent review are properly assessable, particularly where that review is made necessary by a change of circumstances.

(c) *Limitations on charging fees.* (1) No search or review fee shall be charged for a quarter-hour period unless more than half of that period is required for search or review.

(2) Except for requesters seeking records for commercial use (as defined

in paragraph (j)(5) of this section), components shall provide without charge—

(i) The first 100 pages of duplication (or its cost equivalent), and

(ii) The first two hours of search (or its cost equivalent).

(3) Whenever a total fee calculated under paragraph (b) of this section is $8.00 or less, no fee shall be charged.

(4) The provisions of paragraphs (c)(2) and (c)(3) of this section work together. For requesters other than those seeking records for a commercial use, no fee shall be charged unless the cost of search in excess of two hours plus the cost of duplication in excess of 100 pages exceeds $8.00.

(d) *Waiver or reduction of fees.* (1) Records responsive to a request under 5 U.S.C. 552 shall be furnished without charge or at a charge reduced below that established under paragraph (b) of this section where a component determines, based upon information provided by a requester in support of a fee waiver request or otherwise made known to the component, that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. Requests for a waiver or reduction of fees shall be considered on a case-by-case basis.

(2) In order to determine whether the first fee waiver requirement is met—*i.e.*, that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government—components shall consider the following four factors in sequence:

(i) *The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government."* The subject matter of the requested records, in the context of the request, must specifically concern identifiable operations or activities of the federal government—with a connection that is direct and clear, not remote or attenuated. Furthermore, the records must be sought for their informative value with respect to those government operations or activities; a request for access to records for their intrinsic informational content alone will not satisfy this threshold consideration.

(ii) *The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities.* The disclosable portions of the requested records must be meaningfully informative on specific government operations or activities in order to hold potential for contributing to increased public understanding of those operations and activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be likely to contribute to such understanding, as nothing new would be added to the public record.

(iii) *The contribution to an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding."* The disclosure must contribute to the understanding of the requester or a narrow segment of interested persons. A requester's identity and qualifications—*e.g.*, expertise in the subject area and ability and intention to effectively convey information to the general public—should be considered. It reasonably may be presumed that a representative of the news media (as defined in paragraph (j)(8) of this section) who has access to the means of public dissemination readily will be able to satisfy this consideration. Requests from libraries or other record repositories (or requesters who intend merely to disseminate information to such institutions) shall be analyzed, like those of other requesters, to identify a particular person who represents that he actually will use the requested information in scholarly or other analytic work and then disseminate it to the general public.

(iv) *The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities.* The public's understanding of the subject matter in question, as compared to the level of public understanding existing prior to the disclosure, must be likely to be enhanced by the disclosure to a significant extent. Components shall not make separate value judgments as to whether information, even though it in fact would contribute significantly to public understanding of the operations or activities of the government, is "important" enough to be made public.

(3) In order to determine whether the second fee waiver requirement is met—*i.e.*, that disclosure of the requested information is not primarily in the commercial interest of the requester—components shall consider the following two factors in sequence:

(i) *The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure.* Components shall consider all commercial interests of the requester (with reference to the definition of "commercial use" in paragraph (j)(5) of this section), or any person on whose behalf the requester may be acting, but shall consider only those interests which would be furthered by the requested disclosure. In assessing the magnitude of identified commercial interests, consideration shall be given to the role that such FOIA-disclosed information plays with respect to those commercial interests, as well as to the extent to which FOIA disclosures serve those interests overall. Requesters shall be given a reasonable opportunity in the administrative process to provide information bearing upon this consideration.

(ii) *The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."* A fee waiver or reduction is warranted only where, once the "public interest" standard set out in paragraph (d)(2) of this section is satisfied, that public interest can fairly be regarded as greater in magnitude than of the requester's commercial interest in disclosure. Components shall ordinarily presume that, where a news media requester has satisfied the "public interest" standard, that will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who compile and market government information for direct economic return shall not be presumed to primarily serve the "public interest."

(4) Where only a portion of the requested records satisfies both of the requirements for a waiver or reduction of fees under this paragraph, a waiver or reduction shall be granted only as to that portion.

(e) *Notice of anticipated fees in excess of $25.00.* Where a component determines or estimates that the fees to be assessed under this section may amount to more than $25.00, the component shall notify the requester as soon as practicable of the actual or estimated amount of the fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. (If only a portion of the fee can be estimated readily, the component shall advise the requester that the estimated fee may be only a portion of the total fee.) In cases where a requester has been notified that actual or estimated fees may amount to more than

$25,00, the requests will be deemed not to have been received until the requester has agreed to pay the anticipated total fee. A notice to a requester pusruant to this paragraph shall offer him the opportunity to confer with Department personnel in order to reformulate his request to meet his needs at a lower cost.

(f) *Aggregating requests.* Where a component reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a request into a series of requests for the purpose of evading the assessment of fees, the component may aggregate any such requests and charge accordingly. Components may presume that multiple requests of this type made within a 30-day period have been made in order to evade fees. Where requests are separated by a longer period, components shall aggregate them only where there exists a solid basis for determining that such aggregation is warranted, *e.g.*, where the requests involve clearly related matters. Multiple requests involving unrelated matters shall not be aggregated.

(g) *Advance payments.* (1) Where a component estimates that a total fee to be assessed under this section is likely to exceed $250.00, it may require the requester to make an advance payment of an amount up to the entire estimated fee before beginning to process the request, except where it receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(2) Where a requester has previously failed to pay a records access fee within 30 days of the date of billing, a component may require the requester to pay the full amount owed, plus any applicable interest (as provided for in paragraph (h) of this section), and to make an advance payment of the full amount of any estimated fee before the component begins to process a new request or continues to process a pending request from that requester.

(3) For requests other than those described in paragraphs (g)(1) and (g)(2) of this section, a component shall not require the requester to make an advance payment, *i.e.*, a payment made before work is commenced or continued on a request. Payment owed for work already completed is not an advance payment.

(4) Where a component acts under paragraphs (g)(1) or (g)(2) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA for the processing of an initial request or an appeal, plus permissible extensions of these time limits, shall be deemed not to begin to run until the component has received payment of the assessed fee.

(h) *Charging interest.* Components may assess interest charges on an unpaid bill starting on the 31st day following the day on which the bill was sent to the requester. Once a fee payment has been received by a component, even if not processed, the accrual of interest shall be stayed. Interest charges shall be assessed at the rate prescribed in section 3717 of Title 31 U.S.C. and shall accrue from the date of the billing.

(i) *Other statutes specifically providing for fees.* (1) The fee schedule of this section does not apply with respect to the charging of fees under a statute specifically providing for setting the level of fees for particular types of records—*i.e.*, any statute that specifically requires a government entity such as the Government Printing Office or the National Technical Information Service, to set and collect fees for particular types of records—in order to:

(i) Serve both the general public and private sector organizations by conveniently making available government information;

(ii) Ensure that groups and individuals pay the cost of publications and other services that are for their special use so that these costs are not borne by the general taxpaying public;

(iii) Operate an information-dissemination activity on a self-sustaining basis to the maximum extent possible; or

(iv) Return revenue to the Treasury for defraying, wholly or in part, appropriate funds used to pay the cost of disseminating government information.

(2) Where records responsive to requests are maintained for distribution by agencies operating statutorily based fee schedule programs, components shall inform requesters of the steps necessary to obtain records from those sources.

(j) *Definitions.* For the purpose of this section:

(1) The term "direct costs" means those expenditures which an agency actually incurs in searching for and duplicating (and, in the case of commericial use requesters, reviewing) records to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space and heating or lighting of the facility in which the records are stored.

(2) The term "search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Components shall ensure, however, that searches are undertaken in the most efficient and least expensive manner reasonably possible; thus, for example, components shall not engage in line-by-line search where merely duplicating an entire document would be quicker and less expensive.

(3) The term "duplication" refers to the process of making a copy of a record necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine-readable documentation (*e.g.*, magnetic tape or disk), among others. The copy provided shall be in a form that is reasonably usable by requesters.

(4) The term "review" refers to the process of examining a record located in response to a request in order to determine whether any portion of it is permitted to be withheld. It also includes processing any record for disclosure, *e.g.*, doing all that is necessary to excise it and otherwise prepare it for release, although review costs shall be recoverable even where there ultimately is no disclosure of a record. Review time does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(5) The term "commercial use" in the context of a request refers to a request from or on behalf of one who seeks information for a use or purpose that furthers commercial, trade, or profit interests of the requester or the person on whose behalf the request is made, which can include furthering those interests through litigation. Components shall determine, as well as reasonably possible, the use to which a requester will put the records requested. Where the circumstances of a request suggest that the requester will put the records sought to a commercial use, either becasue of the nature of the request itself or because a component otherwise has reasonable cause to doubt a requester's stated use, the component shall provide the requester a reasonable opportunity to submit further clarification.

(6) The term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly

research. To be eligible for inclusion in this category, a requester must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought in furtherance of scholarly research.

(7) The term "noncommercial scientific institution" refers to an institution that is not operated on a "commercial" basis as that term is referenced in paragraph (j)(5) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. To be eligible for inclusion in this category, a requester must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought in furtherance of scientific research.

(8) The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in these instances where they can qualify as disseminators of "news") who make their product available for purchase or subscription by the general public. For "freelance" journalists to be regarded as working for a news organization, they must demonstrate a solid basis for expecting publication through that organization; a publication contract would be the clearest proof, but components shall also look to the past publication record of a requester in making this determination. To be eligible for inclusion in this category, a requester also must not be seeking the requested records for a commercial use. In this regard, a request for records supporting the news dissemination function of the requester shall not be considered to be for a commercial use.

(k) *Charges for other services and materials.* Apart from the other provisions of this section, where a component elects, as a matter of administrative discretion, to comply with a request for a special service or materials, such as certifying that records are true copies or sending them other than by ordinary mail, the actual direct costs of providing the service or materials shall be charged.

Dated: June 8, 1987.

Edwin Meese III,

Attorney General.

[FR Doc. 87-13571 Filed 6-15-87; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. S-204]

Safety Standards; Excavations; Extension of Comment Period and Hearing Clarification Request Procedures

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Extension of written comment period and clarification of hearing request procedures.

SUMMARY: This notice extends the time in which written comments and requests for a hearing may be submitted concerning the notice of proposed rulemaking which OSHA issued on April 15, 1987 [52 FR 12288] on excavations. This notice also clarifies the procedures for submitting hearing requests.

DATE: Written comments and requests for a hearing must be postmarked by October 14, 1987.

ADDRESS: Comments and requests for a hearing must be submitted, in quadruplicate, to the Docket Office, Docket S-204, Room N-3670, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 523-7894. All materials submitted will be available for public inspection and copying at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, U.S. Department of Labor, OSHA, Room N3647, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 523-8151.

SUPPLEMENTARY INFORMATION: OSHA issued a Notice of Proposed Rulemaking on April 15, 1987 [52 FR 12288] which proposed to revise the safety standards for excavations. Interested parties were given until June 15, 1987 to submit comments pertaining to the proposal. The notice of proposed rulemaking also informed the public of the opportunity to request an informal public rulemaking hearing on the proposal.

OSHA has received requests from interested persons to extend the comment period beyond the June 15 date. The Agency believes that the initial comment period has not allowed sufficient time for interested parties to comment, because of the complexity of the subject matter, the extent of the proposed revisions, and the number of substantive issues raised in the preamble. Therefore, OSHA is extending the comment period until October 14, 1987, to ensure that interested persons have ample opportunity to participate in the rulemaking proceedings.

The notice of proposed rulemaking informed the public of the opportunity to request an informal public hearing on the proposed rules. The time period for filing such requests is also hereby extended to October 14, 1987.

The notice of proposed rulemaking set forth five conditions that objections and hearing requests must satisfy. In view of the complexity of this rulemaking and the wide range of issues addressed by the proposal, it is important that hearing requests clearly indicate the subjects to be addressed at the hearing and the evidence to be presented by the party requesting the hearing. Therefore, OSHA is clarifying and restating the conditions for submitting objections and hearing requests. Interested persons who have submitted hearing requests which do not meet the conditions will be so informed and will be given an opportunity to resubmit them.

Objections and hearing requests should be submitted in quadruplicate to the Docket Office at the above address and must comply with the following conditions:

1. The objections and hearing requests must include the name and address of the individual or organization making the objection or request;

2. The objections and hearing requests must be postmarked by October 14, 1987.

3. The objections and hearing requests must specify with particularity the provisions of the proposed rule to which each objection is taken, or concerning which a hearing request is made, and must state the grounds therefore;

4. Each objection and hearing request must be separately stated and numbered; and

5. The objections and hearing requests must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

Authority

This document was prepared under the direction of John A. Pendergrass,

Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued under section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act), (40 U.S.C. 333), Secretary of Labor's Order No. 9–83 (49 FR 35736), and 29 CFR Part 1911.

Signed at Washington, DC, this 11th day of June, 1987.

John A. Pendergrass,

Assistant Secretary of Labor.

[FR Doc. 87–13704 Filed 6–15–87; 8:45 am]

BILLING CODE 4510–26–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–6912]

Proposed Flood Elevation Determinations

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 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 (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

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 and section 206 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.

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. 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 U.S.C. 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 ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances 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, Flood plains.

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.

The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
ALABAMA	
Dothan (city), Houston and Dale Counties	
Limestone Creek:	
About 1.5 miles downstream of Taylor Road	*223
About 0.87 mile upstream of Moore Road	*284
Beaver Creek Tributary:	
At mouth	*258
About 2,300 feet upstream of Honeysuckle Road	*279
Beaver Creek:	
At confluence with Newton Creek	*212
About 1,700 feet upstream of South Park Avenue	*260
Newton Creek:	
At mouth	*200
At confluence of Beaver Creek	*212
Little Choctawhatchee River:	
About 1,000 feet downstream of confluence of Newton Creek	*199
About 0.72 mile upstream of Brookside Drive	*245
Murphy Mill Branch:	
At mouth	*220
Just downstream of Kelly Springs Road	*247
Just upstream of Kelly Springs Road	*255
About 2,000 feet upstream of U.S. Highway 231	*266
Rocky Branch:	
Just upstream of Rocky Branch Road	*254
About 1,800 feet upstream of Bic Road	*302
Rock Creek:	
At mouth	*227
Just downstream of Seaboard Coast Line Railroad	*281
Just upstream of Seaboard Coast Line Railroad	*289
About 1,200 feet upstream of Murray Road	*312
Rock Creek Tributary:	
At mouth	*243
About 0.65 mile upstream of mouth	*259
Cypress Creek:	
About 0.89 mile downstream of Seaboard Coast Line Railroad (downstream crossing)	*245
Just downstream of Seaboard Coast Line Railroad (upstream crossing)	*273
Just upstream of Seaboard Coast Line Railroad (upstream crossing)	*260
About 1,500 feet upstream of Seaboard Coast Line Railroad (upstream crossing)	*282
Poplar Spring Branch:	
Just upstream of Old Webb Road	*236
Just downstream of Seaboard Coast Line Railroad	*263
Just upstream of Seaboard Coast Line Railroad	*268
Just downstream of Norfolk Southern Railway	*270
Just upstream of Norfolk Southern Railway	*290
Maps available for inspection at the City Hall, P.O. Box 2128, Dothan, Alabama.	
Send comments to The Honorable Kenneth Everett, Mayor, City of Dothan, City Hall, P.O. Box 2128, Dothan, Alabama 36302.	
Eufaula (city), Barbour County	
Chattahoochee River:	
About 2.7 miles downstream of confluence of Cheneyhatchee Creek	*196
About 5.6 miles upstream of confluence of Cowikee Creek	*200
Maps available for inspection at the City Hall, P.O. Box 377, Eufaula, Alabama.	
Send comments to The Honorable Jay J. Jackson, Jr., Mayor, City of Eufaula, City Hall, P.O. Box 377, Eufaula, Alabama 36027.	
CALIFORNIA	
Lemon Grove (city), San Diego County	
Spring Valley Creek:	
Approximately 50 feet upstream of Blossom Lane	*300
At Ildica Street	*308
400 feet upstream of Ildica Street	*309
Maps are available for inspection at City Hall, 3232 Main Street, Lemon Grove, California.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Send comments to Mayor James Dorman, City Hall, 3232 Main Street, Lemon Grove, California 92045.	
Marina (city), Monterey County	
Salinas River:	
Approximately 4,350 feet downstream of Blanco Road	*28
Approximately 310 feet upstream of Blanco Road	*32
Maps are available for inspection at City Hall, 211 Hillcrest, Marina, California.	
Send comments to Mayor George Takahashi, City Hall, 211 Hillcrest, Marina, California 93933.	
FLORIDA	
Caryville (city), Washington County	
Choctawhatchee River:	
Downstream corporate limits	*59
Upstream corporate limits	*62
Maps available for inspection at the City Hall, Caryville, Florida.	
Send comments to The Honorable Joe E. French, Mayor of the City of Caryville, Washington County, City Hall, P.O. Box 206, Caryville, Florida 32427.	
Chattahoochee (city), Gadsden County	
Apalachicola River:	
At the upstream side of the Louisville and Nashville Railroad	*77
Approximately 500 feet downstream of the Jim Woodruff Dam	*79
Mosquito Creek:	
At the confluence with the Apalachicola River	*77
At the downstream side of the Apalachicola Northern Railroad	*80
At the downstream side of U.S. Route 90	*82
Maps available for inspection at the City Hall, Chattahoochee, Florida.	
Send comments to The Honorable Robert D. Hayes, Mayor of the City of Chattahoochee, Gadsden County, City Hall, P.O. Drawer 188, Chattahoochee, Florida 32324.	
Destin (city), Okaloosa County	
Choctawhattchee Bay: About 1,750 feet north of the intersection of Chickasaw Way and Indian Bayou Drive	*3
Gulf of Mexico: About 400 feet south of the intersection of Gulf Shore Drive and Norriego Road	*9
Maps available for inspection at the City Hall, P.O. Box 399, Destin, Florida.	
Send comments to The Honorable Jack Dorman, City Manager, City of Destin, City Hall, P.O. Box 399, Destin, Florida 32514.	
GEORGIA	
Barnesville (city), Lamar County	
Tobesofkee Creek:	
About 2,500 feet downstream of confluence of Tobesofkee Creek Tributary	*764
Just downstream of Redbud Drive	*784
Just upstream of Redbud Drive	*790
Just downstream of College Drive	*809
Just upstream of College Drive	*816
Tobesofkee Creek Tributary:	
At mouth	*777
Just downstream of Gordon Road	*783
Just upstream of Gordon Road	*788
Just upstream of Honeysuckle Lane	*793
About 1,125 feet upstream of Honeysuckle Lane	*794
Maps available for inspection at the City Hall, 109 Forsyth Street, Barnesville, Georgia.	
Send comments to The Honorable James R. Matthews, Mayor, City of Barnesville, 109 Forsyth Street, Barnesville, Georgia 30204.	
Clarkesville (city), Habersham County	
Soque River:	
About 1,200 feet downstream of Monroe Street	*1,300
About 0.77 mile upstream of Bridge Street	*1,310
Soque River Tributary:	
At mouth	*1,307
Jupt upstream of Grant Street	*1,310
Maps available for inspection at City Hall, P.O. Box 21, Clarkesville, Georgia.	
Send comments to The Honorable Charles Turner, Mayor, City of Clarkesville, P.O. Box 21, Clarkesville, Georgia 30523.	
Gordon (city), Wilkinson County	
Little Commissioner Creek:	
Just upstream of State Route 18	*332
About 2,660 feet upstream of Pipe Bridge	*333
Little Commissioner Creek Tributary:	
Just downstream of Norfolk-Southern Railway	*332
Just downstream of Englehaard Dam	*358
Just upstream of Englehaard Dam	*372
About 3,660 feet upstream of Englehaard Dam	*383
Maps available for inspection at the City Hall, P.O. Box 387, Gordon, Georgia.	
Send comments to The Honorable Cyler D. Garner, Mayor, City of Gordon, P.O. Box 387, Gordon, Georgia 31037.	
Jesup (city), Wayne County	
Mosely Bay:	
About 1.0 mile downstream of downstream crossing of Sunset Boulevard	*81
Just downstream of upstream crossing of Sunset Boulevard	*103
Millikin Bay:	
At mouth	*62
About 2,800 feet upstream of Sunset Boulevard	*100
Millikin Bay Tributary:	
At mouth	*85
Just upstream of 1st Street	*96
Walker Creek:	
About 1,900 feet downstream of Sunset Boulevard	*69
Just downstream of Seaboard Coast Line Railroad	*77
Just upstream of Seaboard Coast Line Railroad	*87
About 1.7 miles upstream of Seaboard Coast Line Railroad	*97
Little McMillen Creek:	
About 1.0 mile downstream of Grantham Road	*46
Just upstream of 1st Street	*62
Maps available for inspection at the City Hall, P.O. Box 427, Jesup, Georgia.	
Send comments to The Honorable Jerry D. McDaniel, Mayor, City of Jesup, City Hall, P.O. Box 427, Jesup, Georgia 31545.	
Rockmart (city), Polk County	
Euharlee Creek:	
About 0.8 mile downstream of Nathan Dean Bypass	*733
About 1.4 miles upstream of Beauregard Street	*761
Thompson Creek: Within community	*752
Elm Street Slough:	
At mouth	*748
About 500 feet upstream of Piedmont Avenue	*765
Tributary A:	
Just downstream of Brock Road	*748
Just upstream of State Route 113	*779
White River Cave Creek:	
Just downstream of Brock Road	*748
About 600 feet upstream of Brock Road	*751
Maps available for inspection at the Building Inspector's Office, City Hall, P.O. Box 231, Rockmart, Georgia.	
Send comments to The Honorable Steven B. Smith, Mayor, City of Rockrnart, City Hall, P.O. Box 231, Rockmart, Georgia 30153.	
Swainsboro (city), Emanuel County	
Crooked Creek:	
Just downstream of Old Nunez Road	*201
Just downstream of Empire Expressway	*219
Just upstream of Empire Expressway	*225
Just downstream of Meadowlake Parkway	*244
Just upstream of Meadowlake Parkway	*250
Just downstream of Mabel Avenue	*264
Just upstream of Mabel Avenue	*271
Just downstream of Covena Road	*284
Tributary No. 1:	
At mouth	*251
Just downstream of Lakewood Drive	*256
Just upstream of Lakewood Drive	*268
Tributary No. 2:	
At mouth	*271
About 300 feet upstream of Herrington Street	*288
Hughes Prong Canoochee Creek:	
About 2,100 feet downstream of East Main Street	*234
About 2,600 feet upstream of East Main Street	*242
Hughes Prong Canoochee Creek Tributary:	
Just upstream of East Main Street	*247
Just downstream of State Route 56	*266
Yam Grandy Creek Tributary:	
Just upstream of Holloways Pond Dam	*251
About 1,400 feet upstream of Ponderosa Drive	*290
Maps available for inspection at the City Hall, 101 Main Street, Swainsboro, Georgia.	
Send comments to The Honorable James W. Buckley, Mayor, City of Swainsboro, City Hall, 101 Main Street, Swainsboro, Georgia 30401.	
Vidalia (city), Toombs County	
Rocky Creek:	
About 3,300 feet downstream of the Norfolk Southern Railway	*193
Just downstream of the Norfolk Southern Railway	*196
Just upstream of the Norfolk Southern Railway	*207
About 1.5 miles upstream of the Norfolk Southern Railway	*215
Rocky Creek Tributary No. 1:	
About 2,000 feet downstream of North Maple Drive	*208
Just upstream of Meadows Lane	*248
Rocky Creek Tributary No. 1A:	
At mouth	*213
About 1,200 feet upstream of McClenden Road	*220
Rocky Creek Tributary No. 2:	
About 4,600 feet downstream of Estroff Drive	*207
Just downstream of dam	*242
About 1,700 feet upstream of dam	*253
Rocky Creek Tributary No. 3:	
At mouth	*207
Just upstream of Seaboard Coast Line Railroad	*264
Rocky Creek Tributary No. 3A:	
At mouth	*228
Just downstream of Seventh Street	*235
Just upstream of Seventh Street	*240
Rocky Creek Tributary No. 4:	
At mouth	*207
Just downstream of Dam No. 1	*234
About 1,300 feet upstream of Dam No. 1	*244
Little Rocky Creek Tributary:	
About 3,700 feet downstream of breached dam	*226
Just downstream of breached dam	*245
Swift Creek:	
About 1.0 mile downstream of Old Swainsboro Road	*178
About 3,000 feet upstream of Cadillac Drive	*189
Swift Creek Tributary No. 1:	
About 1,500 feet downstream of North Loop Road	*192
Just downstream of dam	*216
Just upstream of dam	*225
About 50 feet upstream of Georgia Street	*266
Swift Creek Tributary No. 1A:	
At mouth	*202
Just downstream of North Street	*243
Just upstream of North Street	*248
About 600 feet upstream of North Street	*249
Swift Creek Tributary No. 2:	
About 300 feet upstream of Thompson Pond Road	*198

Source of flooding and location	#Depth in feet above ground. ²Elevation in feet (NGVD)
About 1,750 feet upstream of Thompson Pond Road	*204
Maps available for inspection at the City Hall, P.O. Box 280, Vidalia, Georgia.	
Send comments to The Honorable W. S. Snell, Mayor, City of Vidalia, City Hall, P.O. Box 280, Vidalia, Georgia 30474.	
Winder (city), Barrow County	
Cedar Creek:	
About 1.1 miles downstream of confluence of Tributary No. 1	*776
Just downstream of Winder Dam	*836
Tributary No. 1:	
At mouth	*821
Just downstream of Sims Road	*840
Just upstream of Sims Road	*848
Tributary No. 2:	
At mouth	*827
Just downstream of Langford Street	*888
Maps available for inspection at City Hall, P.O. Box 566, Winder, Georgia.	
Send comments to The Honorable William C. Landress, Mayor, City of Winder, P.O. Box 566, Winder, Georgia 30680.	
IDAHO	
Boise County	
Payette River:	
Approximately 3,450 feet downstream of Boise Street	*2,589
Just upstream of Main Street near the City of Horseshoe Bend	*2,598
Approximately 200 feet upstream of State Route 55	*2,634
Approximately 370 feet upstream of the confluence with Porter Creek	*2,645
Approximately 1,300 feet upstream of the confluence with Brownlee Creek	*2,668
Shafer Creek:	
Approximately 490 feet upstream of the confluence with Payette River	*2,600
Approximately 1,200 feet upstream of Old Emmett Highway	*2,611
South Fork Payette River:	
Approximately 285 feet upstream of the confluence with Middle Fork Payette River	*3,012
Approximately 1.1 miles upstream of Alder Creek Road	*3,052
Approximately 570 feet upstream of Alder Creek Road	*3,073
Approximately 3,450 feet downstream of State Highway 21	*3,762
Just downstream of State Highway 21	*3,779
Approximately 2,600 feet upstream of State Highway 21	*3,793
Elk Creek:	
Approximately 260 feet upstream of Mores Creek	*3,820
At the confluence with Charcoal Gulch	*3,866
Just upstream of Wall Street	*3,904
Approximately 180 feet downstream of the confluence with Spanish Fork Creek	*3,959
Maps are available for inspection at the Boise County Courthouse, 340 Main Street, Idaho City, Idaho.	
Send comments to Mr. David K. Alley, Chairman, Boise County Board of Commissioners, County Courthouse, 340 Main Street, Idaho City, Idaho 83631.	
Crouch (city), Boise County	
Middle Fork Payette River:	
Approximately 3,260 feet upstream of the confluence with the South Fork Payette River	*3,013
Approximately 1,260 feet downstream of State Highway 17	*3,014
Approximately 2,950 feet upstream of the confluence with Anderson Creek	*3,020
Maps are available for inspection at City Hall, Crouch, Idaho.	
Send comments to The Honorable Robert T. Webb, Mayor, City of Crouch, Box 2189, Garden City, Idaho 83622.	
Custer County	
Salmon River:	
Due east of the Challis Creek Bridge on U.S. Highway 93	*4,837
Due east of the intersection of Jobs Lane and U.S. Highway 93	*4,854
Due east of the intersection of U.S. Highway 93 and Sportsman's Access Road	*4,880
At confluence with Hannah Slough	*4,892
At confluence with Warm Spring Creek	*4,940
Approximately 2,100 feet upstream of U.S. Highway 93	*5,000
Hannah Slough:	
At confluence with Salmon River	*4,892
Approximately 400 feet downstream of confluence with Garden Creek	*4,922
Maps are available for inspection at the Custer County Courthouse, Main Street, Challis, Idaho.	
Send comments to Mr. Ivan Taylor, Chairman, Custer County Board of Commissioners, County Courthouse, Main Street, Challis, Idaho 83251.	
Idaho City (city), Boise County	
Elk Creek:	
Just upstream of Wall Street	*3904
Approximately 750 feet upstream of the confluence with Slaughterhouse Gulch	*3,921
Elk Creek Split Flow:	
Approximately 750 feet downstream of Wallula Street	*3,885
Approximately 100 feet upstream of Wall Street	*3,896
Just downstream of Placer Street	*3,916
Maps are available for inspection at City Hall, 611 Main Street, Idaho City, Idaho.	
Send comments to Mayor Raymond Robinson, P.O. Box 130, Idaho City, Idaho 83631.	
Jefferson County	
Snake River (near Roberts):	
At County Road (at Jefferson/Bonneville County border)	*4,758
Approximately 2,000 feet above County Road Bridge	*4,759
Approximately 6,000 feet above County Road Bridge	*4,761
Approximately 3,700 feet above County Road Bridge	*4,764
Snake River (near Heise):	
At Heise Bridge	*4,991
Approximately 5,000 feet above Heise Bridge	*4,999
At Dry Bed Headgate	*5,004
Approximately 7,500 feet above Dry Bed Headgate	*5,017
Dry Bed (at Heise):	
At Poplar Road	*4,967
Approximately 2,000 feet above Poplar Loop Bridge	*4,990
Approximately 5,000 feet above Poplar Loop Bridge	*4,996
At Dry Bed Headgate	*5,000
Dry Bed (near Rigby):	
At US Highway 20	*4,856
At UPRR Bridge	*4,860
At County Road 300 East	*4,879
Diversion Canal approximately 4,500 feet above County Road 300 East	*4,887
At State Highway 48	*4,921
Maps are available for review at the Jefferson County Planning and Zoning Commission, County Courthouse, Rigby, Idaho.	
Send comments to Mr. Bob Hurley, Chairman, Jefferson County Commission, County Courthouse, Rigby, Idaho 83442.	
Teton County	
Teton River:	
At confluence with Fox Creek	*5,998
At White Bridge (6,600 feet above Fox Creek)	*6,002
At confluence of Trail Creek	*6,005
Trail Creek:	
At County Road Bridge (South of Victor)	*6,227
At upstream side of State Highway 33	*6,301
At confluence of Game Creek	*6,393
At upstream side of State Highway 33	*6,464
700 feet above State Highway 33	*6,470
Teton Creek:	
At State Highway 33 (South of Driggs)	*6,077
Upstream of Cemetary Road (east of Driggs)	*6,161
At Idaho/Wyoming state boundary	*6,369
Badger Creek:	
Approximately 2,560 feet downstream of Badger Creek Road	*6,164
At upstream side of Badger Creek Road Bridge	*6,186
At upstream side of Rammel Mountain Road	*6,255
At County Road	*6,283
175 feet downstream of Badger Creek Road Bridge	*6,352
Maps are available for review at the Teton County Courthouse, 89 Main Street, Driggs, Idaho.	
Send comments to Mr. Arnold Kunz, Chairman, Teton County Board of Commissioners, County Courthouse, P.O. Box 70, Driggs, Idaho 83422.	
ILLINOIS	
South Wilmington (village), Grundy County	
East Fork Mazon River:	
About 300 feet downstream of Rice Road	*581
About 900 feet upstream of Rice Road	*583
Maps available for inspection at the Village Hall, Lake Street, South Wilmington, Illinois.	
Send comments to The Honorable Henry Smolik, Village President, Village of South Wilmington, Village Hall, Lake Street, South Wilmington, Illinois 60474.	
Wamac (city), Clinton, Marion, and Washington Counties	
Fulton Branch:	
Just upstream of Irvington Road	*476
Just downstream of Illinois Central Gulf Railroad	*484
Just upstream of Illinois Central Gulf Railroad	*488
About 650 feet upstream of Burlington Northern Railroad	*493
Fulton Branch Tributary:	
At confluence with Fulton Branch	*477
Just upstream of Jefferson Avenue	*478
About 650 feet upstream of Jefferson Avenue	*496
Just downstream of Wabash Street	*499
Webster Creek:	
Just upstream of Irvington Road	*476
Just upstream of east bridge of Illinois Central Gulf Railroad	*482
Maps available for inspection at the City Hall, 361 East 17th,Wamac, Illinois.	
Send comments to The Honorable Larry Greene, Mayor, City of Wamac, City Hall, 361 East 17th, Wamac, Illinois 62801.	
KANSAS	
Carbondale (city), Osage County	
Burys Creek:	
About 2,850 feet downstream of Main Street	*1,065
Just downstream of U.S. Highway 75	*1,097
Maps available for inspection at the City Hall, Box 70, Carbondale, Kansas 66414.	
Send comments to The Honorable Melvin M. Edmonds, Mayor, City of Carbondale, City Hall, Box 70, Carbondale, Kansas 66414.	
Geary County (unincorporated areas)	
Smoky Hill River Overflow:	
Just upstream of East 6th Street	*1,074
At diversion from Smoky Hill River	*1,083
Kansas River:	
About 0.85 mile downstream of Henry Drive	*1,066
At mouth of Smoky Hill River	*1,070
Smoky Hill River:	
At mouth	*1,070
About 1.0 mile upstream of U.S. Highway 77	*1,090
Republican River:	
At confluence with Smoky Hill River	*1,070
About 3.0 miles upstream of Washington Street	*1,077
Milford Lake: At shoreline	*1,161

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Geary County Lake: At shoreline	*1,206
Lyon Creek:	
At confluence with Smoky Hill River	*1,087
At confluence of Carry Creek	*1,148
Maps available for inspection at the County Courthouse Annex, Junction City, Kansas.	
Send comments to The Honorable Bobby L. Whitten, Chairman, Board of County Commissioners, Geary County, County Courthouse, Junction City, Kansas 66441.	
Pottawatomie County	
Kansas River:	
At downstream County boundary	*931
Approximately 800 feet downstream of confluence of Lost Creek	*952
Approximately 1,200 feet downstream of confluence of Sand Creek	*991
At upstream County boundary	*1,012
Big Blue River:	
At confluence with Kansas River	*1,009
Approximately 80 feet downstream of Rocky Ford Dam	*1,019
At upstream County boundary	*1,028
Cedar Creek	
At confluence with Big Blue River	*1,017
Approximately 1.75 miles upstream of confluence with Big Blue River	*1,038
Approximately 1.0 mile downstream of State Route 13 Bridge	*1,060
Approximately 300 feet downstream of State Route 13 Bridge	*1,091
Willard Creek:	
At downstream County boundary	*943
Approximately 60 feet downstream of Durink Street Bridge	*963
Approximately 830 feet upstream of Durink Street Bridge	*973
East Unnamed Creek:	
At confluence with Kansas River	*976
Approximately 30 feet upstream of U.S. Routes 24 and 40	*998
Approximately 260 feet downstream of Lilac Lane	*1,006
Approximately 0.7 mile upstream of State Route 99	*1,018
Rock Creek:	
Approximately 4,200 feet downstream of State Route 99	*1,003
Upstream side of County Road 541	*1,049
Approximately 3.6 miles upstream of County Road 541	*1,079
At State Route 99	*1,141
Approximately 1.6 miles downstream of County Road 1464	*1,190
Downstream side of County Road 1464	*1,221
Approximately 0.7 mile upstream of County Road 1464	*1,233
Maps available for inspection at the County Courthouse, Westmoreland, Kansas.	
Send comments to The Honorable Leroy Miller, Chairman of the Pottawatomie County Board of Commissioners, County Courthouse, P.O. Box 187, Westmoreland, Kansas 66549.	
LOUISIANA	
Basile (town), Evangeline Parish	
Basile Coulee:	
At downstream corporate limits	*37
Approximately 60 feet upstream of West Railroad Street	*41
At upstream corporate limits	*45
Tributary No. 1:	
At downstream corporate limits	*35
At upstream corporate limits	*35
Tributary No. 2:	
At confluence with Tributary No. 1	*35
Approximately 800 feet upstream of confluence with Tributary No. 1	*43
Bayou Barwick Tributary:	
At downstream corporate limits	*44
Approximately 28 feet upstream of East Stagg Avenue	*44
Maps available for inspection at the Town Hall, Basile, Louisiana.	
Send comments to The Honorable Clarence Vidrine, Mayor of the Town of Basile, Evangeline Parish, P.O. Box 308, Basile, Louisiana 70515.	
Breaux Bridge (town), St. Martin Parish	
Bayou Teche:	
Downstream side of Southern Pacific Railroad	*21
Upstream corporate limits	*21
Downstream side of Interstate 10	*21
Maps available for inspection at the City Hall, 101 Bernard Street, Breaux Bridge, Louisiana.	
Send comments to The Honorable Lewis Karns, Mayor of the Town of Breaux Bridge, St. Martin Parish, City Hall, 101 Bernard Street, Breaux Bridge, Louisiana 70517.	
Iowa (town), Calcasieu Parish	
Lateral 14:	
Downstream corporate limits	*16
Approximately 100 feet upstream of upstream corporate limits	*24
Lateral 14-4:	
At confluence with Lateral 14	*20
Upstream corporate limits	*21
Lateral 14B:	
Approximately 105 feet downstream of downstream corporate limits	*16
Upstream side of State Route 383 (South Thompson Avenue)	*21
Lateral 14B-2:	
At confluence with Lateral 14B	*16
Approximately 0.59 mile upstream of U.S. Route 90 (West Fourth Street)	*20
Lateral 14-3:	
At confluence with Lateral 14-4	*20
Upstream side of East Miller Street	*22
Lateral 14-1:	
At confluence with Lateral 14	*18
Approximately 900 feet upstream of confluence with Lateral 14	*19
Lateral 14-2:	
At confluence with Lateral 14	*18
Approximately 70 feet upstream of West Miller Street	*20
Maps available for inspection at the Town Hall, Thomas Highway, Iowa, Louisiana.	
Send comments to The Honorable Lawrence Toups, Jr., Mayor of the Town of Iowa, Calcasieu Parish, P.O. Box 505, Iowa, Louisiana 70647.	
Krotz Springs (town), Landry Parish	
Latania Bayou:	
At downstream corporate limits	*17
Approximately 115 feet upstream of Ninth Street	*23
Approximately 1,060 feet upstream of Eighth Street	*26
Atchafalaya River: Entire length affecting community	*39
West Atchafalaya Floodway: Entire length affecting community	*29
Maps available for inspection at the Town Hall, Krotz Springs, Louisiana.	
Send comments to The Honorable Robert Moran, Mayor of the Town of Krotz Springs, St. Landry Parish, P.O. Box 218, Krotz Springs, Louisiana 70570.	
Madison Parish (unincorporated areas)	
Brushy Bayou:	
At confluence with Lower Roundaway Bayou	*76
At Illinois Central Gulf Railroad	*81
Approximately 0.59 mile upstream of confluence of Grassy Lake Canal	*83
Cypress Bayou:	
Approximately 2.11 miles downstream of Interstate Route 20 westbound	*80
At Illinois Central Gulf Railroad	*83
At downstream side of downstream crossing of Parish Route B4	*85
Approximately 0.41 mile upstream of upstream Parish Route B4	*87
Ditch L-7CC1:	
At confluence with Lower Roundaway Bayou	*76
Approximately 185 feet upstream of Cleveland Street	*82
Grassy Lake Canal:	
At confluence with Brushy Bayou	*82
At Illinois Central Gulf Railroad	*83
Lower Roundaway Bayou:	
At confluence with Panola Bayou	*75
Upstream of U.S. Route 65	*76
Mississippi River:	
At downstream parish boundary	*96
At upstream parish boundary	*111
Mothiglam Bayou:	
At Chicago Mill Road	*75
At Illinois Central Gulf Railroad	*76
Panola Bayou:	
At confluence with Mothiglam Bayou	*75
At U.S. Route 80	*77
At Bailey Street	*81
Approximately 0.21 mile upstream of State Route 3030	*85
Southeast Tributary to Talla Bena Bayou:	
At confluence with Talla Bena Bayou	*85
Approximately 1.90 miles upstream of confluence with Talla Bena Bayou	*86
Talla Bena Bayou:	
At confluence with Willow Bayou	*80
Approximately 1.33 miles upstream of Port Road	*87
Western Branch of Talla Bena Bayou:	
At confluence with Willow Bayou	*80
Approximately 0.62 miles upstream of confluence with Willow Bayou	*81
Maps available for inspection at the Courthouse, Chestnut Street, Tallulah, Louisiana.	
Send comments to The Honorable Thomas J. Williams, President of the Madison Parish Police Jury, Courthouse Building, Tallulah, Louisiana 71282.	
MAINE	
Benton (town), Kennebec County	
Kennebec River:	
Approximately 1.1 miles downstream of State Routes 11, 100, 139 Bridge	*92
Upstream side of Maine Central Railroad	*97
Upstream side of Interstate Route 95	*102
Downstream side of Shawnut Dam	*108
Upstream side of Shawnut Dam	*120
Sebasticook River:	
Approximately 1.3 miles downstream of State Route 139 Bridge	*59
Downstream side of State Route 139 Bridge	*78
Approximately 0.44 mile upstream of State Route 139 Bridge	*84
At confluence of Fowler Brook	*97
Approximately 1.8 miles upstream of confluence of Fowler Brook	*109
Maps available for inspection at the Town Clerk's Safe, Benton, Maine.	
Send comments to The Honorable Allan Cynway, First Selectman of the Town of Benton, Kennebec County, Town Hall, Route 1, Benton, Maine 04910.	
Cherryfield (town), Washington County	
Narraguagus River:	
Approximately 450 feet upstream of downstream corporate limits	*11
State Route 186	*31
Maine Central Railroad	*55
Approximately 1.1 miles upstream of Maine Central Railroad	*67
Maps available for inspection at the Town Clerk's Vault, Cherryfield, Maine.	
Send comments to The Honorable William G. McAninch, Manager of the Town of Cherryfield, Washington County, Town Hall, Cherryfield, Maine 04622.	
Fairfield (town), Somerset	
Kennebec River:	
At downstream County boundary	*92

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Upstream side of Interstate Route 95 (northbound)	*102
Approximately 100 feet upstream of Shamut Dam	*120
Approximately .8 mile upstream of Shamut Dam	*121
At State Route 23	*125
At upstream corporate limits	*126
Martin Stream:	
At U.S. Route 201 (State Route 23)	*124
Downstream side of State Route 104 (Middle Road)	*146
At the confluence of Alder Brook	*193
Approximately 1 mile downstream of Maine Central Railroad	*212
Upstream side of Maine Central Railroad	*216
Approximately 1 mile upstream of Martin Stream Road	*223

Maps available for inspection at the Code Enforcement Office, Fairfield, Maine.

Send comments to The Honorable Harold C. Robins, Chairman of the Town of Fairfield Council, Somerset County, Town Offices, P.O. Box 149, Fairfield, Maine 04937.

Waterville (city), Kennebec County

Kennebec River:	
Approximately 0.59 mile downstream of confluence of Trafton Road Brook	*55
Downstream of Lockwood Dam	*62
Upstream of Lockwood Dam	*66
Approximately 0.34 mile downstream of Scott Paper Company Dam	*71
Downstream side of Scott Paper Company Dam	*79
Upstream side of Scott Paper Company Dam	*88
Approximately 0.45 mile upstream of confluence of Holland Brook	*92
Messalonskee Stream:	
At confluence with Kennebec River	*57
Upstream side of Union Gas Project Dam	*76
Upstream of State Routes 11 and 137 Bridge	*77
Downstream side of Automatic Project Dam	*83
Upstream side of Automatic Project Dam	*100
Upstream side of North Street Bridge	*105
Approximately 0.6 mile upstream of confluence of Fish Brook	*106

Maps available for inspection at the City Engineer's Office, Waterville, Maine.

Send comments to The Honorable Thomas Nale, Mayor of the City of Waterville, Kennebec County, 1 Common Street, Waterville, Maine 04901.

MISSOURI

Gasconade County (unincorporated areas)

Missouri River:	
About 0.78 mile downstream of eastern County Boundary	*513
At western County Boundary	*528

Maps available for inspection at the Emergency Operations Center, County Courthouse, (Basement floor), P.O. Box 295, Hermann, Missouri.

Send comments to The Honorable Wilford Kallmeyer, Presiding Commissioner, Gasconade County, County Courthouse, P.O. Box 295, Hermann, Missouri 65041.

Pattonsburg (town), Daviess County

Big Creek:	
About 3,400 feet downstream of Norfolk Southern Railway	*779
About 1,000 feet upstream of U.S. Highway 69	*783
Grand River:	
Just upstream of U.S. Highway 69	*779
About 550 feet upstream of County Road	*782

Maps available for inspection at the City Office, Second and Z Highway, Pattonsburg, Missouri.

Send comments to The Honorable Wanda Waggoner, Mayor, Town of Pattonsburg, P.O. Box 206, Pattonsburg, Missouri 64670.

Vandalia (city), Audrain County

Tributary A:	
Just downstream of State Highway F	*740
Just downstream of U.S. Highway 54	*743
Just upstream of U.S. Highway 54	*748
Just downstream of Illinois Central Gulf Railroad	*748
Just upstream of Illinois Central Gulf Railroad	*757
About 1,300 feet upstream of Illinois Central Gulf Railroad	*757
Tributary B:	
Just downstream of Galloway Road	*743
Just downstream of Illinois Central Gulf Railroad	*754
Just upstream of Illinois Central Gulf Railroad	*762
About 1,800 feet upstream of Illinois Central Gulf Railroad	*762

Maps available for inspection at the City Hall, 200 East Park Street, Vandalia, Missouri.

Send comments to The Honorable Eleanore Schewe, Mayor, City of Vandalia, City Hall, 200 East Park Street, Vandalia, Missouri 63382.

MONTANA

Hill County

Milk River:	
Approximately 2.1 miles upstream of Little Boxelder Creek along U.S. Highway 2	*2,464
Approximately 3.0 miles downstream of FAS Highway 232 along U.S. Highway 2	*2,469
Approximately 1.6 miles downstream of FAS Highway 232 along U.S. Highway 2	*2,474
Approximately 200 feet upstream of FAS Highway 232	*2,481
Approximately 4,000 feet downstream of Beaver Creek	*2,488
Big Sandy Creek:	
Approximately 100 feet downstream of U.S. Highway 2	*2,503
Approximately 1,100 feet downstream of Duncan Coulee Creek	*2,509
Approximately 2,000 feet upstream of Duncan Coulee Creek	*2,514
Beaver Creek:	
Approximately 200 feet upstream of U.S. Highway 2	*2,530
Approximately 100 feet upstream of Burlington Northern Railroad (BNRR) crossing, located approximately 1.4 miles south of U.S. Highway 2 along the BNRR	*2,556
Approximately 100 feet downstream of BNRR crossing approximately 4,300 feet downstream of U.S. Highway 87 crossing	*2,583
Approximately 2,500 feet upstream of U.S. Highway 87	*2,618

Maps are available for inspection at the County Health and Planning Office, 300 Fourth Street, Havre, Montana.

Send comments to Mr. Arthur Rambo, Chairman, Hill County Board of Commissioners, County Courthouse, 315 Fourth Street, Havre, Montana 59501.

Wibaux County

Beaver Creek:	
Approximately 2.4 miles downstream of Interstate Highway 94	*2,603
Approximately 200 feet downstream of Interstate Highway 94	*2,644
Approximately 200 feet upstream of Interstate Highway 94	*2,650
Approximately 4,600 feet upstream of State Highway 7 (approximately 100 feet downstream of southernmost corporate limits of the Town of Wibaux)	*2,657
Approximately 400 feet downstream of State Highway 7 (approximately 4,000 feet from southernmost corporate limits of the Town of Wibaux along State Highway 7)	*2,669

Maps are available for inspection at the Office of the County Clerk and Recorder, Wibaux County Courthouse, 200 S. Wibaux Street, Wibaux, Montana.

Send comments to Mr. Dey Schiapia, Chairman, Wibaux County Commissioners, P.O. Box 207, Wibaux, Montana 59353.

Wibaux (town), Wibaux County

Beaver Creek:	
Approximately 1,500 feet downstream of Interstate Highway 94	*2,640
Approximately 200 feet downstream of Interstate Highway 94	*2,644
Approximately 200 feet upstream of Interstate Highway 94	*2,650
Approximately 150 feet downstream of State Highway 7	*2,652
Approximately 4,600 feet upstream of State Highway 7 (approximately 100 feet downstream of southernmost corporate limits)	*2,657

Maps are available for inspection at the Town Clerk's Office, 112 S. Wibaux Street, Wibaux, Montana.

Send comments to Mayor Michael Nicosia, Box 219, 112 S. Wibaux Street, Wibaux, Montana 59353.

NEBRASKA

Unincorporated Areas of Saline County

Big Blue River:	
About 0.6 mile downstream of County Road (at upstream extraterritorial limits of DeWitt)	*1,294
Just upstream of State Highway 41	*1,317
At northern county boundary	*1,372

Maps available for inspection at the County Courthouse, Wilbur, Nebraska.

Send comments to The Honorable Charles Rule, Chairman, County Commission, Saline County, County Courthouse, Wilbur, Nebraska 68465.

NEW HAMPSHIRE

Meredith (town), Belknap County

Lake Winnipesaukee: Entire shoreline within community	*506
Winnisquam Lake: Entire shoreline within community	*486
Lake Waukewan: Entire shoreline within community	*544
Meredith Bay: Entire shoreline within community	*506

Maps available for inspection at the Town Clerk's Vault, Meredith, New Hampshire.

Send comments to The Honorable Eric Meserve, Manager of the Town of Meredith, Belknap County, Main Street, R.R. 4, Box 15, Meredith, New Hampshire 03253.

NORTH CAROLINA

Banner Elk (town), Avery County

Elk River:	
Just upstream of Mill Pond Dam	*3,643
About 250 feet upstream of State Road 1341	*3,896
Whitehead Creek:	
Just upstream of State Road 194	*3,436
About 1,650 feet upstream of Old Turnpike Road	*3,524
Shawneehaw Creek:	
About 3,120 feet downstream of Dogwood Road	*3,668
About 1,100 feet upstream of Balsam Road	*3,747
Hanging Rock Creek:	
At mouth	*3,656
About upstream of State Road 1337	*3,712
Horse Bottom Creek:	
At mouth	*3,686
About 0.36 mile above mouth	*3,713
Sugar Creek:	
At mouth	*3,680
About 0.48 mile upstream of mouth	*3,724

Maps available for inspection at the Town Hall, P.O. Box 156, Banner Elk, North Carolina.

Send comments to The Honorable David L. Tate, Mayor, Town of Banner Elk, Town Hall, P.O. Box 156, Banner Elk, North Carolina 28604.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Calabash (town), Brunswick County	
Calabash River:	
At the intersection of Oak Street and River View Drive	*13
Maps available for inspection at the Town Hall, Route 7, Box 226, Shalotte, North Carolina.	
Send comments to The Honorable Ray Douglas Simmons, Mayor, Town of Calabash, Route 7, Box 226, Shalotte, North Carolina 28459.	
Louisburg (town), Franklin County	
Tar River:	
About 900 feet downstream of confluence of Sycamore Creek	*196
About 1.2 miles upstream of North Main Street	*207
Maps available for inspection at the Town Hall, 110 West Nash Street, Louisburg, North Carolina.	
Send comments to The Honorable Lucy T. Allen, Mayor, Town of Louisburg, Town Hall, 110 West Nash Street, Louisburg, North Carolina 27549.	
Southern Pines (town), Moore County	
McDeeds Creek:	
About 1845 feet downstream of Old Connecticut Avenue	*369
About 625 feet upstream of Old Connecticut Avenue	*393
Maps available for inspection at the Town Hall, P.O. Box 870, Southern Pines, North Carolina.	
Send comments to The Honorable William Coleman, Town Manager, Town of Southern Pines, Town Hall, P.O. Box 870, Southern Pines, North Carolina 28387.	
NORTH DAKOTA	
Tioga (city), Williams County	
Main Tributary:	
Approximately 475 feet upstream of the Burlington Northern Railroad	*2,197
Approximately 1,400 feet downstream of North Dakota State Highway 40	*2,226
Just downstream of Main Street	*2,242
Just upstream of County Road at western corporate limits	*2,257
Approximately 300 feet downstream of Tioga Dam	*2,272
South Main Tributary:	
Approximately 370 feet upstream of confluence with Main Tributary	*2,230
Just downstream of Main Street	*2,240
Approximately 1,880 feet upstream of the county road paralleling the western corporate limits	*2,268
North Burlington Northern Railroad Ditch:	
At convergence with Main Tributary	*2,263
Approximately 170 feet downstream of divergence with Main Tributary	*2,270
North Tributary:	
At confluence with Main Tributary	*2,236
Just upstream of 3rd Street	*2,237
Just upstream of Signal Street	*2,248
North Channel:	
At confluence with Main Tributary	*2,236
Just upstream of 4th Street	*2,237
Just downstream of Signal Street	*2,241
Maps are available for inspection at the City Auditor's Office, City Hall, 12 N.E. First Street, Tioga, North Dakota.	
Send comments to Mayor Larry Rosencrans, City Hall, P.O. Box 218, Tioga, North Dakota 58852.	
OHIO	
Belmont County	
Ohio River:	
At river mile 108.5	*647
At river mile 90.7	*659
Wheeling Creek:	
At downstream County boundary	*659
Approximately 100 feet upstream of Township Route 326	*716
Approximately 150 feet upstream of Barton-Blaine Road (3rd upstream crossing)	*779
Approximately 0.63 mile upstream of St. Clairesville-Barton Road	*804
McMahon Creek:	
Approximately 350 feet at downstream County boundary	*656
Upstream side of Fowke Road	*693
Approximately 100 feet upstream of Neffs Sandhill Road	*730
Wegee Creek:	
At confluence with Ohio River	*654
Approximately 1,900 feet upstream of Wegee Road (1st upstream crossing)	*690
Approximately 200 feet upstream of Wegee Road (4th upstream crossing)	*757
Captina Creek:	
Approximately 1,800 feet at downstream County boundary	*647
Downstream side of State Route 148 (1st upstream crossing)	*757
Upstream side of CONRAIL	*776
Approximately 0.86 mile upstream of Pugh Ridge Road	*830
Maps available for inspection at the Sanitary Sewer District Office, Belmont County, Ohio.	
Send comments to The Honorable A. J. Sargus, President of the Board of Commissioners for the County of Belmont, County Courthouse, St. Clairsville, Ohio 43950.	
Brookside (village), Belmont County	
Wheeling Creek:	
At downstream corporate limits	*659
At upstream corporate limits	*659
Maps available for inspection at the Town Hall, 875 National Road, Brookside, Ohio.	
Send comments to The Honorable Albert Mazoch, Mayor of the Village of Brookside, Belmont County, Four Poplar Street, Brookside, Ohio 43912.	
Crooksville (village), Perry County	
Moxahala Creek:	
About 1.0 mile downstream of Main Street	*746
About 0.9 mile upstream of Industrial Drive	*755
Moxahala Creek Overflow Baseline:	
About 1,020 feet downstream of China Street	*749
Just downstream of Main Street	*752
Maps available for inspection at the Municipal Building, 22 China Street, Crooksville, Ohio.	
Send comments to The Honorable James Cannon, Mayor, Village of Crooksville, Municipal Building, 22 China Street, Crooksville, Ohio 43731.	
Muskingum County	
Muskingum River:	
At downstream County boundary	*677
At U.S. Route 22	*694
Approximately 0.6 mile upstream of upstream County boundary	*733
Licking River:	
At confluence with Muskingum River	*697
At T409	*698
At Dillon Dam (at toe)	*711
Maps available for inspection at the County Coordinator's Office, Muskingum County, Ohio.	
Send comments to The Honorable Don Dilts, President of the Board of County Commissioners of Muskingum County, Muskingum County Courthouse, 401 Main Street, Zanesville, Ohio 43701.	
Pike County (unincorporated areas)	
Scioto River:	
About 2.0 miles downstream of U.S. Route 23	*567
About 0.5 miles upstream of confluence of Mutton Run	*593
Maps available for inspection at the County Engineer's Office, County Courthouse, Waverly, Ohio.	
Send comments to The Honorable John R. Allen, President, County Commissioners, Pike County, County Courthouse, Waverly, Ohio 45690.	
Piketon (village), Pike County	
Scioto River:	
About 0.8 mile downstream of U.S. Route 23	*567
About 0.7 mile upstream of U.S. Route 23	*569
Maps available for inspection at the Municipal Building, Piketon, Ohio.	
Send comments to The Honorable Charles Osborne, Mayor, Village of Piketon, Piketon, Ohio 45661.	
Port Washington (village), Tuscarawas County	
Tuscarawas River:	
About 0.8 mile downstream of Saint Clairsville Street	* 812
About 0.4 mile upstream of Saint Clairsville Street	* 815
Maps available for inspection at the Clerk's Residence, 400 West Main Street, Port Washington, Ohio.	
Send comments to The Honorable Glenn McMullen, Mayor, Village of Port Washington, 607 West Main Street, Port Washington, Ohio 43837.	
Waverly (city), Pike County	
Scioto River:	
About 1,100 feet downstream of Bridge Street	* 572
About 1.1 miles upstream of Norfolk Southern Railway	* 575
Maps available for inspection at the Municipal Building, 210 North Street, Waverly, Ohio.	
Send comments to The Honorable Blaine Beekman, Mayor, City of Waverly, 201 North Street, Waverly, Ohio 45690.	
OKLAHOMA	
Fairview (city), Major County	
Lost Creek:	
At downstream corporate limits	*1,258
Upstream side of U.S. Route 60, State Route 8	*1,278
At most upstream corporate limits	*1,306
Lost Creek Tributary:	
At confluence with Lost Creek	*1,266
Approximately 300 feet upstream of 8th Street	*1,276
Upstream side of Beck Street	*1,289
Approximately 300 feet upstream of North First Avenue	*1,299
Gypsum Creek:	
At downstream corporate limits	*1,274
At upstream corporate limits	*1,289
Sand Creek School Tributary:	
Approximately 2,300 feet upstream of downstream corporate limits	*1,253
Approximately 250 feet upstream of State Routes 8 and 58	*1,272
Approximately 1,500 feet upstream of State Routes 8 and 58	*1,275
Sand Creek:	
At most downstream corporate limits	*1,264
Approximately 200 feet upstream of U.S. Route 60	*1,277
At most upstream corporate limits	*1,302
Sand Creek Park Tributary:	
At downstream corporate limits	*1,264
Upstream side of Twelfth Avenue	*1,276
Approximately 75 feet upstream of U.S. Route 60	*1,299
Approximately 100 feet upstream of Atchison, Topeka and Santa Fe Railway	*1,302
At most upstream corporate limits	*1,332
Maps available for inspection at the City Hall, 206 East Broadway, Fairview, Oklahoma.	
Send comments to The Honorable Keevan Ewald, Mayor of the City of Fairview, Major County, 206 East Broadway, Fairview, Oklahoma 73737.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Luther (town), Oklahoma County	
Deep Fork:	
At downstream corporate limits	*876
Upstream side of 206th Street	*894
At upstream corporate limits	*903
Wildhorse Creek:	
At confluence with Deep Fork	*894
Approximately 120 feet downstream of 178th Street	*907
Maps available for inspection at 119 South Main Street, Luther, Oklahoma.	
Send comments to The Honorable Gerald Martin, Mayor of the Town of Luther, Oklahoma County, 119 South Main Street, Luther, Oklahoma 73045.	
Waynoka (city), Woods County	
Dog Creek:	
Approximately 500 feet upstream of Ash Street	*1,473
At upstream corporate limits	*1,482
Maps available for inspection at the City Hall, 201 East Cecil Street, Waynoka, Oklahoma.	
Send comments to The Honorable Marvin Miller, Mayor of the City of Waynoka, Woods County, 201 East Cecil Street, Waynoka, Oklahoma 73860.	
Wynnewood (city), Garvin County	
Savage Creek:	
At downstream corporate limits	*875
Upstream side of Kean Street	*885
Upstream side of Chickasaw Street	*891
Downstream side of State Route 29	*891
Upstream side of State Route 29	*894
Downstream side of Clayton Avenue	*897
Downstream side of Cox Avenue	*903
Upstream corporate limits	*907
Approximately 190 feet upstream of corporate limits	*908
Maps available for inspection at 207 West Robert S. Kerr, Wynnewood, Oklahoma.	
Send comments to The Honorable Roy B. Hill, City Manager of Wynnewood, Garvin County, P.O. Box 82, Wynnewood, Oklahoma 73098.	
OREGON	
Baker County	
Powder River (at Baker):	
3,000 feet south of T 8/9 S	*3,394
30 feet upstream of Hughes Lane (City of Baker corporate limits)	*3,412
50 feet upstream of Madison Street Bridge	*3,433
Upstream of the Union Pacific Railroad Bridge	*3,453
City of Baker southern corporate limits	*3,476
At confluence of Griffin Gulch	*3,483
Powder River Overflow A:	
3,200 feet south of T 8/9 S	*3,393
South of Hughes Lane	*3,410
Powder River Overflow B:	
3,000 feet south of T 8/9 S	*3,394
2,000 feet north of northern corporate limits of City of Baker	*3,403
Powder River (at Sumpter):	
At upstream side of Whitney Tippon Highway Bridge	*4,242
180 feet above West Dredge Road	*4,272
At City of Sumpter corporate limits	*4,328
At Sawmill Gulch Road	*4,356
At confluence of Cracker Creek	*4,383
North Powder River (at North Powder):	
Approximately 4,200 feet above mouth	*3,222
At an unnamed road located approximately 5,200 feet above mouth	*3,226
At Thiel Valley Road	*3,244
Just above Interstate 84 South	*3,256
Approximately 900 feet above State Highway 30	*3,261
Old Settler's Slough:	
At R 39/40 E	*3,389
Just above Pocahontas Road	*3,402
At City of Baker corporate limits	*3,411
50 feet below Auburn Avenue	*3,435
At divergence from Powder River	*3,456

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Pine Creek (at Halfway):	
At downstream side of Pine Creek Highway	*2,622
60 feet above Slaughterhouse Road	*2,638
At East Pine Creek Road	*2,706
Maps are available for inspection at the Baker County Planning Office, County Courthouse, 1995 Third Street, Baker, Oregon 97814.	
Send comments to Judge Larry Smith, Baker County Courthouse, 1995 Third Street, Baker, Oregon 97814.	
Enterprise (city), Wallowa County	
Wallowa River:	
At upstream side of Fish Hatchery Road Bridge	*3,749
At upstream side of Hurricane Creek Bridge	*3,769
At southern corporate limit of City of Enterprise	*3,777
Prairie Creek:	
At downstream corporate limit of City of Enterprise	*3,717
At upstream side of Montclair Street Bridge	*3,744
At upstream side of River Street Bridge	*3,757
At upstream side of Wallowa Lake Highway	*3,773
At southeastern corporate limit of City of Enterprise	*3,790
Maps are available for inspection at Wallowa County Planning Department, County Courthouse, 101 South River Street, Enterprise, Oregon.	
Send comments to Mayor Larry Christman, City Hall, 108 N.E. First Street, Enterprise, Oregon 97828.	
Joseph (city), Wallowa County	
Wallowa River:	
At upstream side of Wallowa Avenue Bridge	*4,146
At upstream side of Park Street Bridge	*4,165
At western corporate limit near Third Street	*4,189
At southwestern corporate limit of City of Joseph	*4,226
Maps are available for inspection at Wallowa County Planning Department, County Courthouse, 101 South River Street, Enterprise, Oregon 97828.	
Send comments to Mayor Paul Costelleja, City Hall, P.O. Box 15, Joseph, Oregon 97846.	
Prairie City (city), Grant County	
John Day River:	
At western corporate limit of Prairie City	*3,506
At confluence of Dixie Creek	*3,510
At upstream side of Bridge Street Bridge	*3,523
At upstream side of Main Street Bridge	*3,525
At eastern corporate limit of Prairie City	*3,535
Dixie Creek:	
At confluence with John Day River	*3,510
At upstream side of Lumber Mill Access Road	*3,525
At upstream side of U.S. Highway 26 Bridge	*3,534
At Fourth Street	*3,542
At northern corporate limit of Prairie City	*3,588
Maps are available for inspection at City Recorder's Office, City Hall, 133 Bridge Street, Prairie City, Oregon.	
Send comments to Mayor Donald Parker, Box 577, Prairie City, Oregon 97869.	
Wallowa County	
Wallowa River (at Wallowa):	
550 feet downstream of Highway 82 Bridge	*2,879
At upstream side of State Highway 82 Bridge	*2,882
At upstream side of Union Pacific Railroad Bridge	*2,916
At upstream side of Troy Road Bridge	*2,923
At southeastern corporate limit of City of Wallowa	*2,935
Wallowa River (from Enterprise to Wallowa Lake):	
900 feet downstream of confluence of Hurricane Creek	*3,699
At upstream side of Hurricane Creek Road Bridge	*3,769
At upstream side of County Road 572 Bridge	*3,882
At upstream side of Russel Lane	*4,069
At upstream side of Wallowa Avenue Bridge	*4,146

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
200 feet downstream of Wallowa Lake Dam	*4,353
Wallowa River (South Channel):	
At convergence with main channel of Wallowa River	*3,761
At upstream side of Hurricane Creek Road Bridge	*3,776
At upstream side of Union Pacific Railroad Bridge	*3,791
At divergence from main channel of Wallowa River	*3,809
Wallowa River (Upstream of Wallowa Lake):	
At mouth at Wallowa Lake	*4,364
At upstream side of Wallowa Lake State Park Access Road	*4,404
At confluence of East Fork Wallowa River	*4,465
50 feet above confluence of B.C Creek	*4,584
Lostine River:	
At township line between Township 1 and 2 South	*3,666
At confluence of Bitter Creek	*3,681
At bridge 1,050 feet downstream of Lostine River Road Bridge	*3,723
At upstream side of Lostine River Road Bridge	*3,747
150 feet downstream of confluence of Silver Creek	*3,925
Hurricane Creek:	
At confluence with Wallowa River	*3,708
At upstream side of County Road 581	*3,774
At upstream side of Hurricane Creek Road Bridge	*3,836
At upstream side of Dorrance Road Bridge	*3,936
At upstream side of Road 568 Bridge	*4,122
At downstream side of Hurricane Creek Road Bridge	*4,234
Prairie Creek:	
At confluence with Wallowa River	*3,711
At upstream side of Montclair Street Bridge	*3,744
At upstream side of River Street Bridge	*3,757
At upstream side of Wallowa Lake Highway	*3,773
700 feet above the southeastern corporate limits of City of Enterprise	*3,796
Little Hurricane Creek:	
At confluence with Wallowa River	*3,716
At upstream side of Stockton Road	*3,763
At upstream side of County Road 581	*3,782
At upstream side of Hurricane Creek Road	*3,812
At downstream side of County Road 572 Bridge	*3,863
Little Hurricane Creek (East Channel):	
At confluence with Little Hurricane Creek	*3,822
At downstream side of County Road 572 Bridge	*3,871
Maps are available for inspection at Wallowa County Planning Department, County Courthouse, 101 South River Street, Enterprise, Oregon.	
Send comments to Judge LeRory Childers, Wallowa County Courthouse, P.O. Box E, Enterprise, Oregon 97828.	
Wallowa (city), Wallowa County	
Wallowa River:	
500 feet downstream of Highway 82 Bridge	*2,879
At upstream side of State Highway 82 Bridge	*2,882
At upstream side of Union Pacific Railroad Bridge	*2,916
At upstream side of Troy Road Bridge	*2,923
At southeastern corporate limit of City of Wallowa	*2,935
Maps are available for inspection at Wallowa County Planning Department, County Courthouse, 101 South River Street, Enterprise, Oregon.	
Send comments to Mayor Leon N. Fisher, City Hall, P.O. Box 1, Wallowa, Oregon 97885.	
PENNSYLVANIA	
Bath (borough), Northampton County	
Monocacy Creek:	
At downstream corporate limits	*406
Upstream side of Main Street	*427
Upstream side of Creek Road	*449
Approximately 50 feet upstream of corporate limits	*466
Maps available for inspection at the Borough Office, 250 East Northampton Street, Bath, Pennsylvania 18014.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Send comments to The Honorable Allen J. Haidle, President of the Bath Borough Council, Northampton County, 250 East Northampton Street, Bath, Pennsylvania 18014.	
Bushkill (township), Northampton County	
Bushkill Creek:	
At downstream corporate limits	*396
Approximately 300 feet upstream of Legislative Route 48040 (Henry Road)	*420
Approximately 2,200 feet downstream of Township Road 597 (Aluta Mill Road)	*485
Approximately 400 feet downstream of Hahn Road	*560
At upstream corporate limits	*620
Maps available for inspection at 1114 Bushkill Center Road, Nazareth, Pennsylvania.	
Send comments to The Honorable Clifford J. Bonney, Chairman of the Township of Bushkill Board of Supervisors, Northampton County, 1114 Bushkill Center Road, Nazareth, Pennsylvania 18064-9557.	
Center (township), Snyder County	
Penns Creek:	
Approximately 1.8 miles downstream of State Route 104	*509
At confluence of Dry Run	*519
Approximately 100 feet downstream of State Route 104	*521
Approximately 0.4 mile upstream of State Route 104	*525
Maps available for inspection at the Township Secretary's residence, R.D. 1, Box 129, Middleburg, Pennsylvania.	
Send comments to The Honorable George M. Richard, Jr., Chairman of the Township of Center Board of Supervisors, Snyder County, R.D. 2, Box 229, Middleburg, Pennsylvania 17842.	
Chestnuthill (township), Monroe County	
McMichael Creek:	
At downstream corporate limits	*623
Approximately 75 feet upstream of T-434	*649
Upstream side of T-432	*706
Upstream side of LR 45099	*780
Upstream side of T-378	*814
Approximately 1.4 miles upstream of T-378	*880
Upstream side of LR 45067	*938
Approximately 800 feet upstream of State Route 715 (3rd upstream crossing)	*1,019
Pohopoco Creek:	
At downstream corporate limits	*703
Upstream side of T-445	*732
Approximately 50 feet upstream of T-447	*758
Downstream side of T-439	*798
At LR 45066	*842
Upstream side of LR 45066 (3rd upstream crossing)	*900
Approximately 350 feet downstream of LR 45055	*961
Approximately 0.3 mile upstream of LR 45055 (1st upstream crossing)	*990
Sugar Hollow Creek:	
At confluence with Pohopoco Creek	*803
Approximately 65 feet upstream of LR 45042 (1st upstream crossing)	*643
Upstream side of LR 45042 (2nd upstream crossing)	*876
Approximately 725 feet upstream of T-459	*900
Approximately 0.9 mile upstream of T-459	*982
Weir Creek:	
At downstream corporate limits	*696
Upstream side of Hickory Lane	*705
At T-430	*734
Maps available for inspection at the Township Building, Chestnuthill, Pennsylvania.	
Send comments to The Honorable Earl Everett, Supervisor of the Township of Chestnuthill, Monroe County, P.O. Box 277, Gilbert, Pennsylvania 18331.	
Conewago (township), Adams County	
South Branch Conewago Creek:	
At downstream corporate limits	*509
Approximately 40 feet downstream of L.R. 01005	*517
Approximately 90 feet downstream of State Route 116	*524
Plum Creek:	
Approximately 0.81 mile downstream of State Route 116	*520
Approximately 0.28 mile downstream of State Route 116	*526
Approximately 1,000 feet upstream of State Route 116	*533
Maps available for inspection at the Township Building, 350 Third Street, Hanover, Pennsylvania.	
Send comments to The Honorable William J. Bair Jr., Chairman of the Township of Conewago Board of Supervisors, Adams County, 350 Third Street, Hanover, Pennsylvania 17331.	
Dawson (borough), Fayette County	
Youghiogheny River:	
Approximately 0.36 mile downstream of State Route 819 bridge	*851
Approximately 0.7 mile upstream of State Route 819 bridge	*854
Maps available for inspection at the Borough Building, Dawson, Pennsylvania.	
Send comments to Ms. Josephine Rearick, Chairwoman of the Borough of Dawson, Fayette County, P.O. Box 5, Dawson, Pennsylvania 15428.	
Dreher (township), Wayne County	
Wallenpaupack Creek:	
Approximately 1.9 miles downstream of State Route 507	*1,278
Downstream side of Mountain View Road	*1,339
Approximately .8 mile downstream of Pine Grove Road	*1,410
Downstream side of Pine Grove Road	*1,467
Approximately 1.7 miles upstream of Pine Grove Road	*1,596
Maps available for inspection at the Township Building, Newfoundland, Pennsylvania.	
Send comments to The Honorable Alan Brosziet, Chairman of the Township of Dreher Board of Supervisors, Wayne County, P.O. Box 177, Newfoundland, Pennsylvania 18445.	
Eldred (township), Monroe County	
Buckwha Creek:	
At downstream corporate limits	*490
Approximately 1,550 feet downstream of Chestnut Ridge Road	*521
Approximately 0.4 mile upstream of Chestnut Ridge Road	*532
Chapple Creek:	
At confluence with Buckwha Creek	*510
Approximately 1,775 feet upstream of LR 45004	*560
At upstream side of T-361	*624
Uupstream side of T-365	*694
At Bollinger Road	*731
Pine Creek:	
At confluence with Princess Run	*691
Approximately 1,400 feet upstream of T-370 (1st upstream crossing)	*750
At T-370 (2nd upstream crossing)	*805
Princess Run:	
At confluence with Buckwha Creek	*532
Upstream side of LR 45003 (1st upstream crossing)	*573
Upstream side of LR 45003 (2nd upstream crossing)	*642
Approximately 0.7 mile upstream of LR 45003 (2nd upstream crossing)	*680
Upstream side of T-369	*721
Upstream side of Princess Run Road	*746
Maps available for inspection at the Eldred Township Building, Eldred, Pennsylvania.	
Send comments to The Honorable Steve Borger, Chairman of the Township of Eldred Board of Supervisors, Monroe County, R.D. 2, Box 102, Konkietown, Pennsylvania 18058.	
Hartley (township), Union County	
Penns Creek:	
At downstream corporate limits	*571
Approximately 1 mile upstream of downstream corporate limits	*585
Downstream side of Ranch Road	*594
Downstream side of State Route 235	*604
Downstream side of Thomas Road Dam	*660
Upstream side of Weikert Lane	*731
Approximately .9 miles upstream of Weikert Lane	*751
Approximately 2 miles upstream of Weikert Lane	*786
Approximately 3.2 miles upstream of Weikert Lane	*812
Approximately .8 mile downstream of upstream corporate limits	*835
At upstream corporate limits	*854
Laurel Run:	
Confluence with Penns Creek	*597
Upstream side of T-307	*633
Upstream side of LR 59003	*699
Downstream side of State Route 235	*720
Approximately .6 mile upstream of State Route 235	*753
Maps available for inspection at the Hartley Community Center, Laurelton, Pennsylvania.	
Send comments to The Honorable Donald Buoy, Chairman of the Township of Hartley Board of Supervisors, Union County, Laurelton, Pennsylvania 17835.	
Lamar (township), Clinton County	
Fishing Creek:	
At downstream corporate limits	*595
Upstream side of 2nd U.S. Route 220	*607
Upstream side of first upstream crossing of LR 18007	*615
Upstream side of second upstream crossing of LR 18007	*624
Approximately 0.6 mile upstream of second upstream crossing of LR 18007	*633
Approximately 0.5 mile downstream of third upstream crossing of LR 18007	*642
Upstream side of third upstream crossing of LR 18007	*652
Upstream side of LR 18030 (Main Street)	*670
Downstream side of Rag Valley Road	*678
At upstream corporate limits	*692
Long Run:	
At confluence with Fishing Creek	*603
Downstream side of first upstream crossing of State Route 477 (Ridge Road)	*608
Downstream side of second upstream crossing of State Route 477 (Ridge Road)	*618
Downstream side of T-362 (Wetzel Road)	*644
Approximately 0.6 mile upstream of T-362 (Wetzel Road)	*670
Maps available for inspection at the Township Building, Rote, Pennsylvania.	
Send comments to The Honorable Arlington J. Walizer, Chairman of the Board of Supervisors for the Township of Lamar, Clinton County, R.D. #1, Box 135-A1, Mill Hall, Pennsylvania 17751.	
Lehigh (township), Wayne County	
Gouldsboro Lake Tributary:	
At confluence with Lehigh River	*1,885
Approximately .5 mile upstream of Main Street (State Route 507)	*1,890
At CONRAIL bridge	*1,894
Lehigh River:	
Phillips Road	*1,814
Approximately 2,000 feet upstream of Phillips Road	*1,829
Approximately .7 mile upstream of Phillips Road	*1,843
Downstream side of downstream dam	*1,873
Upstream side of Fourth Street (T-303)	*1,880
At confluence of Gouldsboro Lake Tributary	*1,885

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Lehigh Municipal Building, Gouldsboro, Pennsylvania.	
Send comments to The Honorable Robert Fleer, Chairman of the Township of Lehigh Board of Supervisors, Wayne County, R.D. 1, Box 62, Gouldsboro, Pennsylvania 18472.	
Limestone (township), Union County	
Penns Creek:	
Approximately 400' downstream of downstream corporate limits	*489
At downstream corporate limits	*491
Approximately 200' upstream of State Route 204	*495
At confluence of Sweitzers Run	*504
Approximately 1.1 miles downstream of State Route 104	*515
Approximately .4 mile upstream of State Route 104	*525
Approximately 0.9 mile upstream of State Route 104	*530
At upstream corporate limits	*543
Maps available for inspection at the Township Meeting Hall, R.D. 3, Mifflinburg, Pennsylvania.	
Send comments to The Honorable Stanley Borinski, Chairman of the Township of Limestone Board of Supervisors, Union County, R.D. 3, Box 133, Mifflinburg, Pennsylvania 17844.	
Lower Frankford (township), Cumberland County	
Conodoguinet Creek:	
At downstream corporate limits	*438
At upstream corporate limits	*458
Maps available for inspection at the Township Building, R.D. 9, Carlisle, Pennsylvania.	
Send comments to The Honorable Edward D. Baker Jr., Chairman of the Township of Lower Frankford Board of Supervisors, Cumberland County, R.D. 9, P.O. Box 344, Carlisle, Pennsylvania 17013.	
Lower Tyrone (township), Fayette County	
Youghiogheny River:	
At downstream corporate limits	*811
Approximately 4.25 miles downstream of confluence of Laurel Run	*815
Approximately 2.95 miles downstream of confluence of Laurel Run	*829
At confluence of Laurel Run	*844
Approximately 0.1 mile downstream of State Route 819 bridge	*852
At upstream corporate limits	*859
Maps available for inspection at the Township Building, Dawson, Pennsylvania.	
Send comments to The Honorable Wendall R. Hayes, Chairman of the Township of Lower Tyrone Board of Supervisors, Fayette County, P.O. Box 240, Dawson, Pennsylvania 15428.	
McSherrystown (borough), Adams County	
Plum Creek:	
At upstream corporate limits	*533
At downstream corporate limits	*527
Maps available for inspection at the Borough Hall, 338 Main Street, McSherrystown, Pennsylvania.	
Send comments to The Honorable Charles C. Rider, Council President of the Borough of McSherrystown, Adams County, 125 Main Street, McSherrystown, Pennsylvania 17344.	
Mifflinburg (borough), Union County	
Buffalo Creek:	
At downstream corporate limits	*540
Approximately 200' downstream of Fourth Street	*545
At upstream corporate limits	*549
Maps available for inspection at the Mifflinburg Borough Building, 33 Chestnut Street, Mifflinburg, Pennsylvania.	
Send comments to The Honorable Donald Bitner, Borough of Mifflinburg Council President, Union County, 8 Shipton Street, Mifflinburg, Pennsylvania 17844.	
Perry (township), Snyder County	
West Branch Mahantango Creek:	
Approximately 0.4 mile downstream of T-301	*463
Upstream side of T-301	*469
Upstream side of T-315	*485
Downstream side of LR 54004	*493
Approximately 1.3 miles upstream of LR 54004	*540
Approximately 2.4 miles upstream of LR 54004	*540
At upstream corporate limits	*556
North Branch Mahantango Creek:	
Confluence with Mahantango Creek	*428
Approximately 0.8 miles upstream of confluence with Mahantango Creek	*434
Approximately 0.6 mile downstream of T-344	*441
Downstream side of T-344	*449
Upstream side of T-333	*465
Downstream side of LR 54002	*471
Approximately 0.7 mile upstream of LR 54002	*483
Downstream side of LR 54003	*502
Approximately 0.5 mile upstream of LR 54003	*515
Downstream side of T-351	*529
Upstream side of Township Route 356	*543
Approximately 450 feet upstream of State Route 35	*552
Maps available for inspection at the Township Building, R.D. 2, Mt. Pleasant Mills, Pennsylvania.	
Send comments to The Honorable Ray L. Swartz, Chairman of the Township of Perry Board of Supervisors, Snyder County, Mt. Pleasant Mills, Pennsylvania 17853.	
Ross (township), Monroe County	
Aquashicola Creek:	
At downstream corporate limits	*576
At upstream side of Faulstick Road	*603
At upstream side of Tittle Road	*614
At downstream side of Mount Eaton Road	*634
Buckwha Creek:	
Approximately 1.7 miles downstream of upstream corporate limits	*615
Approximately .5 mile downstream of Township Route 378	*653
Lake Creek:	
At downstream corporate limits	*641
Approximately 1,000 feet upstream of Legislative Route 45004	*686
Lake Creek Tributary:	
At confluence with Lake Creek	*662
At downstream side of Old State Route 115	*690
Princess Run:	
At downstream corporate limits	*757
Approximately 500 feet upstream of Stone Hill Lane	*904
Maps available for inspection at the Municipal Building (Garage), Saylorsburg, Pennsylvania.	
Send comments to The Honorable Robert Bonser, Chairman of the Township of Ross Board of Supervisors, Monroe County, P.O. Box 276, Saylorsburg, Pennsylvania 18353.	
Saville (township), Perry County	
Buffalo Creek:	
Approximately 450 feet downstream of Springle Hollow Road	*577
Approximately .6 mile upstream of confluence of Panther Creek	*585
Approximately 1.3 miles upstream of confluence of Panther Creek	*593
Approximately 1.6 miles upstream of confluence of Panther Creek	*598
Unnamed Tributary to Buffalo Creek:	
Confluence with Buffalo Creek	*598
Approximately .9 mile upstream of confluence with Buffalo Creek	*615
Approximately 1.8 miles upstream of confluence with Buffalo Creek	*640
Approximately 1,600 feet downstream of Peach Ridge Road	*657
Approximately 100 feet upstream of Peach Ridge Road	*675
Maps available for inspection at the Township Building, R.D. #1, Elliottsburg, Pennsylvania.	
Send comments to The Honorable Ronald E. Hampton, Chairman of the Township of Saville Board of Supervisors, Perry County, R.D. #1, Elliottsburg, Pennsylvania 17024.	
Smithfield (township), Monroe County	
Delaware River:	
At downstream corporate limits	*315
At confluence of Shawnee Creek	*325
Approximately 1.5 miles upstream of confluence of Shawnee Creek	*330
Brodhead Creek:	
At confluence with Delaware River	*322
At confluence of Marshalls Creek	*322
Approximately 1,000 feet upstream of confluence of Marshalls Creek	*322
Marshalls Creek:	
At confluence with Brodhead Creek	*322
Upstream side of Old Mill Road	*338
Upstream side of U.S. Route 209	*403
Upstream side of Twin Falls Road	*441
Upstream side of Marshalls Road	*471
At upstream corporate limits	*520
Cherry Creek:	
At downstream corporate limits	*322
Upstream side of Cherry Valley Road	*338
At upstream corporate limits	*348
Approximately 1,000 feet above corporate limits	*350
Shawnee Creek:	
At confluence with Delaware River	*324
Upstream side of River Road	*325
Approximately 3,000 feet upstream of River Road	*382
Approximately 1,000 feet downstream of Shawnee Lake Dam #1	*422
Downstream side of Shawnee Lake Dam #2	*441
Downstream side of Hollow Road	*464
Approximately 1,800 feet upstream of Hollow Road	*467
Little Sambo Creek:	
At downstream corporate limits	*454
Upstream side of Valhalla Drive	*472
Upstream side of Delaware Avenue	*485
Little Sambo Creek Tributary:	
At confluence with Little Sambo Creek	*476
Approximately 850 feet upstream of confluence with Little Sambo Creek	*496
Maps available for inspection at the Township Building, East Stroudsburg, Pennsylvania.	
Send comments to The Honorable Al Wilson, Chairman of the Township of Smithfield Board of Supervisors, Monroe County, R.D. 5, Box 5229, East Stroudsburg, Pennsylvania 18301.	
Spring (township), Snyder County	
Middle Creek:	
At downstream corporate limits	*569
At downstream side of Legislative Route 54048	*594
At upstream side of Township Route 570	*611
Beaver Creek:	
At confluence with Middle Creek	*571
At confluence of Mitchell Run	*601
Approximately 200 feet upstream of confluence of Mitchell Run	*602
Mitchell Run:	
At confluence with Beaver Creek	*602
Approximately 0.3 mile upstream of confluence with Beaver Creek	*627
Maps available for inspection at the Township Building, Railroad Avenue, Beaver Springs, Pennsylvania.	
Send comments to The Honorable Douglas Garrison, Chairman of the Township of Spring Board of Supervisors, Beaver Springs, Pennsylvania 17812.	
Starrucca (borough), Wayne County	
Shadigee Creek:	
Confluence with Starrucca Creek	*1,296
Downstream side of Cemetery Road	*1,325

Source of flooding and location	#Depth in feet above ground. ²Elevation in feet (NGVD)
At State Route 365	*1,348
Starrucca Creek:	
Downstream corporate limits	*1,269
Downstream side of LR 57054	*1,302
Downstream side of Buck Road	*1,349
Approximately .5 mile upstream of Buck Road	*1,360

Maps available for inspection at the Starrucca Garage, Box 36, Starrucca, Pennsylvania.

Send comments to The Honorable Charles Downton, President of the Starrucca Borough Council, Wayne County, R.D. 1, Starrucca, Pennsylvania 18462.

Tyrone (township), Perry County

Laurel Run:	
Approximately 1,600 feet downstream of L.R. 50010	*533
Upstream side of L.R. 50010	*541
Approximately 1,700 feet upstream of L.R. 50010	*549
Muddy Run:	
Approximately 1,155 feet downstream of State Routes 274 and 850	*571
Upstream side of State Routes 274 and 850	*578
Downstream side of L.R. 50010	*579

Maps available for inspection at the Township Municipal Building, Route 274, Landisburg, Pennsylvania.

Send comments to The Honorable Blaine B. Morrison, Chairman of the Township of Tyrone Board of Supervisors, Perry County, R.D. 1, Landisburg, Pennsylvania 17040.

Upper Frankford (township), Cumberland County

Conodoguinet Creek:	
At downstream corporate limits	*458
Downstream side of Blosserville Road	*466
Approximately 280 feet upstream of upstream corporate limits	*481

Maps available for inspection at the Township Building, Mohawk Road, R.D. 3, Newville, Pennsylvania.

Send comments to The Honorable Harry Hosler, Sr., Chairman of the Township of Upper Frankford Board of Supervisors, Cumberland County, R.D. 4, P.O. Box 184, Newville, Pennsylvania 17241.

Washington (township), Armstrong

Allegheny River:	
Approximately 0.4 mile downstream of Lock and Dam No. 8	*806
Downstream side of Lock and Dam No. 9	*827
Approximately 2,000 feet upstream of Hulinc Run	*838

Maps available for inspection at the Washington Township Building, R.D. 1, Cowansville, Pennsylvania.

Send comments to The Honorable Lunsford Helgert, Chairman of the Township of Washington Board of Supervisors, Armstrong County, R.D. 1, Adrian, Pennsylvania 16210.

West Pennsboro (township), Cumberland County

Conodoguinet Creek:	
At downstream corporate limits	*438
Downstream side of McCallister Road	*446
Upstream side of Interstate Route 76	*470
Approximately 1,400 feet upstream of upstream corporate limits	*482

Maps available for inspection at the Township Building, 2130 Newville Road, Carlisle, Pennsylvania.

Send comments to The Honorable Paul B. Snyder, Chairman of the Township of West Pennsboro Board of Supervisors, Cumberland County, R.D. 9, P.O. Box 275, Carlisle, Pennsylvania 17013.

Source of flooding and location	#Depth in feet above ground. ²Elevation in feet (NGVD)
SOUTH CAROLINA	
Clemson (city), Pickens and Anderson Counties	
Eighteenmile Creek:	
About 0.45 mile downstream of Pendleton Road	*701
About 0.7 mile upstream of Central Road	*714
Tributary No. 1:	
At mouth	*709
About 0.77 mile upstream of Downs Loop	*750
Tributary No. 2:	
At mouth	*704
Just downstream of Clarendon Drive	*745
Twelvemile Creek Tributary:	
Just upstream of Old Central Road	*670
About 0.38 mile upstream of Old Central Road	*674

Maps available for inspection at the City Hall, Amtrak Building, Elm Street/Highway 123, Clemson, South Carolina.

Send comments to The Honorable Charles F. Helsel, Jr., City Administrator, City of Clemson, City Hall, Amtrak Building, Elm Street/Highway 123, Clemson, South Carolina 29633.

Hampton County

Tributary to Coosawhatchie River:	
At upstream side of State Road 68	*64
Approximately .4 mile downstream of upstream County boundary	*79
Approximately 0.5 mile downstream of State Highway 363	*86
Approximately 800 feet upstream of State Highway 363	*97
Sanders Branch:	
At upstream side of State Road 593	*53
At Mixson Street (extended)	*61
At upstream corporate limits	*63
House Fork:	
At confluence with Sanders Branch	*54
Approximately .8 mile upstream of confluence with Sanders Branch	*68
Approximately 550 feet upstream of State Highway 68	*75

Maps available for inspection at the County Administrator's Office, 201 Jackson Street West, Hampton, South Carolina.

Send comments to The Honorable Virginia Sinclair, Hampton County Administrator, 201 Jackson Street West, Hampton, South Carolina 29924.

TENNESSEE

Brownsville (city), Haywood County

Sugar Creek:	
About 0.88 mile downstream of Sugar Creek Road	*296
About 1,000 feet upstream of State Route 76 Bypass	*360
Sugar Creek Lateral:	
At mouth	*335
Just downstream of County Road	*369
Buck's Creek:	
At mouth	*320
Just downstream of Key Corner Road	*340
Buck's Creek Lateral:	
At mouth	*326
Just downstream of Key Corner Road	*346
Little Nixon Creek:	
Just upstream of Allen King Road	*319
Just downstream of Louisville and Nashville Railroad	*366
Little Nixon Creek Lateral:	
At mouth	*340
Just downstream of Louisville and Nashville Railroad	*371

Maps available for inspection at the City Hall, P.O. Box 376, Brownsville, Tennessee.

Send comments to The Honorable Joe G. Taylor, Mayor, City of Brownsville, City Hall, P.O. Box 376, Brownsville, Tennessee 38012.

Source of flooding and location	#Depth in feet above ground. ²Elevation in feet (NGVD)
Clifton (city), Wayne County	
Tennessee River:	
About 157.1 miles upstream of mouth	*390
About 159.2 miles upstream of mouth	*391

Maps available for inspection at the City Hall, P.O. Box 192, Clifton, Tennessee.

Send comments to The Honorable Estelle Brooks, Mayor, City of Clifton, City Hall, P.O. Box 192, Clifton, Tennessee 38425.

Fayetteville (city), Lincoln County

Elk River:	
About 2.6 miles downstream of Old Huntsville Highway	*665
About 7.1 miles upstream of confluence of Norris Creek	*680
Norris Creek:	
At mouth	*670
About 1.2 miles upstream of Louisville and Nashville Railroad	*681
Wells Creek:	
About 1,500 feet downstream of Liberty Road	*673
Just upstream of Private Road	*689
Cotton Mill Branch:	
At mouth	*677
About 0.47 mile upstream of Mount Drive	*704
Boonshill Road Branch:	
About 1,100 feet downstream of Private Drive	*665
Just downstream of Old Boonshill Road	*674

Maps available for inspection at the Municipal Building, Fayetteville, Tennessee.

Send comments to The Honorable Elgan Brooks, Mayor, City of Fayetteville, Municipal Building, Fayetteville, Tennessee 37344.

Henning (town), Lauderdale County

Henning Creek:	
About 3,200 feet downstream of McFarlin Avenue	*284
About 860 feet upstream of Henning Bethlehem Road	*295

Maps available for inspection at the City Hall, P.O. Box 488, Henning, Tennessee.

Send comments to The Honorable Carol Ann Brandon, Mayor, Town of Henning, City Hall, P.O. Box 488, Henning, Tennessee 38041.

Lewisburg (city), Marshall County

Big Rock Creek:	
About 0.85 mile downstream of Nashville Highway (U.S. Route 31A)	*701
About 800 feet downstream of Old Lake Road	*748
Snake Creek:	
About 500 feet downstream of Nashville Highway (U.S. Route 31A)	*693
About 500 feet upstream of Finley Beech Road	*738
About 0.8 mile upstream of U.S. Route 431	*788
Just downstream of Louisville and Nashville Railroad	*799
Snell Branch:	
At mouth	*703
Just downstream of Ellington Parkway	*705
Just upstream of Ellington Parkway	*711
Just downstream of Louisville and Nashville Railroad	*728
Just upstream of Louisville and Nashville Railroad	*733
Just downstream of Heil Quaker Avenue	*733
Just upstream of Heil Quaker Avenue	*738
About 1,400 feet upstream of Heil Quaker Avenue	*742
Collins Creek:	
At mouth	*726
About 600 feet upstream of Ellington Parkway	*752
Loyd Branch:	
At mouth	*736
About 1,700 feet upstream of White Drive	*820
Capps Branch:	
At mouth	*713
About 1.08 miles upstream of Old Belfast Road	*823

Maps available for inspection at the City Hall, P.O. Box 332, Lewisburg, Tennessee.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Send comments to The Honorable Eddie Derryberry, Mayor, City of Lewisburg, City Hall, P.O. Box 332, Lewisburg, Tennessee 37091.	
Marshall County (unincorporated areas)	
Snake Creek:	
At mouth	*693
Just upstream of Louisville and Nashville Railroad	*800
Snell Branch:	
At mouth	*703
Just downstream of Ellington Parkway	*705
Just upstream of Ellington Parkway	*711
Just downstream of Louisville and Nashville Railroad	*728
Just upstream of Louisville and Nashville Railroad	*733
Just downstream of Heil Quaker Avenue	*733
Just upstream of Heil Quaker Avenue	*738
About 1,400 feet upstream of Heil Quaker Avenue	*742
Collins Creek:	
At mouth	*726
Just downstream of Springplace Road	*779
Big Rock Creek:	
About 2.9 miles downstream of Nashville Highway (U.S. Route 31A)	*693
Just downstream of New Lake Road	*758
Loyd Branch:	
At mouth	*736
About 1,700 feet upstream of White Drive	*820
Capps Branch:	
At mouth	*713
About 1.08 miles upstream of Old Belfast Road	*823
Maps available for inspection at the County Courthouse, Lewisburg, Tennessee.	
Send comments to The Honorable Carlton Norris, County Executive, Marshall County, County Courthouse, Lewisburg, Tennessee 37091.	
Mount Pleasant (city), Maury County	
Sugar Fork:	
About 1,050 feet downstream of State Route 6 Bypass	*608
Just downstream of U.S. Route 43	*612
Just upstream of U.S. Route 43	*618
Sugar Creek:	
Just upstream of U.S. Route 43	*618
About 600 feet upstream of Arrow Mine Road	*652
Maps available for inspection at the City Hall, P.O. Box 426, Mount Pleasant, Tennessee.	
Send comments to The Honorable Willie Baker, Mayor, City of Mount Pleasant, City Hall, P.O. Box 426, Mount Pleasant, Tennessee 37474.	
Shelbyville (city), Bedford County	
Duck River:	
About 1.1 miles downstream of confluence of Flat Creek	*727
About 0.5 mile upstream of confluence of Holland Branch	*744
Holland Branch:	
About 450 feet downstream of Depot Street	*744
Just upstream of Blue Ribbon Parkway	*766
Tributary B:	
At mouth	*766
About 0.38 mile above mouth	*777
Big Spring Creek:	
Just downstream of Madison Street	*737
About 550 feet upstream of Cedar Street	*759
Little Hurricane Creek:	
About 1,160 feet downstream of Midland Road	*751
About 400 feet upstream of Main Street	*761
Pettus Branch: Within community	*731
Flat Creek:	
About 1.0 mile downstream of Cannon Boulevard	*729
About 0.74 mile upstream of Cannon Boulevard	*738
Bomar Creek:	
About 700 feet downstream of confluence of Tributary A	*750
Just downstream of Eagle Boulevard	*770
Tributary A:	
At mouth	*754
Just downstream of Madison Street	*763
Just upstream of Madison Street	*770
Just upstream of Ledbetter Road	*782
Maps available for inspection at the City Hall, 109 Lane Parkway, Shelbyville, Tennessee.	
Send comments to The Honorable H.V. Griffin, Mayor, City of Shelbyville, City Hall, 109 Lane Parkway, Shelbyville, Tennessee 37160.	
Viola (town), Warren County	
Hickory Creek:	
About 0.4 mile downstream of Mount Zion Road	*993
About 0.3 mile upstream of Mount Zion Road	*998
Maps available for inspection at the City Hall, Viola, Tennessee.	
Send comments to The Honorable Drannon Sain, Mayor, Town of Viola, City Hall, P.O. Box 85, Viola, Tennessee 37394.	
Warren County (unincorporated areas)	
Barren Fork:	
At mouth	*875
About 2,400 feet upstream of confluence of Caney Branch	*957
Pepper Creek:	
At mouth	*899
Just downstream of South Chancery Street	*899
Just upstream of South Chancery Street	*910
About 0.4 mile upstream of South Chancery Street	*911
Hickory Creek:	
At mouth	*914
About 0.9 mile upstream of confluence of Little Hickory Creek	*1,006
Hills Creek:	
At mouth	*893
At the confluence of Dry Creek	*914
Charles Creek:	
At mouth	*863
Just downstream of State Route 56	*894
Collins River:	
About 1200 feet downstream of confluence of Charles Creek	*862
Just downstream of North Shellsford Road	*885
Dry Creek:	
At mouth	*914
Just downstream of Hills Creek Road	*1,009
Maps available for inspection at the County Courthouse, McMinnville, Tennessee.	
Send comments to The Honorable Ray Moore, County Executive, Warren County, County Courthouse, McMinnville, Tennessee 37110.	
TEXAS	
Granbury (city), Hood County	
Brazos River:	
Approximately 1 mile downstream of confluence of Rough Creek	*697
Approximately 1,000 feet upstream of State Route 426 (Pearl Street)	*698
Rough Creek: Upstream and downstream of State Route 144	*697
Lambert Branch:	
Confluence with Brazos River	*698
Upstream of Moore Street	*718
Confluence of Stream LB-2	*733
Approximately 1,100 feet upstream of Park Street	*747
2,500 feet downstream of Highway 377 Business Route	*765
Downstream of Highway 377 Business Route	*787
Downstream of southern corporate limits	*790
Stream LB-1:	
Confluence with Lambert Branch	*720
At downstream corporate limits	*722
Stream LB-2:	
Confluence with Lambert Branch	*733
Downstream of Ables Street	*750
Upstream of Walters Drive	*760
Downstream side of U.S. Route 377	*774
Maps available for inspection at the City Hall, 116 West Bridge Street, Granbury, Texas.	
Send comments to The Honorable Charles E. Baker, Mayor of the City of Granbury, Hood County, 116 West Bridge Street, P.O. Box 968, Granbury, Texas 76048.	
Lewisville (city), Denton County	
Elm Fork Trinity River:	
At confluence of Timber Creek	*451
Approximately 1.7 miles upstream of Missouri-Kansas-Texas Railroad	*464
Approximately 400 feet downstream of State Route 121	*461
At confluence of Prairie Creek	*462
Elm Fork Trinity River West Split Flow Area Around Downstream Floodway Landfill:	
At confluence with Elm Fork Trinity River Main Channel	*454
At divergence from Elm Fork Trinity River Main Channel	*459
Lake Lewisville Spillway:	
At confluence with Elm Fork Trinity River	*460
Approximately 1.0 mile upstream of State Route 121	*482
Timber Creek:	
At confluence with Elm Fork Trinity River	*451
Approximately 1,000 feet upstream of downstream crossing of Interstate Route 35E main lanes	*453
At Round Grove Road	*454
Just upstream of upstream crossing of interstate Route 35E main lanes	*456
Approximately 100 feet upstream of State Route 121	*476
Approximately 0.8 mile upstream of the confluence of Stream TC-1	*485
Upstream side of Valley Parkway	*512
Approximately 400 feet upstream of the confluence of Stream TC-2	*535
Timber Creek Relief Channel:	
At confluence with Timber Creek	*455
At divergence from Timber Creek	*462
Stream TC-1:	
At confluence with Timber Creek	*477
Upstream side of Bellaire Boulevard	*500
Upstream side of Edmonds Lane	*537
Stream TC-2:	
At confluence with Timber Creek	*534
Approximately 965 feet upstream of confluence with Timber Creek	*535
Prairie Creek:	
At confluence with Elm Fork Trinity River	*461
Upstream side of Interstate Route 35E southbound lane	*520
Upstream side of Kirkpatrick Lane	*572
Stream PC-1:	
At confluence with Prairie Creek	*507
Approximately 1,500 feet upstream of upstream dam	*521
Approximately 520 feet upstream of the Atchison, Topeka, and Santa Fe Railroad	*532
Stream PC-2:	
At confluence with Prairie Creek	*521
Upstream side of Valley Parkway	*554
Stream PC-3:	
A confluence with Prairie Creek	*544
Approximately 70 feet upstream of Topeka Street	*552
Copperas Branch:	
At confluence with Lake Lewisville	*537
Downstream side of Brazos Boulevard	*546
Approximately 550 feet upstream of Cripple Creek Road	*571
Denton Creek:	
Approximately 3.4 miles above confluence with Elm Fork Trinity River	*450
Approximately 4.8 miles above confluence with Elm Fork Trinity River	*454
Approximately 81.1 miles above confluence with Elm Fork Trinity River	*470
Approximately 8.7 miles above confluence with Elm Fork Trinity River	*471
Maps available for inspection at the Department of Public Works, 1000 North Kealey, Lewisville, Texas.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Send comments to The Honorable Tom Dingler, Director of Public Works for the City of Lewisville, Denton County, 151 West Church Street, Lewisville, Texas 75067.	
Navasota (city), Grimes County	
Cedar Creek:	
Approximately 370 feet downstream of downstream corporate limits	*185
At upstream side of 5th Street bridge	*200
At upstream side of Brosig Avenue bridge	*221
At upstream corporate limits	*249
Cedar Creek Tributary 1:	
At confluence with Cedar Creek	*230
At upstream corporate limits	*248
West Tributary of Sandy Creek:	
At downstream corporate limits	*219
Upstream side of Old Huston Road	*224
At upstream corporate limits	*259
Maps available for inspection at the Department of Public Works, 204 East McAlpin, Navasota, Texas.	
Send comments to The Honorable Al McDonald, Manager for the City of Navasota, Grimes County, P.O. Box 910, Navasota, Texas 77868.	
VERMONT	
Grand Isle (town), Grand Isle County	
Lake Champlain: Entire shoreline affecting community	*102
Maps available for inspection at the Town Office Vault, Grand Isle, Vermont.	
Send comments to The Honorable Perley Dubuque, Chairman of the Town of Grand Isle Board of Selectmen, Grand Isle County, Route 1, Box 388, Grand Isle, Vermont 05448.	
Hartland (town), Windsor County	
Connecticut River:	
At downstream corporate limits	*331
Approximately 2.4 miles upstream of confluence of Lulls Brook	*335
Approximately 400 feet upstream of confluence of Ottauquechee River	*343
At upstream corporate limits	*346
Ottauquechee River Lower Reach:	
At confluence with Connecticut River	*343
At upstream side of White Current Corporation dam	*353
At downstream side of U.S. Route 5	*357
Ottauquechee River Upper Reach:	
At downstream corporate limits	*626
At upstream corporate limits	*635
Lulls Brook:	
At upstream side of Old Mill Dam	*421
At downstream side of U.S. Route 5	*557
Approximately 120 feet upstream of first crossing of State Route 12	*601
At upstream side of first crossing of Brownsville Road	*659
Approximately 0.5 mile upstream of second crossing of Brownsville Road	*695
Maps available for inspection at the Town Clerk's Vault, Town Office Building, Hartland, Vermont.	
Send comments to The Honorable Lawrence Frazier, Chairman of the Town of Hartland Board of Selectmen, Windsor County, Town Office Building, Hartland, Vermont 05048.	
Pittsford (town), Rutland County	
Otter Creek:	
Downstream corporate limits	*360
Upstream corporate limits	*368
Maps available for inspection at the Town Clerk's Vault, Planes Row, Vermont.	
Send comments to The Honorable Ronald Moran, Chairman of the Board of Selectmen for the Town of Pittsford, Rutland County, Town Offices, P.O. Box 8, Planes Row, Vermont 05763.	
St. Albans (town), Franklin County	
Lake Champlain: Entire shoreline within the community	*102
Maps available for inspection at the Town Clerk's Vault, St. Albans, Vermont.	
Send comments to The Honorable James Bessette, Chairman of the Board of Selectmen for the Town of St. Albans, Franklin County, Town Office Building, P.O. Box 37, St. Albans, Vermont 05481.	
VIRGINIA	
Abingdon (town), Washington County	
Wolf Creek:	
Downstream corporate limits	*2,000
Approximately 300 feet downstream of Colonial Road	*2,002
Upstream corporate limits	*2,009
Town Creek:	
Downstream corporate limits	*1,996
Approximately 250 feet downstream of East Main Street	*2,042
Upstream corporate limits	*2,061
Maps available for inspection at the Municipal Building, Abingdon, Virginia.	
Send comments to The Honorable G. M. Newman, Manager of the Town of Abingdon, Washington County, P.O. Box 789, Abingdon, Virginia 24210.	
Damascus (town), Washington County	
Beaver Dam Creek:	
Upstream corporate limits	*1,985
Upstream side of Water Street	*1,940
At confluence with Laurel Creek	*1,917
Laurel Creek:	
At upstream corporate limits	*1,960
Upstream side of Old Mill Dam	*1,924
Downstream corporate limits	*1,879
Maps available for inspection at the Municipal Building, Damascus, Virginia.	
Send comments to The Honorable Maurice Parris, Mayor of the Town of Damascus, Washington County, P.O. Box 56, Damascus, Virginia 24236.	
Glade Spring (town), Washington County	
Tributary to Hutton Creek:	
At downstream corporate limits	*2,061
Approximately 75 feet upstream of Highland Street	*2,070
Approximately 100 feet upstream of Norfolk and Western Railway	*2,100
At Norfolk and Western Railway	*2,108
Maps available for inspection at the Town Hall, 213 East Main Street, Glade Spring, Virginia.	
Send comments to The Honorable Fred White, Mayor of the Town of Glade Spring, Washington County, 113 East Main Street, P.O. Box 98, Glade Spring, Virginia 24340.	
Lancaster County	
Chesapeake Bay:	
Shoreline at State Route 646 (extended)	*10
Intersection of State Route 643 and State Route 709	*7
State Route 695 at Windmill Point Creek (Bridge)	*8
Rappahannock River:	
Shoreline at State Route 3 bridge (Norris Bridge)	*10
Shoreline at West Point	*7
Approximately 200 feet south of intersection of State Route 626 and	*7
State Route 627	
Shoreline at Curletts Point	*7
Maps available for inspection at the Zoning Office, County Courthouse, Lancaster, Virginia.	
Send comments to The Honorable Anita Sanders, Administrator of Lancaster County, P.O. Box 167, Lancaster, Virginia 22503.	
Russell County (unincorporated areas)	
Indian Creek:	
Approximately 0.14 mile downstream of first downstream crossing of U.S. Route 19	*2,121
Upstream side of second downstream crossing of county road	*2,142
At confluence of Hogwallow Branch	*2,162
Upstream side of third downstream crossing of U.S. Route 19	*2,184
Approximately 0.24 mile upstream of most upstream crossing of U.S. Route 19	*2,256
Lick Creek:	
At confluene with Clinch River	*1,471
Upstream side of second upstream crossing of Clinchfield Railroad	*1,496
Approximately 0.08 mile upstream of State Route 63	*1,640
Big Cedar Creek:	
Approximately 0.48 mile downstream of U.S. Route 19	*1,884
Approximately 0.85 mile upstream of footbridge	*1,965
Clinch River:	
Approximately 0.14 mile downstream of downstream St. Paul corporate limits	*1,463
At usptream St. Paul corporate limits	*1,469
Approximately 0.41 mile upstream of confluence with Lick Creek	*1,473
Lewis Creek:	
Approximately 0.09 mile downstream of State Route 653	*1,794
At upstream Honaker corporate limits	*1,823
At State Route 624	*1,844
Swords Creek:	
At most downstream crossing of Norfolk and Western Railway	*1,861
Upstream side of State Route 622	*1,930
Approximately 140 feet downstream of Robinson Run	*2,059
Maps available for inspection at the County Courthouse, Lebanon, Virginia.	
Send comments to The Honorable James Gillespie, Russell County Administrator, P.O. Box 1208, Lebanon, Virginia 24266.	
WEST VIRGINIA	
Berkeley County (unincorporated areas)	
Potomac River:	
At downstream county boundary	*345
At CONRAIL	*371
At confluence of Cherry Run	*407
Tributary 1 of the Potomac River:	
At confluence with Potomac River	*360
Approximately 200 feet upstream of Interstate Route 81	*393
Opequon Creek:	
At confluence with Potomac River	*358
Approximately 200 feet upstream of State Route 45	*366
At State Route 9	*375
At County Route 19	*401
At State Route 51	*441
Approximately 550 feet upstream of County Route 28-5	*453
Dry Run:	
Approximately 0.4 mile downstream of downstream county boundary	*452
Downstream side of County Route 9-11	*489
Upstream side of County Route 4	*553
Approximately 150 feet upstream of County Route 13	*575
Tuscarora Creek:	
Approximately 1,370 feet downstream of CSX Transport	*385
Downstream side of Interstate Route 81	*483
At County Route 15 (1st upstream crossing)	*521
At County Route 15 (3rd upstream crossing)	*556
Approximately 1.6 miles upstream of County Route 15 (3rd upstream crossing)	*594
Mill Creek:	
Approximately 0.4 mile downstream of County Route 26	*476
At County Route 24-3	*585
At County Route 24	*630
Approximately 1.7 miles upstream of County Route 24	*661

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Middle Creek:	
Approximately 1.3 miles downstream of U.S. Route 1	*486
Downstream side of County Route 30	*559
Approximately 1,500 feet downstream of County Route 30-5	*606
Approximately 100 feet upstream of County Route 37	*625
Evans Run:	
Approximately 1.4 miles downstream of U.S. Route 11	*454
At U.S. Route 11	*490
At Interstate Route 81	*521
Approximately 1 mile upstream of Interstate Route 81	*558
Maps available for inspection at the Berkeley County Planning Office, 212 South College Street, Martinsburg, West Virginia.	
Send comments to The Honorable Donald L. Bayer, President of the Berkeley County Commission, County Courthouse, 100 West King Street, Martinsburg, West Virginia 25401.	
Bridgeport (city), Harrison County	
Simpson Creek:	
Downstream side of Summit Park abandoned covered bridge	*956
Upstream side of Interstate Route 79	*963
At confluence of Ann Run	*975
At upstream corporate limits	*979
Ann Run:	
Confluence with Simpson Creek	*975
Downstream side of Willis Avenue	*984
At upstream corporate limits	*1,000
Maps available for inspection at the City Hall, 131 W. Main Street, Bridgeport, West Virginia.	
Send comments to The Honorable Edgar A. Hess, Mayor of the City of Bridgeport, Harrison County, 131 W. Main Street, Bridgeport, West Virginia 26330.	
Fayette County (unincorporated areas)	
White Oak Creek:	
Confluence of Dunloup Creek	*1,606
Downstream side of County Route 20/6 bridge	*1,693
Approximately 0.7 mile upstream of upstream crossing of County Route 21-20 bridge	*1,724
Paint Creek:	
At confluence with Town Creek	*1,608
Approximately 210 feet upstream of County Route 23-4 bridge	*1,631
Dunloup Creek:	
Approximately 3.6 miles downstream of first downstream crossing of County Route 25	*1,538
Upstream side of County Route 25-5 bridge	*1,604
At confluence with White Oak Creek	*1,606
Gauley River:	
At downstream county boundary	*668
Approximately 200 feet downstream of confluence of Big Creek	*674
New River:	
At confluence with Kanawha River	*665
Approximately 130 feet upstream of Chessie System bridge	*683
Kanawha River:	
At downstream county boundary	*625
At downstream side of County Highway 13 bridge	*645
At confluence with New River	*665
Maps available for inspection at the Fayette County Zoning Office, County Memorial Building, Fayetteville, West Virginia.	
Send comments to The Honorable Gene Carte, President of the Fayette County Commission, County Courthouse, Fayetteville, West Virginia 25840.	
Grant Town (town), Marion County	
Paw Paw Creek:	
At downstream corporate limits	*933
At upstream corporate limits	*945
Maps available for inspection at the City Hall, Grant Town, West Virginia.	
Send comments to The Honorable Gary McHenry, Mayor of the Town of Grant Town, Marion County, P.O. Box 40, Grant Town, West Virginia 26574.	
Lost Creek (town), Harrison County	
Lost Creek:	
Downstream corporate limits	*1,012
At confluence of Bonds Run	*1,013
Upstream side of Virginia Avenue	*1,022
Upstream corporate limits	*1,028
Gee Lick:	
At confluence with Lost Creek	*1,013
2nd Crossing of County Route 25	*1,018
Upstream corporate limits	*1,052
Maps available for inspection at the City Hall, Lost Creek, West Virginia.	
Send comments to The Honorable Gail Ashbaker, Mayor of the Town of Lost Creek, Harrison County, P.O. Box 216, Lost Creek, West Virginia 26385.	
Lumberport (town), Harrison County	
West Fork River:	
Upstream side of State Route 20	*919
Confluence of Tenmile Creek	*920
Entire Length of Tenmile Creek within the community	*920
Maps available for inspection at the City Hall, Lumberport, West Virginia.	
Send comments to The Honorable Madge Kellison, Mayor of the Town of Lumberport, Harrison County, P.O. Box 327, Lumberport, West Virginia 26386.	
Monongah (town), Marion County	
West Fork River:	
Downstream corporate limits	*885
Upstream corporate limits	*888
Maps available for inspection at the Town Hall, Monongah, West Virginia.	
Send comments to The Honorable Daniel Wood, Mayor of the Town of Monongah, Marion County, P.O. Box 9119, Monongah, West Virginia 26554.	
Worthington (town), Marion County	
West Fork River:	
At downstream corporate limits	*897
At upstream corporate limits	*898
Maps available for inspection at the City Hall, 274 Main Street, Worthington, West Virginia.	
Send comments to The Honorable Tracy Smith, Mayor of the Town of Worthington, Marion County, P.O. Box 265, Worthington, West Virginia 26591.	

The proposed modified base (100-year) flood elevations for selected locations are:

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
California	Yolo County (unincorporated areas).	Sacramento River	At the divergence of Sutter Slough	None	*17
			At County Road 141 Extended to river	None	*21
			At Davis Road Extended to river	None	*28
			At Pioneer Memorial Bridge	None	*30
			At "I" Street Bridge	None	*31
		Sutter Slough	At the confluence of Elk Slough	None	*17
		Yolo Bypass	At southwestern corner of Yolo County	None	*17
			At the intersection of Western Pacific R.R. and County Road 106.	None	*22
			At Yolo Causeway (Interstate Highway 80 and U.S. Highway 40).	None	*25
			Area located within County Road 104, south of County Road 38 A (Hackman Road), and Western Pacific R.R..	None	#2
		Elk Slough	At the intersection of Clarksburg Road and Western Pacific R.R., in Reclamation District (RD) 999.	None	*10
			At County Road 142, in Merritt Island (RD 150)	None	*17
		Sacramento River Deep Water Ship Channel.	On the entire reach located within Yolo County	None	*16

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps are available for inspection at the Yolo County Department of Planning, 292 West Beamer Street, Woodland, California.					
Send comments to Mr. Clarke Cameron, Chairman, Yolo County Board of Supervisors, 625 Court Street, Room 206, Woodland, California 95695.					
Delaware	Newark, City, New Castle County.	Christina River	At most downstream corporate limits	*65	*62
			Approximately 300 feet upstream of confluencne of West Branch Christina River.	*85	*87
			Downstream side of Barksdale Road	*110	*111
			At most upstream corporate limits	*130	*134
		White Clay Creek	At downstream corporate	None	*53
			Approximatley 1,050 feet upstream of tsh upstream corporate limits.	None	*7
Maps are available for inspection at the Planning Department, Municipal Building, 320 Elkton Road, Newark, Delaware.					
Send comments to The Honorable Carl Luft, Manager of the City of Newark, New Castle County, P.O. Box 390, Newark, Delaware 19711.					
Illinois	Sugar Grove (village), Kane County.	Welch Creek	About 900 feet downstream of Fay's Lane	None	*680
			Just downstream of Burlington Northern railroad	None	*683
			Just upstream of Burlington Northern railroad	None	*692
			Just upstream of Granart Road	None	*693
			Tributary No. 1		
			Just upstream of north-south airport runway	None	*693
			About 3500 feet upstream of north-south airport runway	None	*697
			Blackberry Creek		
			About 650 feet downstream of Bliss Road	None	*684
			About 750 feet upstream of Bliss Road	None	*687
Maps available for inspection at the Village Hall, 85 Main Street, P.O. Box 49, Sugar Grove, Illinois.					
Send comments to The Honorable Mario Tolomei, Village President, Village of Sugar Grove, Village Hall, 85 Main Street, P.O. Box 49, Sugar Grove, Illinois 60554.					
Michigan	Blissfield, Village Lenawee County.	River Raisin	At most downstream corporate limits	*684	*685
			Upstream side of Adrian Street Bridge	*686	*687
Maps available for inspection at the Village Hall, 117 West Adrian Street, Blissfield, Michigan.					
Send comments to The Honorable Charles Vollers, President of the Village of Blissfield, Lenaweee County, Village Hall, 117 West Adrian Street, Blissfield, Michigan 49228.					
Mississippi	City of Pass Christian, Harrison County.	Canal No. 1	Just upstream of Espy Avenue	*12	*12
			About 0.45 mile upstream of Espy Avenue	*13	*16
Maps available for inspection at the City Hall, Pass Christian, Mississippi.					
Send comments to The Honorable J.W. Erwin, Mayor, City of Pass Christian, P.O. Box 368, Pass Christian, Mississippi 39571.					
Montana	Flathead County (unincorporated areas).	Flathead River	Approximately 7000 feet downstream of State Route 208, Somers Big Fork Highway.	None	*2,893
			At Church Slough	None	*2,899
			Approximately 900 feet upstream of the confluence with Ashley Creek.	None	*2,901
			Approximately 2050 feet upstream of the confluence with Stillwater River.	*2,902	*2,903
		Middle Fork Flathead River	Approximately 4300 feet downstream of McDonald Creek	*3,149	*3,149
			At confluence with McDonald Creek	*3,152	**3,153
			Approximately 3500 feet upstream of McDonald Creek	*3,163	**3,162
			Approximately 1600 feet downstream of Glacier Route 1	*3,169	**3,169
		Swan River	Approximately 6350 feet upstream of Big Fork Dam	None	*3,012
			Approximately 1800 feet upstream of the confluence with Mud Creek.	None	*3,016
			Approximately 100 feet downstream of the confluence with Peterson Creek.	none	*3,024
			At the Lake County line	None	*3,034
Maps available for inspection at the Flathead County Regional Development Office, Planning Division, 723 Fifth Avenue East, Kalispell, Montana.					
Send comments to Mr. Allen Jacobsen, Chairman, Flathead County Board of Supervisors, 800 South Main Street, Kalispell, Montana 59901.					
Nevada	Lincoln County (unincorporated areas).	Meadow Valley Wash (near Caliente).	Approximately 100 feet upstream of State Route 55 crossing which is located approximately 4.75 miles south of the City of Caliente.	None	*4,192
			Approximately 1.22 miles downstream of State Route 55 crossing which is located approximately 2.5 miles south of the City of Caliente.	None	*4,235
			Approximately 500 feet upstream of State Route 55 Crossing which is located approximately 2.5 miles south of the City of Caliente.	None	*4,288
			Approximately 1.18 miles downstream of Union Pacific Railroad.	None	*4,313
			Approximately 700 feet downstream of Union Pacific Railroad.	*4,353	4,353
Maps are available for review at the Lincoln County Courthouse, Main Street, Picohe, Nevada.					
Send comments to Mr. Keith Whipple, Chairman, Lincoln County Board of Commissioners, P.O. Box 90, Pioche, Nevada 89043.					
Oregon	City of Sumpter, Baker County.	Powder River	At southern coporate limit (1000 feet east of the river channel.	None	*3,321
			At southern corporate limit	None	*4,328
			At Sawmill Gulch Road	None	*4,356
			At confluence of Cracker Creek	None	*4,383

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps are available for inspection at the Baker County Planning Office, County Courthouse, 1995 Third Street, Baker, Oregon 97814.					
Send comments to Mayor Bob McBride, City Hall, 240 North Mill Street, Sumpter, Oregon 97877.					
Pennsylvania	Chalfont, Borough Bucks County.	West Branch Neshaminy Creek	Upstream side of Bulter Avenue	*248	*247
			Confluence with Tributary No. 1	*250	*249
			Upstream corporate limits	*253	*250
		Tributary No. 1 to West Branch Neshaminy Creek.	Confluence with West Branch Neshaminy Creek	*250	*249
Maps are available for inspection at the Borough Building, 40 North Main Street, Chalfont, Pennsylvania.					
Send comments to The Honorable Gerald J. Eberz, Jr., President of the Borough Council of Chalfont, Bucks County, P.O. Box 80, Chalfont, Pennsylvania 18914.					
Pennsylvania	Hatfield, Township Montgomery County.	West Branch Neshaminy Creek	Upstream side of Countyline Road at downstream corporate limits.	*272	*269
			Upstream side of State Route 309	*278	*276
			Confluence with Unionvile Tributary	*283	*282
		Colmar Tributary	Confluence with West Branch Neshaminy Creek	*274	*272
			A point approximately 800 feet downstream of Walnut Street.	*275	*274
		Unionville Tributary	Confluence with West Branch Neshaminy Creek	*283	*282
			Upstream side of Lexington Road	*301	*299
			Confluence with Tributary to Unionville Tributary	*314	*311
			Downstream side of U.S. Route 309 at the upstream corporate limits.	*345	*343
		Tributary to Unionville Tributary	Confluence with Unionville Tributary	*314	*311
			Approximately 320 fet upstream of the confluence with Unionville Tributary.	*314	*313
		North Hatfield Tributary	Upstream side of Unionville Pike	None	*330
			Approximately 925 feet upstream of Bergery Road	None	*370
Maps are available for Inspection at the Hatfield Township Building, School Road and Chestnut Street, Hatfield, Pennsylvania.					
Send comments to The Honorable Raymond S. Masser, Chariman of the Township of Hatfield Board of Commissioners, Montgomery County, School Road and Chestnut Street, Hatfield, Pennsylvania 19440.					
Pennsylvania	New Britain, Township Bucks County.	West Branch Neshaminy Creek	At downstream corporate limits	*252	*250
			Downstream side of CONRAIL	*265	*264
			Downstream side of County line road at the upstream corporate limits.	*272	*268
		Railroad Creek	Confluence with West Branch Neshaminy Creek	None	*251
			Approximately 1,170 feet upstream of Sunset Road at the upstream limit of detailed study.	None	*257
Maps available for inspection at the Township Building, 207 Park Avenue, Chalfont, Pennsylvania.					
Send comments to The Honorable Robert Bender, Manager for the Township of New Britain, Bucks Country, 207 Park Avenue, Chalfont, Pennsylvania 18914.					
Tennessee	City of Manchester, Coffee County.	Duck River	About 0.1 mile downsteam of U.S. Route 41	*999	*999
			Just downstream of Morton Dam	*1,001	*1,001
			Just upstream of Morton Dam	*1,010	*1,010
			About 400 feet upsteam of Interstate 24	None	*1,013
		Little Duck River	About 0.75 mile downstream of U.S. Route 41	*975	*975
			At confluence of Hunt Creek	*1,047	*1,048
		Grindstone Hollow Creek	About 420 feet upstream of mouth	*978	*976
			Just downstream of Louisville and Nashville Railroad	*1,030	*1,029
			Just upstream of Louisville and Nashville Railroad	*1,039	*1,039
			Just downstream of Louisville and Nashville Railroad	*1,056	*1,055
		Hickory Flat Creek	At mouth	*1,041	*1,042
			About 400 feet upstream of Expressway Drive	None	*1,056
		Hunt Creek	At confluence with Little Duck River	*1,047	*1,048
			About 0.6 mile upstream of Skinner Flat Road	*1,057	*1,056
		Wolf Creek	At confluence with Little Duck River	*1,012	*1,011
			About 1.2 miles upstream of Brushy Branch Road	*1,042	*1,043
Maps available for inspection at the City Hall, 200 West 4th Street, Manchester, Tennessee.					
Send comments to The Honorable Ray Worthington, Mayor, City of Manchester, City Hall, 200 West 4th Street, Manchester, Tennessee 37355.					
Tennessee	City of McMinnville, Warren County.	Barren Fork	About 1.6 miles downstream of Beersheba Street	*887	*887
			About 1600 feet downstream of the confluence of Hickory Creek.	*915	*914
		Pepper Creek	At Mouth	*899	*899
			Just downstream of South Chancery Street	*899	*899
			Just upstream of South Chancery Street	*901	*910
			About 0.4 mile upstream of South Chancery Street	*903	*911
Maps available for inspection at the Blue Municipal Building, West Colville Street, McMinnville, Tennessee.					
Send comments to The Honorable Royce Davenport, Mayor, City of McMinnville, Blue Municipal Building, West Colville Street, McMinnville, Tennessee 37110.					
Texas	Arlington, City, Tarrant County	Cottonwood Creek	Approximately 1,740 feet downstream of Timberlake Drive	*526	*528
			Approximately 1,740 feet upstream of Susan Drive	*560	*558
		South Fork Cottonwood Creek	Approximately 1,300 feet downstream of Forum Drive	*558	*557
			Approximately 1,560 feet upstream of State Route 360, Right Frontage Road.	None	*597
		Fish Creek	Upstream side of Watson Road	*541	540
			Approximately 100 feet downstream of Nathan Lowe Road	*588	*583
			Approximately 2,160 feet upstream of Matlock Road	None	*616
		Stream FC-1	At confluence with Fish Creek	*547	*549
			Approximately 500 feet upstream of confluence with Fish Creek.	None	*550
			Approximately 1.1 miles upstream of New York Avenue	None	*586

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
		Stream FC-2	At confluence with Fish Creek	*570	*571
			Approximately 1.8 miles upstream of confluence with Fish Creek.	None	*604
		Lynn Creek	Approximately 820 feet downstream of Webb-Lynn Road	None	*552
			Upstream side of Nathan Lowe Road	None	*610
		Bowman Branch	Approximately 160 feet upstream of Matlock Road	None	*624
			Approximately 1.5 miles downstream of Webb Ferrel Road	None	*542
		Stream BB-1	Approximately 1.8 miles upstream of Mansfield Webb Road	None	*609
			At confluence with Bowman Branch	None	*576
			Approximately 0.8 mile upstream of confluence with Bowman Branch.	None	*601
		Johnson Creek	At downstream corporate limits	*512	*509
			Upstream side of Randol Mill Road	*543	*542
			Approximately 200 feet upstream of Texas and Pacific Railroad.	*564	*562
			Approximately 850 feet upstream of East Mitchell Street	*574	*575
			Approximately 100 feet downstream of West Park Row	*584	*583
			Upstream side of Arkansas Lane	*614	*613
			Approximately 850 feet downstream of Matlock Road	*628	*629
			Upstream side of Matlock Road	None	*632
			Approximately 100 feet upstream of High Point Road	None	*656
		Stream JC-1	At downstream corporate limits	None	*502
			.85 mile upstream of corporate limits	None	*533
		Stream JC-2	At confluence with Johnson Creek	*589	*588
			Approximately 400 feet upstream of East Tucker Boulevard	None	*610
		Stream JC-3	At confluence with Johnson Creek	None	*612
			Approximately 0.6 mile upstream of Station Drive	None	*645
		West Fork Trinity River	Approximately 1.1 miles downstream of confluence of Stream WF(A)-1.	None	*464
			Downstream side of U.S. Route 157	*465	*468
			Approximately 250 feet upstream of confluence of Stream WF(A)-2.	*468	*475
			Approximately 1.5 miles upstream of confluence of Stream WF(A)-2.	None	*478
		Stream WF(A)-1	At confluence with West Fork Trinity River	None	*465
			Upstream side of Forest Oak	None	*532
		Stream WF(A)-2	Approximately 60 feet upstream of Stadium Road	None	*556
			At confluence with West Fork Trinity River	*468	*475
		Village Creek	Approximately 120 feet upstream of North Cooper Street	None	*509
			At confluence with West Fork Trinity River	None	*479
			At confluence of Rush Creek	*494	*490
			Approximately 850 feet downstream of State Route 303	*501	*500
			Approximately 1,600 feet upstream of confluence of Stream VC(A)-2.	*507	*506
		Stream VC(A)-1	Approximately 0.7 mile downstream of West Lamar Boulevard.	None	*479
			Approximately 2,000 feet downstream of West Lamar Boulevard.	*480	*486
			Downstream side of West Lamar Boulevard	*481	*492
			Approximately 50 feet upstream of Fielder Road	None	*545
		Rush Creek	Approximately 0.6 mile downstream of Pioneer Parkway (State Route 303).	*499	*500
			At confluence of Kee Branch	*538	*540
			Approximately 550 feet upstream of Interstate Route 20	*565	*566
			Approximately 100 feet downstream of Kennedale Sublett Road.	*599	*597
			Approximately 0.5 mile upstream of Willow Oak	None	*654
		Stream RC-1	At confluence with Rush Creek	*495	*491
			Approximately 100 feet upstream of Bowen Road	None	*552
		Stream RC-1-A	At confluence with Stream RC-1	None	*529
			Approximately 70 feet upstream of Bowen Road	None	*562
		Pantego Branch	Approximately 600 feet upstream of confluence with Rush Creek.	*499	*500
			Approximately 1,820 feet upstream of Park Springs Boulevard.	None	*533
		Stream RC-2	At confluence with Rush Creek	*514	*517
			Approximately 60 feet upstream of Arkansas Lane	None	*562
		Kee Branch	At confluence with Rush Creek	*538	*540
			Upstream side of Poly Webb Road	*591	*589
			Upstream side of Kennedale Sublett Road	*612	*639
		Stream KB-1	At confluence with Kee Branch	None	*571
			Approximately 530 feet upstream of Green Oaks Boulevard	None	*605
		Sublett Creek	At confluence with Rush Creek	None	*604
			Approximately 1.3 miles upstream of U.S. Route 287	None	*671
		Stream VC(A)-2	At confluence with Village Creek	None	*506
			Approximately 0.7 mile upstream of confluence with Village Creek.	None	*564

Maps available for inspection at the City Hall, 200 West Abrahams, Arlington, Texas.

Send comments to The Honorable Harold Patterson, Mayor of the City of Arlington, Tarrant County, P.O. Box 231, Arlington, Texas 76010.

Vermont	Windsor, Town Windsor County.	Connecticut River	At upstream side of Bridge Street	*324	*327
			At confluence with Connecticut River	*324	*326
		Mill Brook	Approximately 400 feet downstream of Mill Pond Dam	*349	*351
			At upstream side of Mill Pond Dam	*387	*386
			Approximatley 160 feet upstream of State Route 44	*408	None
			Approximately 0.7 mile upstream of State Route 44	*428	None

Maps available for inspection at the Town Clerk's Office, Town Offices, Windsoir, Vermont.

Send comments to The Honorable Paul Hughes, Manager for the Town of Windsor, Windsor County, Town Offices, Windsor, Vermont 05089.

Issued: June 4, 1987.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 87-13423 Filed 6-15-87; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-183, RM-5636]

Radio Broadcasting Services; Kotzebue, AK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Arctic Broadcasting Associates, seeking the allotment of Channel 280A to Kotzebue, Alaska, as that community's first local FM service.

DATES: Comments must filed on or before August 3, 1987, and reply comments on or before August 18, 1987.

ADDRESS: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Peter Gutmann, Esq., Pepper & Corazzini, 1776 K Street, NW., Washington, DC 20006.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, Docket No. 87-183, adopted May 5, 1987, and released June 11, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

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

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte contact.*

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-13695 Filed 6-15-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-185, RM-5606]

Radio Broadcasting Services; Pine, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Thomas Renteria requesting the allotment of Channel 291A to Pine, Arizona, as a first local service.

DATES: Comments must be filed on or before August 3, 1987, and reply comments on or before August 18, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Thomas Renteria, 769 West Sepulveda Street, San Pedro, CA 90731.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-185, adopted May 5, 1987, and released June 11, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

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

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-13693 Filed 6-15-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-184, RM-5635]

Radio Broadcasting Services; Monticello, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Craig T. Dale seeking the allotment of Channel 260A to Monticello, Arkansas, as that community's second local FM service.

DATES: Comments must be filed on or before August 3, 1987, and reply comments on or before August 18, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the

FCC, interested parties should serve the petitioner, or their counsel or consultant as follows: Craig T. Dale, 2104 Ripley, El Dorado, AR 71739 (Petitioner); Larry G. Fuss, Contemporary Communications, P.O. Box 1901, El Dorado, AR 71731 (Consultant).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–184, adopted May 6, 1987, and released June 11, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

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

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–13694 Filed 6–15–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–181, RM–5500]

Radio Broadcasting Services; Earl Park, IN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by IBN Broadcasting, Inc. proposing the substitution of FM Channel 251B1 for Channel 252A at Earl Park, Indiana and modification of the license of Station WIBN–FM, Earl Park, Indiana to specify operation on Channel 251B1.

DATE: Comments must be filed on or before August 3, 1987, and reply comments on or before August 18, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richard J. Hayes, Jr., Attorney at law, 1359 Black Meadown Road, Spotsylvania, Virginia 22553 (Counsel to Petitioner).

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–181 adopted April 24, 1987, and released June 11, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street NW., Washington DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

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

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–13696 Filed 6–15–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–187, FM–5564]

Radio Broadcasting Services; Bad Axe, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Thumb Broadcasting, Inc., proposing the substitution of FM Channel 271C2 for Channel 221A at Bad Axe, Michigan, and modification of its license of Station WLEW (FM), to reflect the higher class of channel. The allotment requires a site restriction 14.7 kilometers (9.1 miles) northwest of the community and concurrence of the Canadian government.

DATE: Comments must be filed on or before August 3, 1987, and reply comments on or before August 18, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or their counsel or consultant, as follows: James R. Bayes, Jerry V. Haines, Wiley, Rein & Fielding, 1776 K Street NW., Washington DC 20006.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–187, adopted March 13, 1987, and released June 11, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street NW., Washington DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

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

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-13697 Filed 6-15-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-182, RM-5543]

Radio Broadcasting Services; Bear Lake, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document comments on a petition filed by Andrew L. Banas, proposing the substitution of Channel 262C2 for Channel 261A at Bear Lake, Michigan, and modification of the construction permit for Station WRQT at Bear Lake to specify the higher class of channel. Canadian concurrence is required for the allotment of this channel. This proposal could provide a first wide coverage area station to Bear Lake.

DATES: Comments must be filed on or before August 3, 1987, and reply comments on or before August 18, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Stanley G. Emert, Jr., Watson & Emert, 2108 Plaze Tower, Knoxville, Tennessee 37929 (counsel for petitioner).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-182, adopted May 7, 1987, and released June 11, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037..

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

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-13698 Filed 6-15-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-188, RM-5628]

Radio Broadcasting Services; Banks, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by P-N-P Broadcasting to allocate Channel 298A to Banks, Oregon, as the community's first local FM service. Channel 298A can be allocated to Banks in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. Canadian concurrence in the allocation is required since Banks is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before August 3, 1987, and reply comments on or before August 18, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Duane J. Polich, P-N-P Broadcasting, 9235 NE. 175th, Bothall, Washington 98011 (petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, MM Docket No. 87-188, adopted May 5, 1987, and released June 11, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

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

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-13699 Filed 6-15-87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 87-08; Notice 1]

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This notice requests comments on whether the agency should require manufacturers to install lap/shoulder belts in the rear seating positions of passenger cars, multipurpose passenger vehicles, such as vans and utility vehicles, and small buses. This notice presents the results of the agency's preliminary review of the benefits and cost associated with rear seat lap/shoulder belts and requests the public to comment on those results. The

agency is specifically seeking comment on the cost-effectiveness of requiring rear seat lap/shoulder belts, by vehicle type.

DATE: Comments on this notice must be received by July 31, 1987.

ADDRESS: Comments should refer to the docket and notice number for this notice and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Strombotne, Chief, Crashworthiness Division, NRM–12, Room 5320, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 Telephone (202) 366–2264.

SUPPLEMENTARY INFORMATION:

Background

On January 1, 1968, the initial Federal Motor Vehicle Safety Standards went into effect. One of those standards was Standard No. 208, *Occupant Crash Protection,* which required the installation of safety belts in passenger cars. The standard provided for installation of a lap/shoulder belt for the driver and for the right front passenger. In addition, the standard required the installation of, at least, lap belts for all other passengers. Another of the initial safety standards issued by the agency was Standard No. 210, *Seat Belt Assembly Anchorages,* which set location and strength requirements for the anchorages used in installing safety belts. The standard required manufacturers of passenger cars to provide lap/shoulder belt anchorages for the front and rear outboard seats. (NHTSA subsequently amended both standards to extend their applicability to trucks, buses, and multipurpose passenger vehicles. In extending Standard No. 210, the agency did not, however, require manufacturers to provide upper torso belt anchorages for the rear seating positions in trucks, multipurpose passenger vehicles, and buses.)

In 1982, John Melvin and Kathleen Weber of the University of Michigan Transportation Research Institute petitioned the agency to require the installaiton of lap/shoulder belts in the rear outboard seating positions of passenger cars. The petitioners explained that one of the primary reasons for their request was to facilitate the use of booster seats for children in the rear seats. In addition, they said that the availability of rear seat lap/shoulder belts would provide additional safety for adult occupants as well. In 1984 (49 FR 15241), NHTSA denied the petition. Although NHTSA agreed with the petitioners that lap/shoulder belts could provide additional protection to adults, the agency explained that existing crash data showed that rear seat lap belts already provide effective protection. In addition, the agency then estimated that rear seat lap/shoulder belts with emergency locking retractors would cost an additional $20 more than the existing lap belt systems found in the rear seats of most passenger cars. NHTSA concluded that the additional cost could not be justified based on the possibility of increased belt usage or belt effectiveness.

In an attempt to increase the ease and frequency of rear seat shoulder belt retrofit installations (i.e., voluntary installations by the vehicle owner), the agency adopted a requirement that the owner's manual identify the location of the shoulder belt anchorages, which have long been required by Standard No. 210 for passenger cars (50 FR 41356). The owner's manual information requirement goes into effect on September 1, 1987. (51 FR 29552).

In August 1986, the agency granted a petition from the Los Angeles Area Child Passenger Safety Association requesting the agency to require the installation of rear seat lap/shoulder belts. The agency decided to grant the petition and re-examine whether to require the installation of rear seat lap/shoulder belts because of the widespread adoption of state safety belt use laws as a result of the Department's July 1984 decision on occupant crash protection (July 17, 1984, 49 FR 28962). At present, 25 states and the District of Columbia now have safety belt use laws.

Although most of the laws require the use of safety belts in the front seats only, four of the laws require both front and back seat occupants to buckle up. As a result of the state laws, the number of people wearing safety belts has substantially increased. For example, the December 1986 results for the agency's ongoing survey of safety belt usage in 19 cities throughout the United States show that in the 13 cities with safety belt laws in effect during the last 6 months of 1986, 46 percent of the drivers were buckled up. The cities of Dallas and Houston reported the highest usage rates in that study at 67 percent and 64 percent, respectively. The most recent information from North Carolina shows that the usage rates in that state have now reached 78 percent since its fine went into effect in January 1987.

The adoption of safety belt use laws and the growing public awareness of the benefits of safety belts has also brought about a general nationwide increase in safety belt usage. The primary increase in belt usage has been in the front seat, where nationwide, the usage rose from over 10 percent in 1981–82 to almost 22 percent in 1985. There has also been an increase in rear seat usage, from approximately 2 percent usage in 1981–82 to almost 10 percent usage in 1985.

As a part of its efforts to re-examine this issue, the agency has prepared a Preliminary Regulatory Impact Analysis which takes a comprehensive look at the costs and safety benefits of rear seat lap/shoulder belts. The results presented in the PRIA, a copy of which has been placed in the public docket for this rulemaking, show that rear seat lap belts have been effective in reducing deaths and serious injuries. Although lap/shoulder belts may provide additional benefits, the amount of those benefits is likely to be relatively small at current usage rates. The agency estimates such benefits to be a reduction of approximately 10 fatalities and 400 serious injuries per year. The PRIA also shows that the costs associated with installing rear seat lap/shoulder belts are substantial. The agency estimates that the cost of installing lap/shoulder belts at all rear seating positions would be approximately $248 million for passenger cars, $63 million for light trucks and light multipurpose passenger vehicles, and $0.8 million for light buses. If a requirement were limited to installing lap/shoulder belts in the rear outboard seating positions, the costs would still be substantial. $139 million for passenger cars, $21 million for light trucks and multipurpose passenger vehicles, and $0.1 million for buses.

The agency is concerned that such costs are extremely disproportionate to the possible safety benefits. In examining the cost-effectiveness of several existing passenger car crashworthiness standards, the agency finds that these standards (Nos. 203/204, 205, 214, and 301) are from 20 to 160 times more cost-effective than would be a rear seat lap/shoulder belt requirement. Requiring significant industry and agency resources to be spent for relatively little safety gain can result in a lost opportunity to better improve vehicle safety through other means, such as improved frontal or side impact protection. The agency seeks specific comment on this point.

Another factor mitigating the need for a new Federal requirement is the voluntary installation of rear seat lap/shoulder belts in passenger cars by manufacturers. At present at least eight manufacturers (Audi, BMW, Jaguar,

Mercedes-Benz, Peugeot, Rolls-Royce, SAAB, and VW) are installing rear seat lap/shoulder belts in most, if not all of their passenger cars. In addition, General Motors has begun installing rear seat lap/shoulder belts as standard equipment in several of its existing models and has announced plans to install those belts in all of its passenger vehicles by 1989. Both Ford and Chrysler are also planning to install rear seat lap/shoulder belts in some of their cars. Because of all these factors, NHTSA believes it will be difficult to demonstrate that requiring installation of lap/shoulder belts would be cost effective.

In the following sections of this notice, the agency summarizes the major conclusions from the PRIA and requests the public to raise any additional issues or provide any additional data the agency should consider. In addition, the notice requests comments on several other issues related to the installation of rear seat lap/shoulder belts, such as whether those belts should be subject to a crash test requirement and whether comfort and convenience requirements should be applied to those belts.

Effectiveness of Current Lap Belts

There have been a number of recent studies, conducted by the agency and others, that have examined the performance of lap belts in the rear seat and found that they have been effective in reducing deaths and injuries. For example, NHTSA has used data from the Restraint System Evaluation Program, completed in 1976, from Maryland (1981–1984) and North Carolina (1979–1985), from the National Accident Sampling System and its predecessor, the National Crash Severity Study 1977–1984, and from the Fatal Accident Reporting System. These studies contain thousands of cases, which clearly show that lap belts are effective in preventing death and reducing injuries.

In stark contrast to these comprehensive studies, a study released last year by the National Transportation Safety Board (NTSB), which contained a limited analysis of 26 severe frontal crashes, has implied that people would be bettor off not wearing lap belts when riding in the rear seat of a car. NHTSA has recently written NTSB expressing concern that the Board could or would reach its conclusions based on the very small number of accident cases contained in its report. NHTSA cited the comprehensive studies mentioned above and told the Board that the data cases represented by those files far better reflect the real-world effectiveness of lap belts than the tiny sample selected by NTSB for review.

As the agency noted in its reponse to the Board, we are also concerned that the Board's report may have done considerable harm to nationwide efforts to increase safety belt usage. The Board's report and the accompanying publicity has confused the public and dampened enthusiasm for State safety belt usage laws, as well as belt usage generally. It is hoped that the agency's future efforts and those of others in the safety community will overcome any long term negative effects that the Board's report may have had.

As a part of the PRIA prepared for this rulemaking, NHTSA analyzed the potential safety benefits of installing shoulder belts in passenger cars, light trucks, light MPV's, and light buses. In 1985, the most recent year for which complete data is available, there were approximately 1,700 fatalities and more than 190,000 injuries in the rear seat. Based on its review of available data, NHTSA estimates that manual lap belts in the rear seat are 26 percent effective in reducing fatalities and lap/shoulder belts in the rear seat might be 33 percent effective in reducing fatalities. NHTSA estimates that rear seat lap belts are 33 percent effective in reducing moderate-to-severe injuries, while rear seat lap/shoulder belts could be 50 percent effective in reducing those injuries.

NHTSA then examined data on the current safety belt usage rates in the rear seats of passenger cars, light trucks, buses, and MPV's. The agency then combined the safety belt effectiveness estimate and the usage rate data with current injury data to estimate the number of deaths and injuries that would be saved if vehicles were equipped with lap/shoulder belts. The results of those calculations showed that, when compared to the performance of rear seat lap belts at current usage rates, lap/shoulder belts installed at each rear seating position in passenger cars could reduce 10 additional fatalities and 330 additional moderate to serious injuries, with approximately 90 percent of those benefits accruing from use of the lap/shoulder belt in the outboard seats. The calculations also showed that lap/shoulder belts in light trucks and MPV's can reduce 55 moderate to serious injuries, but would bring about no reduction in fatalities; approximately 70 percent of the reduction is due to use of lap/shoulder belts in the outboard seats. Finally, the agency calculated that, because of their low current usage and injury rates, there would be almost no safety benefits associated with installing rear seat lap/shoulder belts in light buses.

NHTSA's estimates of the potential benefits of rear seat lap/shoulder belts is based on the benefit to the rear seat passenger. The agency requests information from commenters on what effects, if any, rear seat lap/shoulder belts would have in reducing injuries to front seat occupants, due to the possible decrease in instances where the rear seat occupant imposes additional force on the back of the front seat. The agency also requests information on what effect, if any, rear seat lap/shoulder belts may have in increasing usage rates.

Cost of Installing Rear Seat Lap/Shoulder Belts

As previously discussed, Standard No. 210 currently requires the installation of anchorages for rear seat lap/shoulder belts in all outboard seats in passenger cars other than convertibles. Thus, the costs associated with installing a lap/shoulder belt at those positions are the costs of the attaching hardware and additional webbing. NHTSA estimated that installing lap/shoulder belts in the outboard seating positions in passenger cars would cost approximately $12 per car. Installing a lap/shoulder belt for the center rear seat would require additional structural reinforcement as well as the installation of a retractor and retractor housing at an additional cost of $20. Thus, the annual cost of installing lap/shoulder belts in only the rear outboard seats in $139 million and requiring those belts for the center rear seat, as well, would increase the costs to $248 million. These costs are based on a regulatory requirement for such belts. To the extent that manufacturers already install lap/shoulder belts in the rear seat, the costs would be reduced proportionately. Similarly, the benefits discussed earlier would also be reduced proportionately.

Unlike its requirements for passenger cars, Standard No. 210 does not require light trucks, multipurpose passenger vehicles, and buses to have lap/shoulder belt anchorages for the rear seat. Thus, the cost of requiring lap/shoulder belts in those vehicles is greater than for passenger cars because vehicle manufacturers must make structural changes to those vehicles to secure the upper torso portion of a lap/shoulder belt. NHTSA esimates that the cost of lap/shoulder belts for the rear outboard seat in light trucks and multipurpose passenger vehicles would range from $7 to $33, depending on vehicle type and seating configuration and whether structural modifications

are needed. The cost for equipping all rear seating positions with lap/shoulder belts would range from $13 to $190.

Limiting the requirement to the second seat in light trucks and multipurpose passenger vehicles would reduce the costs to a range of $7 to $13 for outboard seats and $13 to $65 for the outboard and center seating positions in the second seat. The total annual cost of installing lap/shoulder belt in all rear outboard seats in light trucks and multipurpose passenger vehicles would be $21 million. Covering center seats as well would increase the total cost to $63 million. If the requirement is limited to the second seat, the annual costs for installing lap/shoulder belts for the outboard seats would be $16 million and the cost for covering the outboard and center seating positions would be $56 million.

The agency has also estimated the potential industry costs of installing lap/shoulder belts in the rear seats of buses. Due to the small number of such vehicles, those costs range from $68,000 for installing lap/shoulder belts at only the outboard positions of the second seat to $804,000 to installing lap/shoulder belts at all positions in all rear seats.

The agency requests commenters to provide additional cost data on installing rear seat lap/shoulder belts. In particular, the agency asks commenters to address whether additional structural changes, beyond the ones described in the PRIA, would be needed to install rear seat lap/shoulder belts. The agency also requests commenters to provide information on the number of vehicles in which they would need to substitute an emergency locking retractor for an automatic locking retractor in order to install the belt and what the cost effects of that substitution would be.

Manufacturer Plans To Install Rear Seat Lap/Shoulder Belts

As mentioned previously, at least eight manufacturers (Audi, BMW, Jaguar, Mercedes-Benz, Peugeot, Rolls-Royce, SAAB, and VW) are currently installing rear seat lap/shoulder belts in most, if not all of their passenger cars. In addition, General Motors has begun installing rear seat lap/shoulder belts as standard equipment in several if its 1987 models and plans to install those belts as standard for all its passenger vehicles during the 1988–1989 time frame.

Several other vehicle manufacturers have recently provided the Consumer Subcommittee of the U.S. Senate Committee on Commerce, Science and Transportation with information about their current plans to install rear seat lap/shoulder belts. In a March 5, 1987 hearing before the Subcommittee, Chrysler said it will begin phasing-in those belts in the 1989 model year and also plans to offer a dealer-installed retrofit shoulder belt for its "current models and many earlier models." Ford told the Subcommittee that it "presently equips its Merkur XR4Ti models with three-point safety belts in the rear outboard seating positions, and we plan to expand the use of these systems during the next few years." Ford said it is also "developing dealer-installed rear lap/shoulder belt accessory kits, which we plan to have available for all 1988 car lines during the model year."

Honda informed the subcommittee that it "has installed rear seat lap/shoulder belts in its Accord model since 1982 and in the Legend since its introduction in 1986. We plan to rapidly phase-in rear seat lap/shoulder belts at the outboard seating positions in other models." Nissan said that it currently installs rear seat lap/shoulder belts as standard equipment in its 1987 Maxima models. Nissan also said that its "current plans are to phase in real lap-and-shoulder belts one model at a time, so that all 1990 model year passenger car models will be so equipped. Our multi-purpose passenger vehicles which have rear seating positions will include the real lap-and-shoulder belts as standard equipment by the 1991 model year." Toyota told the Subcommittee that it "intends to have lap and shoulder belts in the rear outboard seating position as standard equipment on Model Year 1988 Cressida and Camry vehicles. Rear lap and shoulders belts will be optional equipment on all other Model Year passengers vehicle and MPV's. For Model Year 1989, passenger vehicles and MPV's will have as standard equipment lap and shoulder belts in the rear outboard positions."

As discussed above, a substantial percentage of the manufacturers producing or importing vehicles into the U.S. now have or plan to install rear seat lap/shoulder belts in their passenger vehicles. So that the agency will have the most up-to-date information, the agency requests manufacturers that have not yet announced whether they will install rear seat lap/shoulder belts to provide the agency with information about their current plans, including information on their plans for MPV's light trucks and buses as well as passenger cars.

Dynamic Testing

Standard No. 208 provides that, if the automatic restraint requirement is rescinded, then beginning on September 1, 1989, all passenger cars with manual lap/shoulder belts installed in the front outboard seats must meet the occupant protection performance requirements set for automatic restraint in a 30 mph frontal barrier crash. The agency has proposed applying a similar requirement to the manual lap/shoulder belts installed in the front outboard seats of light trucks and MPVs. Although the agency believes it is appropriate that rear seat lap/shoulder belts provide the same level of protection as front seat lap/shoulder belts. NHTSA does not have any data on the performance levels of current rear seat lap/shoulder belt systems in vehicle crash tests. NHTSA asks commenters to provide data on the result from sled or vehicle crash tests in which anthropomorphic test dummies, either the Part 572 Subpart B test dummy or the newer Hybrid III test dummy, have been restrained by lap/shoulder belts in the rear seat.

Comfort and Convenience

In November 1985, NHTSA established a new set of performance requirements aimed at making safety belts easier to put on and more comfortable to wear. Several of those performance requirements, such as the requirements in S7.4.6 that are designed to prevent safety belts from slipping between the seat cushions, apply to both the front and rear seats. However, the other performance requiremens apply only to automatic or manual lap/shoulder belts installed in the front seat of vehicles. For example, S7.4.3 of the standard, which limits the pressure that can be exerted by the shoulder belt, applies to safety belts in the front seat. Likewise, the safety belt retraction requirements of S7.4.5 apply only to the front seat. NHTSA requests comments to address whether the agency should consider applying the comfort and convenience requirements applicable to front seat lap/shoulder belts to rear seat lap/shoulder belts installed in the rear already comply with the front seat comfort and convenience requirements, and the costs associated with redesigning, if necessary, rear seat lap/shoulder belts to comply with the front seat comfort, and convenience requirements.

Regulatory Impacts

NHTSA has examined the potential impacts of this rulemaking action. This advance notice of proposed rulemaking is not subject to Executive Order 12291, since that order applies only to notices of proposed rulemaking and final rule. However, NHTSA believes that this advance notice of proposed rulemaking does concern a matter in which there is substantial public interest, which makes

it a "significant" rulemaking action within the meaning of the Department of Transportation's regulatory policies and procedures. As discussed early in this notice, the agency has prepared, and placed in the public docket, the equivalent of a preliminary regulatory impact analysis for this rulemaking.

Submission of Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted. All comments must be limited not to exceed 15 pages in length. (49 CFR 553.21) Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submision, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-address stamped postcard. Upon receiving the comments the docket supervisor will return the postcard by mail.

(15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.)

Issued on June 11, 1987.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 87-13690 Filed 6-15-87; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 653

[Docket No. 70616-7116]

Red Drum Fishery of the Gulf of Mexico

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

ACTION: Proposed rule.

SUMMARY: NOAA issues this proposed rule amending the regulations for the Fishery Management Plan for the Red Drum Fishery of the Gulf of Mexico (FMP). The proposed rule: (1) Establishes primary and secondary fishing areas and prohibits harvest of red drum from secondary areas, (2) revises the quota requirement to include allocations for shrimp vessels and recreational fishing vessels, (3) revises the closure requirement to apply to shrimp and recreational vessels, (4) prohibits the sale of fish landed under the bag limit, (5) requires that fish be landed in conformance with State laws, and (6) revises the allocation procedure. The intended effect is to integrate State and Federal management and to prevent overfishing while achieving optimum yield (OY) from the red drum fishery on a continuing basis.

DATE: Written comments on the proposed rule will be received until Saturday, July 25, 1987.

ADDRESS: Comments on the proposed rule and requests for copies of Amendment 1 and its associated documents should be sent to William R. Turner, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Fl 33702.

FOR FURTHER INFORMATION CONTACT: William R. Turner, 813 893-3722.

SUPPLEMENTARY INFORMATION: The Secretary of Commerce (Secretary) prepared the FMP under section 304(c) of the Magnuson Fishery Conservation and Management Act (Magnuson) Act). Implementing regulations (51 FR 46678, December 24, 1986) were effective December 19, 1986. Earlier, the Secretary promulgated an emergency rule (51 FR 23553, June 30, 1986) that limited directed net harvest of red drum from the exclusive economic zone (EEZ) to one million pounds during its 90-day effective period (June 25 to September 23, 1986); it also limited non-directed fisheries (incidental bycatch) to five percent of red drum by weight of the total catch aboard a vessel. The directed fishery was closed on July 20, 1986 (51 FR 26554, July 24, 1986; corrected at 51 FR 27413, July 31, 1986). The Secretary extended the emergency rule (51 FR 34220, September 26, 1986) for a second 90-day period, until December 22, 1986.

The Gulf of Mexico Fishery Management Council (Council) prepared Amendment 1 to the FMP and this proposed rule to amend the regulations implementing the FMP. Utilizing the advice and expertise of its Scientific and Statistical Committee (SSC) and its Red Drum Advisory Panel (AP), the Council has revised and restated the management unit, problems in the fishery, management objectives, OY, the procedure for specifying harvest levels from the EEZ, allowable harvest levels, and other provisions of the FMP.

Management Unit

Amendment 1 divides the EEZ into areas for which management measures differ. These areas consist of a "primary area", the EEZ between the Florida/Alabama border and the Texas/Louisana border, and two "secondary areas", the EEZ off Florida and the EEZ off Texas (Figure 2). Retention or harvest of red drum from the secondary areas will be prohibited. This rule applies only to these areas, unless otherwise specified. The States will be requested to adopt compatible regulations for their fisheries where applicable.

Different management measures in the primary and secondary areas are based on differing historic stock trends in the fishery, differing geographic jurisdictional limits, and other socioeconomic considerations. Historically, more than 98 percent of catch in the EEZ has been from NMFS statistical areas 11 through 16 (Figure 2) off Alabama, Mississippi, and Lousiana (see 8-10 and 12-1 in the FMP). Biological and fishery data suggest that there is no significant migration and mixing of offshore adult fish. They also suggest that there is a higher standing stock abudance of adults in the primary area than in the secondary areas, which probably results from a higher historical escapement rate of juveniles (or subadults) from the estuarine areas inshore of the primary area (Amendment 1, section 12.2).

Conversely, fishing and total mortality rates for the west coast of Florida, derived from tagging studies conducted

in the early 1960s, were extremely high, suggesting a low escapement rate (less than one percent of each year class) to the offshore spawning stock biomass (SSB) even at that time. No harvest restrictions were applied to the Florida fishery until 1984, even though fishing pressure in terms of participants increased significantly over the two decades. Similarly, historic mortality rates in the Texas fishery were high and escapement was low. The much more limited data from other States suggests a higher historic escapement rate. These data suggest a longer-term reduced escapement from Texas and Florida fisheries which, considering that the fish live 25 years or more, should have resulted in reduced SSB offshore.

In addition to these apparent differences in stock structure, both Texas and Florida have fishery jurisdictions of nine nautical miles, versus three nautical miles for the other States. Therefore, Texas and Florida exercise control over a greater portion of the offshore SSB. Both Texas and Florida currently prohibit harvest of adult fish; there is a complete moratorium on all harvest in Florida. The Council, desiring to support these State programs to restore the SSB, approved the management measure for the secondary areas where retention of red drum is prohibited. Since historically, 98 percent of all catch in the EEZ has come from the primary area, the Council felt that economic considerations also supported the division into primary and secondary areas. From a sociological standpoint, only fishermen fishing the primary area had a historic dependence on the EEZ fishery.

Problems in the Fishery

The problems in the fishery identified by the Council are as follows: (1) Intense fishing mortality on the inshore juvenile red drum population, resulting in decreased recruitment to offshore spawning stock, will likely cause eventual recruitment failure, if not corrected, (2) the potential for recruitment overfishing from reduction of the offshore spawning stock by increased offshore fishing mortality; (3) uncertainty regarding the condition and age composition of the offshore spawning stock, and the size of such stock necessary to provide optimum recruitment to and maintenance (or restoration) of the inshore populations; (4) increasing demand for red drum and increasing competition among harvesters of the resource; (5) inconsistency between State and Federal government measures which may reduce enforceability of regulations and which could result in inadequate protection of red drum resources in both State and Federal waters, and (6) a historic and continuing trend in degradation and reduction of red drum habitat.

The higher fishing mortality historically characteristic of the Texas and Florida fisheries appears to have become, or is becoming, characteristic of the entire inshore fishery in state waters (See section 5.1.4.4 of the FMP). This causes concern for the long-term stability of the SSB, which has been declining due to decreased recruitment (escapement) to the SSB. Also, the SSB has been impacted by the greatly increased level of fishing mortality in the EEZ during 1985 and 1986 (12 million pounds), raising the potential for recruitment overfishing of the SSB. Additional scientific information is needed to clarify the current size of the SSB, its relation to virgin SSB (before exploitation), and the size of the SSB that must be maintained to optimize recruitment to the inshore fisheries. Until these data become available, there is considerable uncertainty about the condition of the SSB and the risk associated with continuing harvest of the SSB, especially from the secondary areas. Degradation of inshore habitat has also reduced its capability to support a population of juveniles comparable to that supported in earlier years.

Because of changing market conditions, increased consumer damand for red drum, and the continually increasing migration of human populations to the coastal areas of the Gulf States there is increasing demand for red drum by recreational and commercial fishermen. The result is increased competition and inability of the stock to satisfy the harvesting capacity of the fisheries without being overfished. Therefore, increased State and Federal regulation of the fisheries is required. Additional social and economic information is needed to clarify the value of red drum to each user group. Until these data become available, the effect of regulations on the value of the resource to society will remain unknown. The current inconsistencies in management between State and Federal regulatory entities may result in poor enforceability of existing regulatory measures and inadequate protection of the stock.

Management Objectives

The proposed management objective of Amendment 1 are as follows: (1) Cooperatively with the States, provide at least a 20 percent level of escapement of juvenile red drum to the offshore spawning stock, and control offshore fishing mortality to assure optimum recruitment and enhancement of the inshore and offshore populations, (2) establish, implement, and maintain research and data gathering programs so appropriate date will be available to formulate management measures and monitor the condition of the stock, (3) if a total allowable catch (TAC) is determined which provides for catch in the EEZ, allocate the EEZ portion of the TAC fairly among users of the resource, (4) maximize the economic and social benefits of the resources to the nation, and (5) identify and encourage actions which conserve, restore, and enhance the red drum habitat.

In addressing objective (1), the Council has requested the States to modify their rules regulating the fisheries in their waters to achieve a minimum escapement of juveniles to the offshore SSB of 20 percent of the number that would have escaped had there been no inshore fishery. The Council's SSC (Minutes, September, 1986) and NMFS (see sections 5.3.1 and 5.5 in the FMP) concluded that the SSB should not be reduced below 20 to 40 percent of the stock size before exploitation (virgin biomass). They also concluded that current inshore exploitation rates are and have been higher than the level which maintain the SSB at 20 to 40 percent of virgin biomass and, if these exploitation rates are not reduced, the spawning stock will be overexploited, even if no fishing occurs on the offshore SSB. The Council has proposed the 20 percent minimum escapement as an interim target level, realizing that in the long term the percentage may have to be increases to assure the stability of the SSB. In computing the maximum sustainable yield, (MSY), a spawning stock biomass per recruit (SSBR) ratio of 30 percent as used (see FMP section 5.3.3. of the FMP). The Council has included (Amendment 1, section 12.6.2) procedures for an annual stock assessment and an assessment of juvenile escapement by State. These assessments will keep the Council apprised of the status of the SSB and the need for increased escapement levels. To achieve the 20 percent target level of escapement, each State will have to assess its current escapement and adjust its rules. Since current escapement levels differ by State, the rules necessary to attain this 20 percent escapement will vary. The Council will control fishing on the SSB through this Amendment 1 and subsequent FMP amendments. To assess the condition of the stock, specify the acceptable biological catch (ABC) range, set TAC,

and identify the soclal and economic impacts, a comprehensive and continuing research and data gathering program is required.

The harvesting capability of recreational and commercial use groups greatly exceeds the ability of the resource to satisfy the potential demand if unregulated harvesting were allowed. Current stock assessments indicate that the resource is currently fully exploited or overexploited throughout much (or all) of its range. In allocating TAC, the Council will attempt to maximize the economic and social benefits to the Nation. The Council, through its Habitat and Environmental Protection Committee and Advisory Panels, will continue to address habitat issues to prevent, reduce, or mitigate man-made alterations to red drum habitat.

Optimum Yield (OY)

OY is defined as: (1) All red drum recreationally and commercially harvested from State waters and landed consistent with State laws and regulations, under a goal of allowing 20 percent escapement of the juvenile population, and (2) all red drum commercially or recreationally harvested from the primary area of the EEZ, under the TAC and allocations specified according to the FMP, and a zero retention level from the secondary areas of the EEZ.

This statement of OY acknowledges that the optimum harvest level from State-controlled fisheries is consistent with obtaining an excapement level of juveniles to the SSB of 20 percent of those that would have escaped if there had been no fishery, to assure long-term stabilization of the SSB throughout its range. Consistent with this goal is the OY statement limiting offshore harvest to the primary area and within the TAC range set by the Council. Historically, escapement to the SSB in the EEZ from waters bordering the secondary areas has been less than from waters bordering the primary area. Data on red drum migration suggest little or no mixing of the SSB between these areas. Therefore, the prohibition on retention from the secondary areas in consistent with State and Federal actions to increase the SSB in these areas.

Procedure for Specifying Harvest Levels

The FMP procedure for specifying harvest and allocation levels by notice in the **Federal Register** by the Regional Director (RD) would be revised by Amendment 1.

The FMP procedure was rejected because it addresses only the directed and non-directed commercial fishery allocations and because the RD sets the harvest levels. The preferred alternative allows the Council to set allocations by an FMP amendment after considering new stock assessment information, recommendations of its AP and SSC, and public comment. The proposed FMP amendment process allows the Council to update and revise the FMP based on new information and to formulate allocations based on analysis of the new scientific information, social and economic impacts of alternatives, and public input. The present FMP procedure sets a TAC for the entire EEZ, whereas under Amendment 1, TAC will be set only for the primary area because scientific information indicates that the SSBs of the secondary areas have been significantly reduced due to long-term high inshore fishing mortality.

Allowable Harvest Levels

The primary area of the EEZ will remain closed to directed commercial harvest until such time as the States bordering the primary area have attained a minimum aggregate escapement of juveniles of 20 percent of each year-class. The incidental bycatch quota of red drum for the non-directed commercial fishery (excluding shrimp vessels) of 100,000 pounds established by the FMP is maintained, but such fish must be landed in conformance with State laws. The incidental bycatch quota for shrimp vessels of 200,000 pounds established by the FMP is maintained; it must be landed in conformance with State laws. Incidental bycatch of red drum in the shrimp fishery and the non-directed commercial fishery is defined as not exceeding five percent by weight of the total catch landed for each trip. The recreational harvest from the primary area of the EEZ will be limited to one red drum per person per trip which must be landed in conformance with State laws. Sale of fish landed under the bag limit is prohibited. All annual harvest levels will remain unchanged until new allocations are specified through a subsequent FMP amendment. No retention of red drum will be allowed in or from the secondary areas of the EEZ.

After reviewing the stock assessment information, the Council's SSC concluded that the high rate of inshore fishing under equilibrium yield conditions has reduced or will reduce the SSB below an amount where recruitment overfishing occurs. They further concluded that the SSB will continue to decline over time from fishing mortality in State waters and offshore natural mortality even if no fishing occurs in the EEZ. The States have been requested to modify their rules to achieve a minimum 20 percent escapement of juveniles to the offshore SSB, so that the trends detected by the SSC are alleviated. Corrective actions by the States have been initiated. The benefits of these actions would be minimized or greatly delayed if significant harvests of red drum from the EEZ are allowed. The Council has, therefore, taken a prudent conservation position by prohibiting directed commercial harvest from the primay area until the desired escapement occurs and by prohibiting any harvest from the secondary areas, where the SSB has been more severly impacted. The Council recognized that, historically, red drum are taken from the EEZ as bycatch in the shrimp fishery and that red drum have been and will be taken by commercial vessels targeting other species. Therefore, the Council retained a 300,000-pound allowance for such bycatch. Landings must be in conformance with State laws so that State restoration efforts are not circumvented. Landings of bycatch will be prohibited when the 200,000-pound and the 100,000-pound quotas are reached for the shrimp fishery and the non-directed commercial fishery, respectively.

As provided for under the FMP, the one-fish recreational bag limit is anticipated to result in a harvest of 325,000 pounds, which is almost equal to the allowable commercial bycatch harvest of 300,000 pounds. The bag limit will become zero when the 325,000-pound quota is reached. The risk analyses of the stock assessment show significant risk to the SSB associated with harvest levels as high as the middle of the range of ABC (0.34–2.5 million pounds). The combined recreational and commercial allocations of 625,000 pounds are one-fourth of the maximum level of ABC. To allow harvest beyond this level, considering the risk, would not be in the best interests of the resource.

Exemption From State Laws

The FMP section (12.6.9) providing for exemption from State laws is deleted by Amendment 1. This section, which provided an exemption to State landing, possession, or sales laws for fish legally harvested from the EEZ, would result in supercession of State laws which are designed to rebuild and maintain the stock. It is deleted because such a measure would adversely affect the cooperative State/Federal approach to restoration and maintenance of the stock proposed under this amendment. It is not necessary since section 12.6.6 of the amendment provides for marketing fish caught in the directed commercial

fishery in the EEZ (when that fishery is allowed) by requiring a documentation trail for legally harvested fish. This provision of the regulations at § 653.22(h) is reserved until a quota is provided for that fishery.

The proposed rule differs from that submitted by the Council in that the definition of "*Dealer*" in § 653.2 has been omitted to avoid the unintended and unnecessary expansion of the FMP's currently approved reporting system. This action is consistent with Amendment 1.

Classification

Section 304(a)(1)(C)(ii) of the Magnuson Act, as amended by Pub. L. 99–659, requires the Secretary to publish regulations proposed by the Council within 15 days of receipt. At this time the Secretary has not determined that the FMP amendment these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

The Council prepared an environmental assessment (EA) for Amendment 1 and concluded that there will be no significant impact on the environment as a result of this rule. You may obtain a copy of the EA from the Southeast Region of NMFS (see ADDRESS).

The Administrator of NOAA determined that this proposed rule is not a "major rule" requiring the preparation of a regulatory impact analysis under Executive Order 12291. The amendment's management measures are designed to maintain the productivity of each user group to the maximum extent possible while preventing overfishing of and restoring the red drum stock. The major benefit of this rule is restoration and maintenance of the red drum stock.

The Council prepared a supplemental regulatory impact review (SRIR) which concluded that this proposed rule will have the following economic effects. Greater long-term benefits, in terms of overall poundage produced, will result than from the other alternatives. The impact of the prohibition of harvest from the secondary areas is expected to be negligible since, historically, 98 percent of recreational and commercial catch from the EEZ has been from the primary area. The impact of a bag limit of one fish and the impact of prohibiting directed commercial fishing for red drum, continued in Amendment 1, were described in the RIR and initial regulatory flexibility analysis (IRFA). No additional costs to participants for permits are anticipated as a result of the amendment.

Federal enforcement costs of the regulatory actions are not changed by the proposed rule. Annual State enforcement costs, estimated to be as high as $1 million, are anticipated to be significantly reduced by deletion of the FMP exemption to State laws.

You may obtain a copy of the RIR/IRFA for the FMP and SRIR from the Southeast Region of NMFS (see **ADDRESS**).

The proposed rule is exempt from the procedure of Executive Order 12291 under section 8(a)(2) of that order. It is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow procedures of the order.

The Council prepared an IRFA as part of the SRIR which concluded that this proposed rule will have an insignificant effect on fishing entities. These effects are included in the SRIR, which is summarized above. The General Counsel has certified to the Chief Counsel for Advocacy, Small Business Administration, that the proposed rule will not have a significant economic impact on a substantial number of small entities. This is because the only action of consequence in Amendment 1 is the deletion of the exemption from State landing laws. Although fishermen will now be required to conform to State law, landings will not be affected since harvesting will be permitted in those States (Alabama, Mississippi, Louisiana) where 98 percent of the historical catch has occurred, and fish can continue to be landed where permitted by State law. The action will enhance enforcement activities and will provide benefits in the form of an improved resource and higher landings in the long term.

This rule does not contain a collection of information requirement subject to the Paperwork Reduction Act (PRA). Other collection-of-information requirements of the FMP have been approved under OMB Control Number 0648–0177.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Florida, Alabama, Mississippi, and Louisiana. Texas does not have an approved coastal zone management program. These determinations have been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

List of Subjects in 50 CFR Part 653

Fish, Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 11, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR Part 653 is proposed to be amended as follows:

PART 653—RED DRUM FISHERY OF THE GULF OF MEXICO

1. The authroity citation for Part 653 continues to read as follows:

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

2. Section 653.1 is revised to read as follows:

§ 653.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for the Red Drum Fishery of the Gulf of Mexico as prepared by the Secretary of Commerce and amended by the Gulf of Mexico Fishery Management Council.

(b) The regulations of this part, except for §§ 653.5 and 653.22(g), apply only to the fishery in the EEZ in the Gulf of Mexico.

(1) The reporting requirements in § 653.5 apply to vessels and persons in the fishery in both the EEZ and State jurisdictions.

(2) Section 653.22(g) provides that red drum from the EEZ must be landed in conformance with law of the State where landed.

3. In § 653.2, a phrase is added to the definition for *Exclusive economic zone (EEZ)* between the word "means" and the word "that" and new definitions for *Primary area, Secondary areas,* and *Total allowable catch (TAC)* are added in alphabetical order to read as follows:

§ 653.2 Definitions.

* * * * *

Exclusive economic zone (EEZ) means the zone established by Presidential Proclamation 5030, dated March 10, 1983, and is that * * *

* * * * *

Primary area means the EEZ seaward of the fishery jurisdictions of the Alabama, Mississippi, and Louisiana and bounded on the east by a line directly south from the boundary between Alabama and Florida (87°31'06" W. longitude) to its intersection with the outer limit of the EEZ and on the west by a line, comprising the boundary between Texas and Louisiana (midpoint of the pass to Sabine Lake to 29°32.1' N. latitude, 93°47.7' W. longitude) and thence

directly south to its intersection with the outer limit of the EEZ (Figure 2).

* * * * *

Secondary areas means (1) the EEZ in the Gulf of Mexico seaward of the fishery jurisdiction of Florida and (2) the EEZ seaward of the fishery jurisdiction of Texas, with boundaries as described for the primary area (Figure 2).

* * * * *

Total allowable catch (TAC) means the maximum permissible annual harvest from the primary area set from within or below the ABC range after consideration of biological, economic, and social factors and the risk of inducing recruitment overfishing associated with that harvest level.

* * * * *

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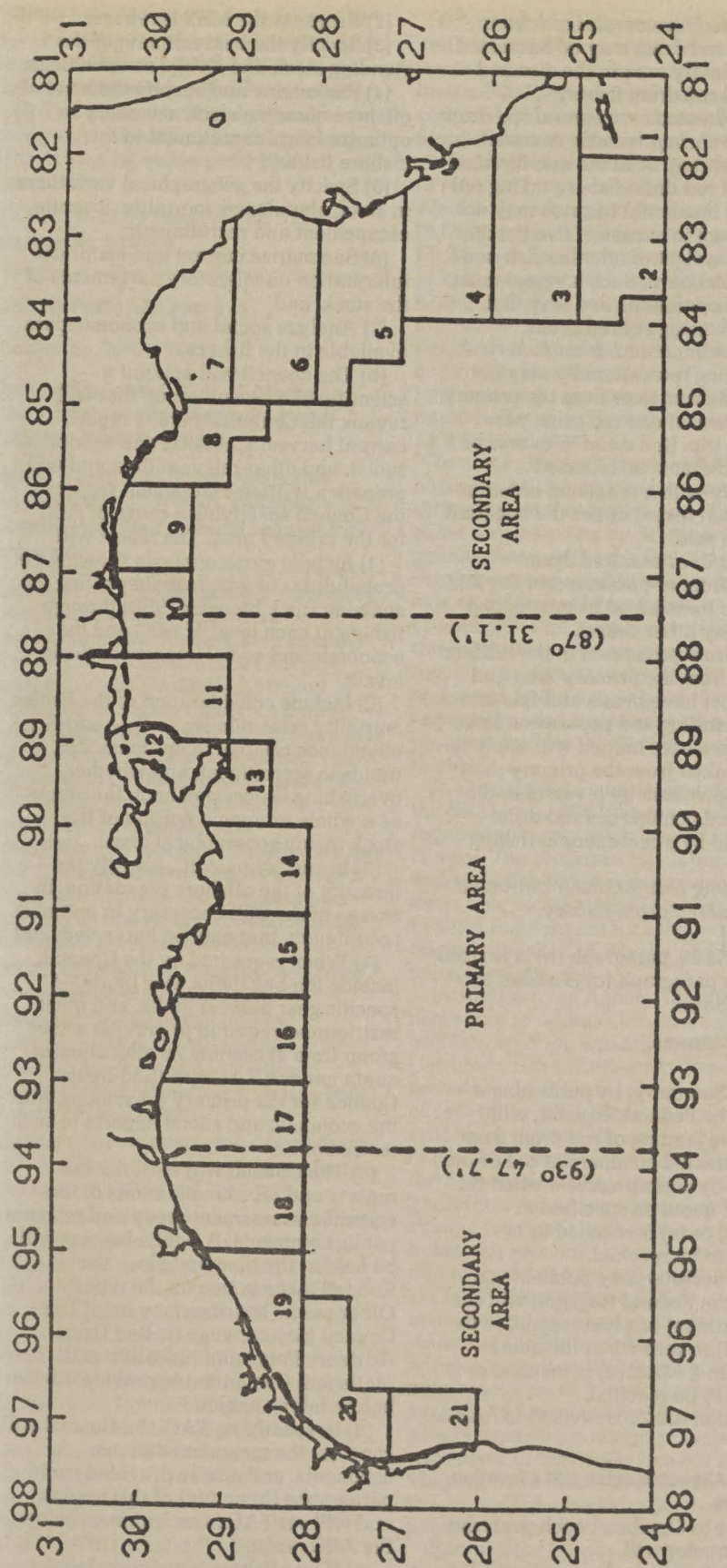

Figure 2. Statistical zones in the Gulf of Mexico

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4. In § 653.3, a new paragraph (d) is added to read as follows:

§ 653.3 Relation to other laws.

* * * * *

(d) Persons landing red drum from the non-directed commercial red drum fishery or from shrimp vessels as bycatch, or from recreational fishing must comply with the landing, possession, and other fishery laws of the State where landed.

5. In § 653.4, paragraph (a) is revised to read as follows:

§ 653.4 Permits and fees.

(a) *Applicability.* A permit is required for a vessel fishing in the EEZ in the non-directed commercial red drum fishery which possesses or lands red drum.

* * * * *

6. In § 653.7, paragraph (a)(1) is revised to read as follows:

§ 653.7 Prohibitions.

(a) * * *

(1) Fish for, take, retain, or land red drum in the non-directed red drum commercial fishery without a permit as required by § 653.4(a), or in violation of the Magnuson Act, this part, or any regulation or permit issued under the Magnuson Act or this part;

* * * * *

7. In § 653.21, the section title and paragraph (b) are revised and new paragraphs (c), (d) and (e) are added to read as follows:

§ 653.21 Quotas.

* * * * *

(b) The total allowable harvest of red drum for the non-directed commercial red drum fishery in the primary area is 100,000 pounds for each fishing season (as specified in § 653.20).

(c) The total allowable harvest of red drum for shrimp vessels taking red drum as incidental bycatch in the primary area is 200,000 pounds for each fishing season.

(d) The total allowable harvest of red drum for persons fishing recreationally in the primary area is 325,000 pounds for each fishing season.

(e) The TAC in the primary area is 625,000 pounds for each fishing season.

8. Section 653.22 is revised to read as follows:

§ 653.22 Harvest and landing limitations.

(a) *Harvest from secondary areas.* No red drum may be harvested from or possessed in the secondary area. Red drum caught in the secondary areas must be released immediately with a minimum of harm.

(b) *Directed commercial red drum fishery.* No red drum may be harvested from the primary area in the directed commercial red drum fishery.

(c) *Non-directed commercial red drum fishery and shrimp vessels.* A vessel fishing for shrimp or in the non-directed commercial red drum fishery taking red drum as an incidental bycatch may not land red drum in excess of five percent of the total weight of all other fish and/or shrimp on board. Such a vessel must conduct its operations in a way that minimizes wastage of red drum.

(d) *Recreational red drum fishery.* A person fishing recreationally may not possess red drum in or from the primary area in excess of one red drum per person per trip. Red drum in excess of this bag limit must be released immediately with a minimum of harm. Red drum harvested under the bag limit may not be sold.

(e) *Transfer at sea.* Red drum harvested from or possessed in the EEZ may not be transferred from a fishing vessel to any other vessel.

(f) Red drum possessed in the EEZ, or harvested from the primary area and landed, must have heads and fins intact.

(g) The landing and possession laws of the State where landed will apply to red drum taken from the primary area by a shrimp vessel, by a vessel in the non-directed commercial red drum fishery, and by a recreational fishing vessel.

(h) *Landing restrictions for directed commercial red drum fishery.* [Reserved]

9. In § 653.23, paragraph (b) is revised and a new paragraph (c) is added to read as follows:

§ 653.23 Closures.

* * * * *

(b) The Secretary, by publishing a notice in the **Federal Register**, will prohibit the landing of red drum from the non-directed commercial red drum fishery or by shrimp vessels when the respective quota as specified in § 653.21(b) or (c) is reached or is projected to be reached.

(c) The Secretary, by publishing a notice in the **Federal Register**, will set the recreational bag limit specified in § 653.22(d) to zero when the quota specified in § 653.21(d) is reached or is projected to be reached.

10. Section 653.24 is revised to read as follows:

§ 653.24 Allowable catch and allocation procedures.

(a) Prior to October 1 each year, the Center Director will

(1) Update the stock assessment for red drum;

(2) Reassess the MSY level;

(3) Specify the best estimate of the standing stock and its age compositions;

(4) Reexamine and specify the level of offshore standing stock necessary to optimize larval recruitment to the inshore fishery;

(5) Specify the geographical variations in stock abundance, mortality, juvenile escapement and recruitment;

(6) Summarize current and historical information on migratory movements of the stock; and

(7) Analyze social and economic data available in the fishery.

(b) The council will appoint a scientific assessment group that will review the Center Director's report, current harvest statistics, and economic, social, and other relevant data and will prepare a written assessment report to the Council specifying a range of ABC for the primary area. The report will

(1) Include a risk analysis showing the probabilities of adversely impacting the spawing stock biomass (SSB) through fishing at each level of ABC and the economic and social impacts of those levels;

(2) Include consideration of the fishing mortality rates relative to F_{MSY} and $F_{0.1}$, abundance relative to optimum SSB, trends in recruitment, and whether overfishing is occurred upon the stock as a whole or upon a portion of the stock in any geographical area;

(3) In specifying ABC, identify the quantity of the offshore population, in excess of the SSB necessary to optimize recruitment, that may be harvested; and

(4) When requested by the Council, include the bag limits, size limits, specific gear harvest limits, and other restrictions, required to prevent a user group from exceeding its allocation or quota under a TAC specified by the Council for the primary area, along with the economic and social imports of such restrictions.

(c) The Council will consider the reports and recommendations of the scientific assessment group and relevant public comments. A public hearing will be held at the time and place the Council takes action on the report. Other public hearings may held. The Council may convene its Red Drum Advisory Panel and Scientific and Statistical Committee to provide advice before taking action.

(d) In specifying TAC, the Council will consider the recommendations, comments, and advise provided for in paragraphs (b) and (c) of this section and will set TAC from within or below the ABC range.

(e) If an offshore population (above annual surplus production) exceeds an

SSB necessary to optimize recruitment, the percentage of the excess which may be included in the TAC will be set by the Council periodically or annually.

(f) The Council will make changes in user group allocations for the primary area, if any, by subsequent FMP amendment.

[FR Doc. 87-13713 Filed 6-11-87; 4:23 pm]
BILLING CODE 3510-22-M

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50 CFR Parts 672 and 675

[Docket No. 70472-7072]

Groundfish of the Gulf of Alaska; Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Proposed rule and request for comments.

SUMMARY: NOAA proposes a regulatory amendment to the regulations implementing the Fishery Management Plans for Groundfish of the Gulf of Alaska and the Groundfish Fishery in the Bering Sea and Aleutian Islands Area (FMPs). The regulatory amendment would modify domestic reporting requirements with respect to State of Alaska fish tickets. This action is necessary to respond to an administrative problem identified by the NMFS Alaska Region and its intended effect is to improve the precision and accuracy in accounting for commercial groundfish harvests off Alaska..

DATE: Comments on the proposed rules are invited until July 15, 1987.

ADDRESS: Comments should be addressed to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802.

FOR FURTHER INFORMATION CONTACT: Jay J. C. Ginter (Resource Management Specialist, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION: Domestic and foreign groundfish fisheries in the exclusive economic zone (EEZ) in the Gulf of Alaska (GOA) and the Bering Sea and Aleutian Islands (BSAI) area are managed according to policies expressed in the FMPs. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMPs are implemented by regulations governing foreign fisheries appearing at 50 CFR 611.92 and 611.93 and by regulations governing domestic fisheries appearing at 50 CFR Parts 672 and 675.

Information on the quantity, species, and location of groundfish harvested is necessary to monitor prescribed catch limits. The FMPs provide authority for collecting this information partly from State of Alaska fish tickets, required under the Alaska Administrative Code (5 AAC 39.130) to be submitted to the Alaska Department of Fish and Game (ADF&G). Basically, the FMPs provide for Federal requirement of Alaska fish tickets for groundfish harvested in the Gulf of Alaska, the Bering Sea and around the Aleutian Islands and delivered to Alaskan ports, other vessels or ports in the other states. The implementing regulations make this requirement at paragraphs (a) and (b) of §§ 672.5 and 675.5.

In administering these regulations, however, NOAA has become aware of difficulties in the application of the fish ticket requirements by State and Federal governments. Although the current regulations require fish tickets for every sale or delivery of groundfish at a "port of landing", that term is not defined in the regulations. The proposed regulations eliminate that term, clarify and simplify the language of the regulations, and implement identical requirements for the Gulf of Alaska and the BSAI.

In the existing Federal regulations for the BSAI area, fish tickets are not required for groundfish landed in Alaska. The proposed regulations include a fish ticket requirement for these fish, so that there is a blanket Federal requirement for all groundfish taken in the Gulf of Alaska and BSAI management areas.

In addition, the Agency finds it necessary to address an enforcement problem with the existing regulations. Currently, fish tickets are only required for sales and deliveries of groundfish caught in the EEZ. Since agents cannot reliably document the origin or domestic catch, they cannot effectively enforce the Federal reporting requirements. Therefore, the Agency proposes to change the regulations to require fish tickets for groundfish caught in the EEZ and in the territorial sea adjacent to the Gulf of Alaska and the BSAI management area and in the internal waters of the State of Alaska by vessels which have groundfish permits issued under these parts. These regulations simplify enforcement by requiring fish tickets from all permitted vessels, regardless of where the fish are caught. They are reasonable because most of the groundfish caught by Federally permitted vessels are caught in the EEZ.

Because the proposed regulations impose Federal requirements that are the same as existing State of Alaska reporting requirements under 5AAC 39.130, they are not added reporting burdens on fishermen.

Under these proposed regulations, fish tickets are required from catcher vessels that deliver groundfish to processors on land and to domestic processors at sea. Thus, all domestically harvested groundfish are accounted for by fish tickets except for groundfish delivered to foreign processors in the EEZ. These fish are accounted for by the U.S. observer on the foreign processor and the foreign fishing reporting program and therefore are specifically exempt from the proposed regulations.

These proposed regulations include the option that the vessel operator may elect to have the fish ticket submitted by the purchaser.

These proposed regulations also delete a fishing effort reporting requirement found in the existing GOA regulations at § 672.5(a)(1)(ii). This deletion makes the proposed regulations uniform for the GOA and BSAI area by eliminating a potential source of confusion in the reporting requirements for groundfish fisheries off Alaska. The Agency also notes that the Council is currently considering amendments to the FMP's providing for collection of comprehensive fishing effort data.

These proposed regulations are intended to clarify the reporting requirements, and provide a more accurate and enforceable system of accounting for fish.

NOOA expcets no potetial environmental and economic effects from implementing these proposed regulatory changes. They will not change the status quo since they will not affect the amount of groundfish harvested, the species taken or the location of fishing activity. These proposed rules, if implemented, will not affect the cost of fishing and they do not impose any new reporting requirements. The only new effect of these proposed rules will be imposition by the Federal regulation of exisitng State of Alaska fish ticket requirements and deletion of a Federal information requirement. Hence, no additional paperwork burden is imposed on fishermen.

Classification

The proposed rules are published under authority of section 305 (c) of the Magnuson Act. For the reasons stated above, the Administrator of NOAA has determined that these proposed rules are necessary for the conservation and management of the groundfish fisheries in the Gulf of Alaska, the Bering Sea and around the Aleutian Islands, and that the proposed rules are consistent with

the Magnuson Act. In addition, based on the above discussion, the Administrator of NOAA has determined that the proposed rules (1) are not major Federal actions requiring preparation of environmental assessments, (2) are not major rules requiring regulatory impact analysis under Executive Order 12291, (3) will have no significant effects on small entities under the Regulatory Flexibility Act, and (4) contains a collection of information requirements subject to the Paperwork Reduction Act, which has been approved by the office of Management and Budget under control no. 0648–0016. NOAA has determined that these rules will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of Alaska. This determination has been submitted for review to the responsible State agency under section 307 of the Coastal Zone Management Act.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

Dated: June 10, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Parts 672 and 675 are proposed to be amended as follows:

PART 672—[AMENDED]

1. The authority citation for Part 672 continues to read as follows:

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

2. In § 672.5, paragraphs (a)(1) and (a)(2) are revised to read as follows:

§ 672.5 Reporting requirements.

(a) * * *

(1) The operator of any fishing vessel (including catcher/processor vessels) to which a permit has been issued under § 672.4 of this part, that catches groundfish in any of the Gulf of Alaska regulatory areas, the territorial sea adjacent to any regulatory area, or internal waters of the State of Alaska, will be responsible for the submission to ADF&G of an accurately completed State of Alaska Fish ticket or an equivalent document containing all of the information required on an Alaska fish ticket. Fish tickets are not required for groundfish sold or deliverd to a foreign processing vessel which has a permit under § 611.3 of this title.

(i) When to submit fish tickets.

(A) *Sales or deliveries to shore.* Except as provided by paragraph (a)(1)(ii) of this section, the operator of any fishing vessel who sells or delivered his catch of groundfish to shore must submit the fish ticket required under paragraph (a)(1) of this section within one week after such fish are sold or delivered.

(B) *Sales or deliveries to vessels.* Except as provided by paragraph (a)(1)(ii) of this section, the operator of any fishing vessel who sells or delivers his catch of groundfish to another vessel must submit the fish ticket required under paragraph (a)(1) of this section within one week after he returns to port.

(ii) At the election of the fishing vessel operator who catches groundfish, fish tickets may be prepared, and submitted under parargaph (a)(1)(i)(A) of this section to ADF&G by the shore-based purchaser within one week after such fish are received by the purchaser, or, if submitted under paragraph (a)(1)(i)(B) of ths section, to ADF&G by the vessel-based purchaser within one week after such purchaser returns to shore. For purposes of this paragraph, a "purchaser" is any person who receives from a fishing vessel regulated under this Part, groundfish caught in any area or location as defined at § 672.2 of this part, the territorial sea, or internal waters of the State of Alaska.

(2) *Address.* Send these documents to the Director, Commercial Fish Division, Alaska Department of Fish and Game Headquarters, P.O. Box 3–2000, Juneau, Alaska 99802.

* * * * *

PART 675—[AMENDED]

1. The authority citation for Part 675 continues to read as follows:

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

2. In § 675.5, paragraphs (a)(1) and (a)(2) are revised to read as follows:

§ 675.5 Reporting requirements.

(a) * * *

(1) The operator of any fishing vessel (including catcher/processor vessels) to which a permit has been issued under § 675.4 of this part, that catches groundfish in the Bering Sea and Aleutian Islands management area or either subarea, the territorial sea adjacent to either subarea, or internal waters of the State of Alaska, will be responsible for the submission to ADF&G of an accurately completed State of Alaska fish ticket or an equivalent document containing all of the information required on an Alaska fish ticket. Fish tickets are not required for groundfish sold or delivered to a foreign processing vessel which has a permit under § 611.3 of this title.

(i) *When to submit fish tickets.*—

(A) *Sales or deliveries to shore.* Except as provided by paragraph (a)(1)(ii) of this section, the operator of any fishing vessel who sells or delivers his catch of groundfish to shore must submit the fish ticket required under paragraph (a)(1) of this section within one week after such fish are sold or delivered.

(B) *Sales of deliveries to vessels.* Except as provide by paragraph (a)(1)(ii) of this section, the operator of any fishing vessel who sells or delivers his catch of groundfish to another vessel must submit the fish tickets required under paragraph (a)(1) of this section within one week after he returns to port.

(ii) At the election of the fishing vessel operator who catches groundfish, fish tickets may be prepared, and submitted under paragraph (a)(1)(i)(A) of this section to ADF&G by the shorebased purchaser within one week after such fish are received by the purchaser, or, if submitted under paragraph (a)(1)(i)(B) of this section, to ADF&G by the vessel-based purchaser within one week after such purchaser returns to shore. For purposes of this paragraph, a "purchaser" is any person who receives from a fishing vessel regulated under this part, groundfish caught in either subarea of the Bering Sea and Aleutian Islands management area, the territorial sea, the internal waters of the State of Alaska.

(2) *Address.* Send these documents to the Director, Commercial Fish Division, Alaska Department of Fish and Game Headquarters, P.O. Box 3–2000, Juneau, Alaska 99802.

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[FR Doc. 87–13619 Filed 6–15–87; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 52, No. 115
Tuesday, June 16, 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.

ACTION

National Volunteer Advisory Council; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given of a meeting of the National Volunteer Advisory Council.

Date, time and palce: June 30, 2:00 p.m., ACTION Headquarters, Room 522, 806 Connecticut Avenue NW., Washington, DC 20525

Purpose: To hold the regular Council meeting.

For further information, contact: Loni Hagerup, Executive Secretariat, at (202) 634–9380.

Signed this 9th day of June, 1987, in Washington, DC.

Donna M. Alvarado,

Director of ACTION.

[FR Doc. 87–13640 Filed 6–15–87; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Department of Agriculture Programs and Activities Excluded From or Subject to Executive Order No. 12372

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This notice proposes that certain programs administered by the Agricultural Stabilization and Conservation Service (ASCS), the Cooperative State Research Service (CSRS), the Foreign Agricultural Service (FAS), the Office of Advocacy and Enterprise (OAE), and the Office of International Cooperation and Development (OICD) be excluded from coverage of Executive Order No. 12372, "Intergovernmental Review of Federal Programs." This notice also proposes two programs for inclusion: One administered by the Animal and Plant Health Inspection Service (APHIS), and the other by the Farmers Home Administration (FmHA). This notice sets forth the justification for coverage of these programs on the basis of their effect on State and local governments.

DATE: Written comments must be received on or before July 16, 1987.

COMMENTS AND FURTHER INFORMATION: Interested persons should submit comments to or seek information from Gerald R. Miske, Office of Finance and Management, U.S. Department of Agriculture, Room 1369 South Building, 14th and Independence Avenue, SW., Washington, DC 20250. Telephone: (202) 382–1553. Comments will be available for inspection at the above address from 9:00 a.m. to 5:00 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: The requirement of the Executive Order are detailed at 7 CFR Part 3015, Subpart V, Current lists of programs and activities from and subject to Executive Order No. 12372 are published at 48 FR 29114–29117 (June 24, 1983). The programs are listed by the Catalog of Federal Domestic Assistance Number assigned to them.

A synopsis of the agencies responsible for administering the programs and activities listed, follows.

ASCS is responsible for commodity production adjustment, price support and related programs; conservation assistance, through cost-sharing with producers and ranchers; disaster assistance to agricultural producers, through payments and cost-sharing; and certain national emergency preparedness activities.

SCSRS administers formula funds appropriated for agricultural and forestry research at State agricultural experiment stations, forestry schools, 1890 institutions and Tuskegee University, and selected veterinary schools. It also conducts competitive and special agricultural research grants programs, and other project grant programs to support agricultural research and teaching.

FAS is charged with developing foreign markets for United States (U.S.) farm products through effective market expansion activities. It provides services to U.S. and foreign agricultural trade sectors that are necessary to establish, build, and maintain overseas markets for U.S. agricultural products.

OAE provides leadership, direction, and coordination for the Department's programs for civil rights that include program delivery compliance and equal employment opportunity.

OICD coordinates international technical assistance and training programs. It also coordinates international research projects, and scientific and technical exchanges with other nations on topics of interest to U.S. agriculture.

APHIS protects the nation's animals and crops from exotic diseases and pests. In suppressing domestic outbreaks of such diseases and pests, the agency cooperates closely with affected states and the agricultural community.

FmHA provides a supplementary source of credit, accompanied to the extent necessary by technical assistance in farm and money management, for farm operating expenses, farm enlargements, farm improvement and purchase, emergency credit needs, and soil and water conservation. The financial assistance provided by the agency is for rural people and communities who cannot obtain credit from usual commercial credit sources at affordable terms. A goal of FmHA farm credit is to help farmers attain self-sufficiency and to "graduate" to commercial credit as soon as possible.

This notice justifies excluding the ten following programs on the basis that they do not directly affect State and local governments, because they make direct payments to individuals or educational institutions and are therefore outside the scope of Executive Order No. 12372. The following programs are proposed for exclusion:

Agricultural Stabilization and Conservation Service

10.069 Conservation Reserve Program (CRP). The CRP is authorized by Title XII of the Food Security Act of 1985 and administered by ASCS. Under the CRP, the Secretary of Agriculture is authorized to enter into long-term contracts with owners and operators of highly erodible cropland to assist such owners and operators in conserving and improving the nation's soil and water resources. By entering into a contract, based on an accepted bid process, the owner or operator agrees to implement a conservation plan approved by the local conservation district for converting

highly erodible cropland normally devoted to the production of an agricultural commodity to a less intensive use. The Secretary will provide technical assistance, share some of the costs of establishing the conservation practices required by the conservation plan, and make an annual land rental payment to compensate the owner or operator for taking the cropland out of production.

Cooperative State Research Service

10.201 Food and Agricultural Sciences National Needs Graduate Fellowship Grants Program (FASNNGFGP). The CSRS–FASNNGFGP provides grants to colleges and universities to encourage outstanding students to pursue graduate degrees in areas of the food and agricultural sciences for which there are national needs for the development of scientific expertise.

10.211 Higher Education Strengthening Grants (HESG). CSRS–HESG provides grants to strengthen institutional capacities to respond to State, regional, national, or international educational needs in the food and agricultural sciences.

10.212 Small Business Innovative Research (SBIR). CRSR–SBIR provides grants for research to stimulate technologial innovation in the private sector, strengthen the role of small business in meeting Federal research and development needs, increase private sector commercialization of innovations derived from USDA supported research and development efforts, and foster and encourage minority and disadvantaged participation in technological innovation.

10.213 Competitive Research Grants Program for Forest and Rangeland Renewable Resources (CRGPFRRR). CSRS–CRGPFRRR provides competitive research grants to further research activities related to the protection, management, and utilization of forest and rangeland renewable resources.

Foreign Agricultural Service

10.601 Targeted Export Assistance Program (TEA). The FAS-TEA program is carried out pursuant to section 1124 of the Food Security Act of 1985. Under TEA, the Secretary of Agriculture is required to use $110 million in Commodity Credit Corporation (CCC) funds or commodities in each of the Fiscal Years 1986 to 1988 to counter or offset the adverse effect on the export of a U.S. agricultural commodity, or the product thereof, of a subsidy, an import quota, or other unfair foreign trade practice. In Fiscal Years 1989 and 1990, the minimum amount of funds or commodities required to be used will increase not less than $325 million. Targeted export assistance is being provided through program agreements with nonprofit U.S. agricultural trade associations or with private U.S. firms. Program agreements provide for partial reimbursement of eligible promotional expenese identified in FAS-approved activity plans which describe the activities and budgets to be conducted in foreign markets.

Office of Advocacy and Enterprise

10.140 Minority Research and Teaching (MRT). The OAE–MRT program makes grants in full or in partial support of special projects related to agriculture that are undertaken by educational institutions, such as the1890 Land Grant Institutions for purposes of enhancing curriculum, developing faculty, and recruiting and retaining students in agricultural programs.

Office of International Cooperation and Development

10.960 Technical Agricultural Assistance (TAA). The OICD–TAA program, pursuant to the terms of reimbursable agreements with the Agency for International Development, funds cooperative agreements, grants, and cost reimbursable agreements to increase the capabilities of U.S. educational institutions and nonprofit agencies in agricultural research, teaching, and extension and to identify and apply the most appropriate solutions to international agricultural problems.

10.961 Technical Agricultural Research/Collaborative (TAR/C). The OICD–TAR/C program funds cooperative agreements, grants, and cost reimbursable agreements to carry out the administration and coordination of assisgned Departmental programs in international research and scientific and technical cooperation with other governmental agencies, land grant universities, international organizations, international agricultural research centers, and other institutions.

10.962 International Training/ Foreign (IT/F). The OICD–IT/F program, pursuant to the terms of reimbursable agreements with the Agency for International Development (AID), funds cooperative agreements, grants, and cost reimbursable agreements to provide training opportunities in food, agricultural and related research, teaching, and extension to representatives of AID designated countries.

The following programs are proposed for inclusion:

Animal and Plant Health Inspection Service

10.028 Animal Damage Control (ADC). The APHIS–ADC program's primary purpose is to minimize or prevent (1) damage to domestic livestock, agriculture, horticulture, forestry, and rangelands from predator and other animals injurious to agriculture, and (2) to protect stock and other domestic animals through the suppression of rabies and tularemia in predatory or other wild animals.

To accomplish these objectives, APHIS–ADC conducts research to investigate the nature and scope of vertebrate behavior patterns for use in development of new or improved methods to control predator and other animals injurious to agriculture. The new or improved methods developed are applied by APHIS in cooperation with State and local governments, and other Federal agencies to control predator and other animals injurious to agriculture. Techniques such as trapping and removal, mechanical scaring, chemical repelling, and fencing are employed.

Farmers Home Administration

10.434 Nonprofit National Corporation Loan and Grant (NNCLG). The FmHA-NNCLG program provides guaranteed loans and grants to nonprofit corporations that will in turn provide financial and technical assistance to rural businesses to improve business, industry, and employment opportunities in rural areas.

Dated: May 11, 1987.

John J. Franke, Jr.,

Assistant Secretary for Administration.

[FR Doc. 87-13670 Filed 6-15-87; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-021]

Cell-Site Transceivers and Related Subassemblies from Japan; Preliminary Results of Antidumping Duty Administrative Review

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

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request by two respondents, the Department of Commerce has conducted an administrative review of the antidumping duty order on cell-site transceivers and related subassemblies from Japan. The review covers two manufacturers/exporters of this merchandise and the period June 12, 1984 through December 31, 1985. The review indicates the existence of no dumping margins.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: June 15, 1987.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–5505/3601.

SUPPLEMENTARY INFORMATION:

Background

On January 3, 1985 the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 307) an antidumping duty order on cell-site transceivers and related subassemblies from Japan. We published a notice of initiation of the antidumping duty administrative review in the **Fedeal Register** on February 18, 1986 (51 FR 5752).

Scope of the Review

Imports covered by the review are cell-site transceivers and related subassemblies as provied for in items 685.2810 and 658.2820 of the Tariff Schedules of the United States Annotated. Cell-site transceivers and related subassemblies are part of the radio frequency (RF) equipment in the base station (cell-site) of a cellular radio communications system. This single package RF equipment functions as a locating receiver and provides simultaneous two-way voice and date communications between the base station and the subscriber's mobile telephone by using different frequencies to transmit and receive. Subassemblies are an assemblage of component parts dedicated for use in cell-site transceivers as defined above.

The review covers two manufacturers/exporters of Japanese cell-site transceivers and related subassemblies, Kokusai Electric Co., Ltd. ("Kokusai") and Mitsubishi Electric Company ("MELCO"), and the period June 12, 1984 through December 31, 1985.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act of 1930 ("the Tariff Act"). Purchase price was based on the packed f.o.b. Japan price with deductions where applicable for foreign inland freight and foreign brokerage handling. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used constructed value, as defined in section 773(e) of the Tariff Act, since there were no sales in the home market or to third countries during the period. Constructed value was calculated as the sum of materials, fabrication costs, general expenses, profit, and the costs of U.S. packing. The amount added for general expenses was the statutory minimum of ten percent of the sum of materials and fabrication costs because actual general expenses were less than that amount. The amount for profit was the statutory of eight percent of the sum of material and fabrication costs and general expenses because actual profit was less than that amount. We adjusted for difference in credit expenses. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist for the period June 12, 1984 throuh December 31, 1985:

Manufacturer/exporter	*Margin (percent)*
Kokusai	0
MELCO	*59.94

*No shipments during the period.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosusre and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

Further, as provided for by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms. For any shipments from the two remaining known manufacturers/exporters of Japanese cell-site transceivers not covered in this review, the cash deposit will continue to be at the rate published in the antidumping duty order for all other firms (50 FR 307, January 3, 1985).

For any future shipments of this merchandise from a new exporter, not covered in this review or the original fair value investigation, whose first shipments occurred after December 31, 1985, and who is unrelated to any reviewed firm, no cash deposit shall be required. These deposit requirements are effective for all shipments of Japanese cell-site transsceivers and related subassemblies entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 87–13717 Filed 6–15–87; 8:45 am]

BILLING CODE 3510-DS-M

[A–583–081]

Polyvinyl Chloride Sheet and Film From Taiwan; Final Results of Antidumping Duty Administrative Review and Revocation in Part

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

ACTION: Notice of final results of antidumping duty Administrative review and revocation in part.

SUMMARY: On April 22, 1987, the Department of Commerce published the preliminary results of its administrative review and intent to revoke in part the antidumping finding on polyvinyl chloride sheet and film from Taiwan. The review covers eight exporters of this merchandise to the United States and generally consecutive periods from June 1, 1983 through May 31, 1986.

We gave interested parties an opportunity to comment on the preliminary results and intent to revoke in part. We received no comments. The final results of review are unchanged from those presented in the preliminary results and we revoke the finding with respect to Fashion Plastics Fabrication Co., Everlush Industrial Co., Ltd., Eclat International, Elanvital International, S.M. & Roger Co., and Wondertex Ind. Co.

EFFECTIVE DATE: June 16, 1987.

FOR FURTHER INFORMATION CONTACT: Linda L. Pasden or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington DC 20230; telephone: (202) 377–5255.

SUPPLEMENTARY INFORMATION:

Background

On April 22, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 13266) the preliminary results of its administrative review and intent to revoke in part the antidumping finding on polyvinyl chloride sheet and film from Taiwan (43 FR 28457, June 30, 1987). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of unsupported, flexible, calendered polyvinyl chloride ("PVC") sheet, film and strips, over 6 inches in width and over 18 inches in length, and at least 0.0002 inch but not over 0.020 inch in thickness, currently classifiable under item 771.4312 of the Tariff Schedules of the United States Annotated.

The review covers eight exporters of Taiwanese PVC to the United States and generally consecutive periods from June 1, 1983 through May 31, 1986.

The Department has determined not to cover Hop Kee Hong (Hong Kong) and Lumay Products Corporation in this review or future section 751 reviews because they did not export merchandise covered by the finding to the United States. Should these two firms begin exporting the covered merchandise to the United States, we shall treat them as new exporters.

The Department has determined not to cover K.E. Kingstone and Taiwan Eva in this or future section 751 reviews because they only shipped Taiwanese PVC manufactured by Ocean Plastics. Ocean Plastics was excluded from the finding (43 FR 4810, June 30, 1987). The exclusion of these two firms from the finding pertains only to shipments manufactured by Ocean Plastics. Should these firms begin exporting the covered merchandise manufactured by another firm, we shall treat them as new exporters.

Final Results of Review and Revocation in Part

We invited interested parties to comment on the preliminary results and intent to revoke in part. We received no comments. The final results of review are unchanged from those presented in the preliminary results and we determine that the following margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Fashion Plastics Fabrication	06/01/83–09/20/84	*5.90
Union Industries Ltd	06/01/83–05/31/84	*11.37
	06/01/84–05/31/85	*11.37
Orchard Corporation	06/01/85–05/31/86	12.04

*No shipments during the period.

For the reasons set forth in the preliminary results of review and intent to revoke in part, we are satisfied that there is no likelihood of resumption of sales at less than fair value by Fashion Plastics Fabrication. Accordingly, we revoke the antidumping findings on PVC from Taiwan with respect to Fashion Plastics Fabrication. This partial revocation applies to all unliquidated entries of this merchandise manufactured and exported by Fashion Plastics Fabrication and entered, or withdrawn from warehouse, for consumption on or after September 20, 1984, the date of our tentative determination to revoke with respect to Fashion Plastics Fabrication.

Also as a result of our review, the Department revokes the finding with respect to Everlush Industrial Co., Ltd., Eclat International, Elanvital International, S.M. & Roger Co., and Wondertex Ind. Co. This partial revocation applies to all shipments of this merchandise from these five firms manufactured by Cathay Plastics Industry. Should these firms begin exporting Taiwanese polyvinyl chloride sheet and film to the United States manufactured by another firm, we shall treat them as new exporters.

This partial revocation applies to all unliquidated entries of this merchandise manufactured by Cathay and exported by these five firms and entered, or withdrawn from warehouse, for consumption on or after April 22, 1987, the date of our intent to revoke in part.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service. Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms. For any shipments from the remaining known manufacturers/exporters not covered by this review, the cash deposit will continue to be at the rate published in the final result of the last administrative review for each of those firms (49 FR 49128, December 18, 1984). For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after May 31, 1986, and who is unrelated to any reviewed firm, or any previously reviewed firm, a cash deposit of 12.04 percent shall be required. These deposit requirements are effective for all shipments of Taiwanese polyvinyl chloride sheet and film entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and will remain in effect until publication of the final results of the next administrative review.

This administrative review, revocation in part, and notice are in accordance with section 751(a)(1) and (c) of the Tariff Act (19 U.S.C. 1675(a)(1) and (c)) and §§ 353.53a and 353.54 of the Commerce Regulations (19 CFR 353.53a. 353.54).

Dated: June 9, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 87–13716 Filed 6–15–87; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permit: John G. Shedd Aquarium (P396)

Notice is hereby given that the Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant: John G. Shedd Aquarium, 1200 South Lake Shore Drive, Chicago, Illinois 60605.

2. Type of Permit: Public Display.

3. Name and Number of Marine Mammals: Beluga whales (*Delphinapterus leucas*).

4. Type of Take: Live import.

5. Location of Activity: Canada, Western Hudson Bay.

6. Period of Activity: 4 years.

The arrangments and facilities for transportaing and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committe of Scientific Advisors.

Written data or views, or requests for public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individual requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the Marine Mammal Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices.

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Rm. 805, Washington, DC; and

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Dated: June 8, 1987.

Dr. Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 87-13684 Filed 6-15-87; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit to National Marine Fisheries Service, Southeast Fisheries Center (P77#25)

On November 17, 1986, notice was published in the **Federal Register** (51 FR 41524) that an application had been filed by the Southeast Fisheries Center, National Marine Fisheries Service, 75 Virginia Beach Drive, Miami, Florida 33149, to take sea turtles for scientific and enhancement purposes.

Notice is hereby given that on May 4, 1987, as authorized by the provisions of the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), the National Marine Fisheries Service issued a Permit for the above activity subject to certain conditions set forth therein.

Issuance of this permit as required by the Endangered Species Act of 1973, is based on a finding that such Permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of this Permit; (3) and will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973.

The Permit is available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Services, 1825 Connecticut Avenue, NW., Rm. 805 Washington, DC;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Dated: June 10, 1987.

Dr. Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 87-13683 Filed 6-15-87; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishing an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Bangladesh

June 10, 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, as issued the directive published below to the Commissioner of Customs to be effective on June 16, 1987. For further information contact Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715.

Background

On March 23, 1987, a notice was published in the **Federal Register** (52 FR 9207) which announced that the United States Government, under Article 3 of the Arrangement Regarding International Trade in Textiles, done at Geneva on December 20, 1973, and as extended by protocols on December 5, 1977, December 22, 1981 and July 31, 1986, has requested the Government of Bangladesh to enter into consultations concerning exports to the United States of cotton knit blouses and shirts in Category 338/339.

The United States has decided, inasmuch as recent consultations with the Government of Bangladesh did not result in a mutually satifactory solution concerning this category, to control imports of cotton textile products in Category 338/339, produced or manufactured in Bangladesh and exported during the twelve-month period which began on February 28, 1987 and extends through February 27, 1988.

Accordingly, in the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of cotton textile products in Category 338/339, in excess of the designated restraint level.

The United States remains committeed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of Bangladesh, further notice will be published in the **Federal Register**.

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 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068), and in

Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

June 10, 1987.

Committee for the Implementation of Textile Agreements

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

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 16, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of certain cotton textile products in category 338/339, produced or manufactured in Bangladesh and exported during the twelve-month period which began on February 28, 1987 and extends through February 27, 1988, in excess of 350,000 dozen.[1]

Textile products in Category 338/339 which have been exported to the United States prior to February 28, 1987 shall not be subject to this directive.

Textile products in Category 338/339 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

Also effective on June 16, 1987, you are directed to charge the following amounts to the restraint limit established in this directive for Category 338/339. These charges are for the import period February 28, 1987 through March 31, 1987.

Category	Amount to be charged
338	13,721 dozen.
339	49,229 dozen.

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 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1987).

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 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-13637 Filed 6-15-87; 8:45 am]

BILLING CODE 3510-DR-M

[1] The limit has not been adjusted to account for any imports exported after February 27, 1987.

COMMISSION ON MERCHANT MARINE AND DEFENSE

Closed Meeting

SUMMARY: The Commission on Merchant Marine and Defense was established by Pub. L. 98-525 (as amended), and the Commission was constituted in December 1986. The Commission's mandate is to study and report on problems relating to transportation of cargo and personnel for national defense purposes in time of war or national emergency, the capability of the Merchant Marine to meet the need for such transportation, and the adequacy of the shipbuilding mobilization base to support naval and merchant ship construction. In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the Commission announces the following meeting:

DATES AND TIMES: Monday, June 22, 1987; Beginning 9:00 a.m.; Tuesday, June 23, 1987, Beginning 9:00 a.m.

Place: Suite 520, 4401 Ford Avenue, Alexandria, Virginia, 22301-0268

Type of meeting: Closed.

Contact person: Allan W. Cameron, Executive Director, Commission on Merchant Marine and Defense, Suite 520, 4401 Ford Avenue, Alexandria, Virginia 22301-0268, Telephone (202) 756-0411.

Purpose for meeting: To receive additional information pertaining to the needs of the national defense for the Merchant Marine and the shipbuilding industry, and to discuss and deliberate facts and opinions obtained from briefings and public hearings.

SUPPLEMENTARY INFORMATION: The executive meetings of the Commission will be closed to the public pursuant to 5 U.S.C. 552b(c)(1) and 552b(c)(9) in the interests of national security and to protect proprietary information provided to the Commission in confidence. A public meeting and hearing for the shippers of goods (*i.e.*, the users of maritime transportation), announced earlier in the **Federal Register** (52 FR 20134, May 29, 1987), will be held at 2:00 p.m. on Monday, June 22, 1987, in the Center for Naval Analyses Auditorium First Floor, 4401 Ford Avenue, Alexandria, Virginia.

Allan W. Cameron,

Executive Director, Commission on Merchant Marine and Defense.

[FR Doc. 87-13691 Filed 6-15-87; 8:45 am]

BILLING CODE 3820-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Agency Information Collection Activities Under OMB Review

ACTION: Public Information Requirement submitted to OMB for Review.

SUMMARY: The Department of Defense has submitted to OMB for review the following request for renewal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact for whom a copy of the information proposal may be obtained.

REVISION:

DoD FAR Supplements Part 27 and Related Clauses in Part 52.227.—DD Form 882, 0704-0240

Information concerns certain data required to support contractor's right to limit or restrict the use of certain technical data or software and to identify contractor inventions and state that all inventions have been disclosed or disclose that there are no inventions.

Reporting is required to determine what technical data or software, to be utilized in performance under a contract, will be subject to limited/restricted rights and to require the maintenance of records supporting contractors limiting or restricting the Government's right to use such technical data or software. In addition, contractors are required to submit to the contracting officer monthly reports listing inventions and stating that all such inventions have been

disclosed or that there are no such inventions.

Businesses or others for profit/small businesses or organizations.

Responses: 16,766.

Burden Hours: 1,256,336.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302, telephone (202) 746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Dr. Dan Vitiello, address above.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

June 11, 1987.

[FR Doc. 87–13685 Filed 6–15–87; 8:45 am]

BILLING CODE 3810–01–M

Agency Information Collection Activities under OMB Review

ACTION: Public Information Collection Requirements Submitted to OMB for Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Department of Defensne has submitted to OMB for approval a request for an extension of a currently approved collection of information. The request contains the following information: (1) Type of Submission; (2) Tilte of Information Collection and Form number if applicable; (3) Abstract statement of the need for the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) to whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the extension request may be obtained.

EXTENSION

Police Record Check—DD Form 369
0704–0007

In compliance wirth sections 504 and 505, title 10, U.S. Code, applicants for enlistment in the Armed Forces of the United States must be screened to identify any discreditable involvement with police or other legal officials. Form DD 369 is sent to the FBI as part of the entrance National Agency Check. Results are used to determine general enlistment eligibility and job skill placement decisions.

- State and local governments (policie and law enforcement agencies).
- 10,000 respondents.
- 51,250 hours.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, telephone (202) 395–4814; and Mr. Daniel Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302, telephone (202) 746–0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained from Mr. Robert L. Newhart, OSAD (FM&P), Room 3D937, Pentagon, Washington, DC 20301–4000, telephone (202) 695–0643.

This is a request for an extension of an approved collection, and not for contract.

Patricia H. Means,

OSD Federal Register Liasion Officer, Department of Defense.

June 11, 1987.

[FR Doc. 87–13686 Filed 6–15–87; 8:45 am]

BILLING CODE 3810–01–M

Privacy Act of 1974; Deletion and Amended Records Systems

AGENCY: Office of Secretary, Defense (OSD).

ACTION: Notice of a deletion and amendments to systems of records for public comment.

SUMMARY: The Office of the Secretary of Defense proposes to delete one and amend seven systems of records subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

DATE: This proposed action will be effective without further notice July 16, 1987, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to Norma Cook, Privacy Act Officer, ODASD(A), Room 5C–315, The Pentagon, Washington, DC 20301. Telephone: (202) 695–0970, Autovon: 225–0970.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense (OSD) inventory of systems of records notices subject to the Privary Act of 1974 have been published in the **Federal Register** as follows.

FR Doc. 85–10237 (50 FR 22286) May 29, 1985 (compilation)

FR Doc. 85–27008 (50 FR 47087) November 14, 1985

FR Doc. 86–7574 (51 FR 11803) April 7, 1986

FR Doc. 86–10687 (51 FR 17508) May 13, 1986

FR Doc. 86–27868 (51 FR 44665) December 11, 1986

FR Doc. 86–27813 (51 FR 44668) December 11, 1986

FR Doc. 86–27814 (51 FR 44670) December 11, 1986

FR Doc. 86–27815 (51 FR 44672) December 11, 1986

The specific changes to the record systems being amended are set forth below followed by the system notices, as amended, published in its entirety.

These proposed amendments are not within the purview of the provisions of 5 U.S.C. 552a(o) of the Privacy Act of 1974 which requires the submission of new or altered system reports.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

June 1, 1987.

DELETION
DSMC 04

System name:

Defense Systems Management College (DSMC) Academic Analysis System (50 FR 22307, May 29, 1985).

Reasons:

This system is no longer being maintained.

AMENDMENTS
DOCHA 01

System name:

Health Benefits Authorization Files (50 FR 22303, May 29, 1985)

Changes:

Delete entry under the above heading and insert:

"Primary System—OCHAMPUS, DoD, Aurora, Colorado 80045–6900

Decentralized Segment—for PRO demonstration, San Diego, California only.

Blue Cross/Blue Shield of South Carolina, P.O. Box 6500, Columbia, South Carolina 29260–5000. California Medical Review, Inc., 1388 Sutter Street, San Francisco, California 94109."

Routine uses of records maintained in the system, including categories of uses and the purposes of such uses:

At the end of the last sentence under the above heading add "Pre-authorization and concurrent care reviews for a demonstration in San Diego, California." Add as last sentence under the above heading: "See also the Office of the Secretary of Defense (OSD) Blanket Routine uses at the head of this Component's published system notices."

DOCHA 02

System name:

Medical Care Inquiry Files (50 FR 22303, May 29, 1985).

Changes:

Routine uses of records maintained in the system, including categories of users and purposes of such uses:

Add as last sentence under the above heading: "See also the Office of the Secretary of Defense (OSD) Blanket Routine uses at the head of this Component's published system notices."

DOCHA 04

System name:

Legal Opinion files (50 FR 22306, May 29, 1985).

Changes:

Routine uses of records maintained in the system, including categories of users and purposes of such uses:

Add as last sentence under the above heading: "See also the Office of the Secretary of Defense (OSD) Blanket Routine uses at the head of this Component's published system notices."

DOCHA 07

System name:

Medical Claims History files (50 FR 22307, May 29, 1985).

Changes:

Routine uses of records maintained in the system, including categories of users and purposes of such uses:

At the end of the first paragraph under the above heading "Information from CHAMPVA claims will be given to the Veterans Administration."

DOCHA 09

System name:

Grievance Records (50 FR 47095, November 14, 1985).

Changes:

Routine uses of records maintained in the system, including categories of users and purposes of such uses:

Add as last sentence under the above heading "See also the Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices."

DSMC 01

System name:

Defense Systems Management College (DSMC) Personnel Information Files (50 FR 22307, May 29, 1985).

Changes:

Storage:

At the end of the sentence under the above heading add "and computer disks."

Notification procedures:

At the end of the sentence under the above heading delete "703–664–3118", add "703–664–1175".

Record access procedures:

Delete under the above heading words fourteen through twenty and add "DCOS–AP".

DSMC 02

System name:

Defense Systems Management College (DSMC) Student Files (50 FR 22307, May 29, 1985).

Changes:

Categories of records in the system:

At the end of the sentence under the above heading add "and other personal and experience historical data on past and present students."

Purpose(s):

Add between second and third sentences under the above heading "and to evaluate quality content of various courses".

Routine uses of records maintained in the system, including categories of users and purposes of such uses:

At end of last sentence under the above heading add "See OSD Blanket Routine Uses at the head of the Component's published system notices."

System manager(s) and address:

Delete first word under the above heading. Delete fifth and sixth words, substitute therefore: "ATTN.: Registrar".

Record access procedures:

Delete words fourteen through twenty under the above heading. Substitute therefore: "DCOS–AD".

DOCHA 01

SYSTEM NAME:

Health Benefits Authorization Files.

SYSTEM LOCATION:

Primary System—OCHAMPUS, DoD, Aurora, Colorado 80045–6900. Decentralized Segment—for PRO demonstration, San Diego, California, only.

Blue Cross/Blue Shield of South Carolina, P.O. Box 6500, Columbia, South Carolina 29260–5000.

California Medical Review, Inc., 1388 Sutter Street, San Francisco, California 94109.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who seek authorization or preauthorization for care under CHAMPUS/CHAMPVA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Original correspondence with individuals, medical statements, Congressional inquiries, medical treatment records, authorization for care, case status sheets, memos for record, follow-up reports justifying extended care, correspondence with fiscal intermediaries and work-up sheets maintained by case workers

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101, 41 CFR 101–11.000; Chapter 55, 10 U.S.C.; Section 613, Chapter 17, 38 U.S.C.; 32 CFR Part 199.

PURPOSE(S):

To maintain and control records pertaining to requests for authorization or preauthorization of health care under CHAMPUS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Determine eligibility of an individual, authorize payment, respond to inquiries from congressional offices made at the request of the individual covered by the system, control and review health care management plans, control accomplishment of reviews, and coordinate subject matter clearance for congressional committees and auditors.

Referral to the Secretary of the Department of Health and Human Services and/or the Administrator of the Veterans Administration consistent with their statutory administrative responsibilities under CHAMPUS/CHAMPVA pursuant to Chapter 55, 10 U.S.C. and Section 613, Chapter 17, 38 U.S.C.

Referral to federal, state, local, or foreign governmental agencies, and to private business entities, including individual providers of care, on matters relating to fraud, program abuse, utilization review, quality assurance, peer review, program integrity, third-party liability, coordination of benefits, and civil or criminal litigation related to the operation of CHAMPUS. Disclosure to third-party contacts in situations where the party to be contacted has, or is expected to have, information necessary to establish the validity of evidence or to verify the accuracy of

information presented by the individual concerning his or her entitlement, the amount of benefit payments, any review of suspected abuse or fraud, or any concern for program integrity or quality appraisal.

Preauthorization and concurrent care reviews for a demonstration in San Diego, California

See also the Office of the Secretary of Defense (OSD) Blanket Routine uses at the head of this Component's published system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records are maintained on magnetic tape and disc. Paper records maintained in file folders.

RETRIEVABILITY:

Information is retrieved by sponsor Social Security Number and sponsor or beneficiary name.

SAFEGUARDS:

Records are maintained in area accessible only to authorized personnel who are properly screened, cleared, and trained. Automated segments are accessible on-line only to authorized persons possessing user identification codes. OCHAMPUS buildings are protected by military police security force.

RETENTION AND DISPOSAL:

Automated indexes are permanent. Hardcopy records are closed out at the end of the calendar year in which finalized, held one additional year, and transferred to the Federal Records Center (FRC). The FRC will destroy the records after an additional four-year retention.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Beneficiary and Provider Relations Division, OCHAMPUS, DoD, Aurora, Colorado 80045–6900. Telephone: 303–361–8220.

NOTIFICATION PROCEDURE:

Information may be obtained from Privacy Act Officer.

RECORD ACCESS PROCEDURES:

Requests should be addressed to the Privacy Act Officer.

Written requests for information should include the full name of the beneficiary, the full name of the sponsor, current address and telephone. Should it be determined that the release of medical information to the requestor could have an adverse effect upon the individual's physical or mental health, the requestor will be required to provide the name and address of a physician who would be willing to receive the medical record, and at the physician's discretion, inform the individual covered by the system of the contents of that record.

For personal visits to examine records, the individual should provide some acceptable identification such as a driver's license or other form of picture identification.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR Part 286b and OSD Administrative Instruction No. 81.

RECORD SOURCE CATEGORIES:

Contractors, Health Benefits Advisors, all branches of the Uniformed Service, congressional offices, providers of care, consultants and individuals.

EXEMPTIONS CLAIMED FOR THIS SYSTEM:

None.

DOCHA 02

SYSTEM NAME:

Medical Care Inquiry Files.

SYSTEM LOCATION:

OCHAMPUS, DoD, Aurora, Colorado 80045–6900.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who seek information concerning health care under CHAMPUS/CHAMPVA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents reflecting inquiries received from private individuals for information on CHAMPUS/CHAMPVA and replies thereto; congressional inquiries on behalf of constituents and replies thereto; and files notifying personnel of eligibility or termination of benefits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3103; 41 CFR 101–11.000; Chapter 55, 10 U.S.C.; Section 613, Chapter 17, 38 U.S.C.; 32 CRF Part 199.

PURPOSE(S):

To maintain and control records pertaining to requests for information concerning the processing of individual CHAMPUS claims and the benefit structure and procedures of CHAMPUS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Establish eligibility, respond to inquiries from individuals, and respond to inquiries from congressional offices made at the request of the individual covered by the system.

Referral to the Secretary of the Department of Health and Human Services and/or Administrator of the Veterans Administration consistent with their statutory administrative responsibilities under CHAMPUS/CHAMPVA pursuant to Chapter 55, 10 U.S.C. and Section 613, Chapter 17, 38 U.S.C.

Referral to federal, state, local, or foreign governmental agencies, and to private business entities, including individual providers of care, on matters relating to fraud, program abuse, utilization review, quality assurance, peer review, program integrity, third-party liability, coordination of benefits, and civil or criminal litigation related to the operation of CHAMPUS.

Disclosure to other third-party contacts in situations where the party to be contacted has, or is expected to have, information necessary to establish the validity of evidence or to verify the accuracy of information presented by the individual concerning his or her entitlement, the amount of benefit payments, any review of suspected abuse or fraud, or any concern for program integrity or quality appraisal.

See also the Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records maintained on magnetic tape and disc. Paper records maintained in file folders.

RETRIEVABILITY:

Information is retrieved by case number, sponsor name and/or Social Security Number, and inquirer name.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel who are properly screened, cleared, and trained. Automated segments are accessible only by authorized persons possessing user identification codes. OCHAMPUS buildings are protected by military police security force.

RETENTION AND DISPOSAL:

Automated indexes are permanent. Paper records are retained in active file until end of calendar year in which closed, held two additional years, and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Beneficiary and Provider Relations Division, OCHAMPUS, DoD, Aurora, Colorado 80045–6900. Telephone: (303) 361–8220.

NOTIFICATION PROCEDURE:

Information may be obtained from the Privacy Act Officer.

RECORD ACCESS PROCEDURE:

Requests should be addressed to the Privacy Act Officer.

Written requests for information should include the full name of the individual, military sponsor, current address and telephone number. Should it be determined that the release of medical information to the requestor could have an adverse effect upon the individual's physical or mental health, the requestor will be required to provide the name and address of a physician who would be willing to receive the medical record and, at the physician's discretion, inform the individual covered by the system of the contents of that medical record.

For personal visits to examine records, the individual should be able to provide some acceptable identification such as a driver's license or other form of picture identification.

CONTESTING RECORD PROCEDURES:

The agency's rule for access to records, contesting contents, and appealing initial determinations by the individual concerned are contained in 32 CRF Part 286b and OSD Administrative Instruction No. 81.

RECORD SOURCE CATEGORIES:

Contractors, congressional offices, Health Benefits Advisors, all branches of the Uniformed Services, consultants, and individuals.

EXEMPTIONS CLAIMED FOR THIS SYSTEM:

None.

DOCHA 04

SYSTEM NAME:

Legal Opinion Files.

SYSTEM LOCATION:

OCHAMPUS, DoD, Aurora, Colorado 80045–6900.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are the subject of inquiries from the individual, attorneys, fiscal administrators, hospital contractors, other Government agencies, and congressional offices.

CATEGORIES OF RECORDS IN THE SYSTEM:

Inquiries received for individuals, attorneys, fiscal administrators, hospital contractors, other government agencies, and congressional offices. Files contain legal opinions, correspondence, memoranda for the record, and similar documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101; 41 CFR 101–11.000; Chapter 55, 10 U.S.C.; Section 613, Chapter 17, 38 U.S.C.; 32 CFR Part 199.

PURPOSE(S):

OCHAMPUS uses these records for research, precedent, historical, and record purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Referral to the Secretary of the Department of Health and Human Services and/or the Administrator of the Veterans Administration consistent with their statutory administrative responsibilities under CHAMPUS/CHAMPVA pursuant to Chapter 55, 10 U.S.C. and Section 613, Chapter 17, 38 U.S.C. and referral to the Department of Justice and/or foreign law enforcement agencies for possible criminal prosecution.

See also the Office of the Secretary of Defense (OSD) Blanket Routine Uses at the Head of this Component's published system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Information is retrieved by subject matter with crossreference by individual name.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel who are properly screened, cleared, and trained. OCHAMPUS buildings are protected by military police security force.

RETENTION AND DISPOSAL:

Records are permanent. Transfer to Washington National Records Center when superseded or obsolete.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, OCHAMPUS, DoD, Aurora, Colorado 80045–6900. Telephone: (303) 361–8506.

NOTIFICATION PROCEDURE:

Information may be obtained from the Privacy Act Officer.

RECORD ACCESS PROCEDURE:

Requests should be addressed to the Privacy Act Officer

Written requests for information should include the full name of the beneficiary, the full name of the sponsor, current address and telephone number. Should it be determined that the release of medical information to the requestor could have an adverse effect upon the individual's physical or mental health, the requestor will be willing to receive the medical record and, at the physician's discretion, inform the individual covered by the system of the contents of that record.

For personal visits to examine records, the individual should be able to provide some acceptable identification such as a driver's license or other form of picture identification.

CONTESTING RECORD PROCEDURES:

The agency's rules for access to records, contesting contents, and appealing initial determinations by the individual concerned are contained in 32 CFR Part 286b and OSD Administrative Instruction No. 81.

RECORD SOURCE CATEGORIES:

Individuals, attorneys, fiscal administrators, hospital contractors, other agencies, and congressional offices.

EXEMPTIONS CLAIMED FOR THIS SYSTEM:

None.

DOCHA 07

SYSTEM NAME:

Medical Claim History Files.

SYSTEM LOCATION:

Primary System—OCHAMPUS, DoD, Aurora, Colorado 80045–6900.

Decentralized Segment—Office of Civilian Health and Medical Program of the Uniformed Service-Europe (OCHAMPUSEUR), APO New York 09102; Fiscal intermediaries/Contractors (FIs) under contract to OCHAMPUS. Each company listed below maintains claim files on beneficiaries in their respective geographical areas.

Blue Shield of California, P.O. Box 3706, Escondido, CA 92025.

Hawaii Medical Service Association, P.O. Box 860, Honolulu, HI 96808.

Blue Cross and Blue Shield of Rhode Island, One Weybosset Hill, Providence, RI 02903.

Blue Cross and Blue Shield of South Carolina, P.O. Box 6119, Columbia, SC 29260.

Blue Cross of Washington-Alaska, P.O. Box 77084, Seattle, WA 98177.

Wisconsin Physicians Service, P.O. Box 7927, Madison, WI 53707.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEMS:

Eligible beneficiaries and all individuals who seek health care under CHAMPUS/CHAMPVA.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains claims, billings for services, applications or approval forms, medical records, family history files, or any other correspondence, memorandum, or report which are acquired or utilized in the development and processing of CHAMPUS/CHAMPVA claims. Records are maintained on temporary health care/maintenance demonstration projects, i.e., enrollment and bank authorization agreements, correspondence, memoranda, forms and reports which are acquired or utilized during the projects. Also included are records on appeals and hearings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101; 41 CFR 101–11.000; Chapter 55, 10 U.S.C.; Section 613, Chapter 17, 38 U.S.C.; 32 CFR Part 199.

PURPOSE(S):

OCHAMPUS and its FIs use the information to control and process health care benefits available under CHAMPUS including the processing of medical claims, the control and approval of medical treatments, and necessary interface with providers of health care.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Referral to federal, state, local, or foreign governmental agencies, and to private business entities, including individual providers of care, on matters relating to fraud, program abuse, utilization review, quality assurance, peer review, program integrity, third-party liability, coordination of benefits and civil or criminal litigation related to the operation of CHAMPUS.

Information from CHAMPVA claims will be given to the Veterans Administration.

Disclosure to third-party contacts in situations where the party to be contacted has, or is expected to have, information necessary to establish the validity of evidence or to verify the accuracy of information presented by the individual concerning his or her entitlement, the amount of benefit payments, any review of suspected abuse or fraud, or any concern for program integrity or quality appraisal.

Issuance of deductible certificates; responding to inquiries from congressional offices, made at the request of the person to whom a record pertains; and conducting audits of FI processed claims to determine payment and occurrence accuracy of the FI's adjudication process.

Process and control of recoupment claims in favor of the United States arising under the Federal Claims Collection Act. In connection with these recoupment claims, information may be disclosed to:

a. The U.S. Department of Justice, including U.S. Attorneys, for legal action and final disposition of the recoupment claims.

b. The Internal Revenue Service to obtain current address information on delinquent accounts receivable (automated controls exist to preclude redisclosure of solicited IRS address information) and to report amounts written-off as uncollectible as taxable income.

c. Private collection agencies for collection action when deemed to be in the best interest of the U.S.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collections Act of 1966 (31 U.S.C. 3701(a)(3).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records maintained on magnetic tape and disc. Paper records maintained in file folders.

RETRIEVABILITY:

Information is retrieved by sponsor's Social Security Number; beneficiary's name; classification of medical diagnosis, procedure code, or geographical location of care provided; and selected utilization limits.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel who are properly screened, cleared and trained. Decentralized automated segments within FI operations are accessible on-line only to authorized persons possessing user identification codes. The automated portion of the Primary System is accessible only through the medium of OCHAMPUS prepared computer programs resulting in a print-out of the data. OCHAMPUS buildings are protected by military police security force.

RETENTION AND DISPOSAL:

Records maintained on magnetic tape are individual annual files and are permanent. Paper records are closed out at the calendar year end in which processed, held one additional year, and transferred to the Federal Records Center. Federal Records Centers will destroy after an additional four-year retention.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Contract Management Division, OCHAMPUS, DoD, Aurora, Colorado 80045–6900. Telephone: (303) 361–8043.

NOTIFICATION PROCEDURE:

Information may be obtained from the Privacy Act Officer.

RECORD ACCESS PROCEDURE:

Requests should be addressed to the Privacy Act Officer.

Written requests for information should include the full name of the beneficiary, the full name of the sponsor, current address, and telephone number. Should it be determined that the release of medical information to the requestor could have an adverse effect upon the individual's physical or mental health, the requestor will be required to provide the name and address of a physician who would be willing to receive the medical record and, at the physician's discretion, inform the individual covered by the system of the contents of that record.

For personal visits to examine records, the individual should provide some acceptable identification such as driver's license or other form of picture identification.

CONTESTING RECORD PROCEDURES:

The agency's rules for access to records, contesting contents, and appealing initial determinations by the individual concerned are contained in 32 CFR Part 286b and OSD Administrative Instruction No. 81.

RECORD SOURCE CATEGORIES:

Physicians, hospitals, and other sources of care; individuals; insurance companies; and consultants.

EXEMPTIONS CLAIMED FOR THIS SYSTEM:

None.

SYSTEM NAME:

Grievance Records.

SYSTEM LOCATION:

OCHAMPUS, DoD Aurora, Colorado 80045–6900.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former Federal employees who have submitted grievances in accordance with 5 U.S.C. 2302 and 5 U.S.C. 7121 or a negotiated procedure.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents related to grievances including statements of witnesses, reports of interviews and hearings, examiner's findings and recommendations, copy of the original and final decision, and related correspondence and exhibits. This system includes files and records of internal grievance and arbitration systems that OCHAMPUS may establish through negotiations with recognized labor organizations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 2302 and 5 U.S.C. 7121.

PURPOSE(S):

To control and process Federal employees grievances.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Disclosure to appropriate federal, state, or local agencies responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; to disclose information to any source from which additional information is requested in the course of processing a grievance, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request and identify the type of information requested; to disclose information to a federal agency, in response to its request, in connection with the hiring or retention of an employees, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to requesting that agency's decision on the matter; to respond to inquiries from that congressional office made at the request of that individual concerned by the system; to disclose information to another federal agency or to a court when the government is party to a judicial proceeding before the court; to disclose information to officials of the Merit Systems Protection Board including the Office of the Special Counsel, the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission when requested in performance of their authorized duties; to disclose in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding; and to provide information to officials of labor organizations reorganized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices and matters effecting work conditions.

See also the Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices.

This information is used in the creation and maintenance of records of summary descriptive statistics and analytical studies or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by reference.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Information is retrieved by individual name.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel who are properly screened, cleared, and trained. OCHAMPUS buildings are protected by military police security force.

RETENTION AND DISPOSAL:

Records are closed at the end of the calendar year in which they are closed, held an additional seven years, and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Personnel office, OCHAMPUS, DoD, Aurora, Colorado 80045-6900, Telephone: (303) 361-3954.

NOTIFICATION PROCEDURE:

Information may be obtained from the Privacy Act Officer.

RECORD ACCESS PROCEDURES:

Requests should be addressed to the Privacy Act Officer.

Written requests for information should include the full name of the individual.

For personal visits to examine records, the individual should provide some acceptable identification such as a driver's license or other form of picture identification.

CONTESTING RECORD PROCEDURES:

The agency's rules for access to records, contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR Part 286b and OSD Administrative Instruction No. 81.

RECORD SOURCE CATEGORIES:

Individuals, witnesses, agency officials, and organizations.

EXEMPTIONS CLAIMED FOR THIS SYTEM:

None.

DSMC 01

SYSTEM NAME:

Defense Systems Management College (DSMC) Personnel Information Files.

SYSTEM LOCATION:

Administrative and Personnel Service Directorate, Defense Systems Management College (DSMC), Ft. Belvoir, VA 22060-5426.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military and civilian personnel assigned or attached to the Defense Systems Management College.

CATEGORIES OF RECORDS IN THE SYSTEM:

Data includes summary of occupational experience, education, training, security clearance, home address, home telephone number, dependent status, awards and decorations, promotion status, pay status.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136, and Department of Defense Directive 5160.55, "Defense Systems Management College," January 5, 1977.

PURPOSE(S):

Information is used by supervisory officials to obtain information on which to base decisions; by assigned Personnel Management Assistants for accomplishment of records maintenance and personnel services to individuals assigned and attached; for publication of biographical data booklets, personnel rosters, telephone directories, and organizational charts by the Administrative and Personnel Services

staff. Information from records contained in the system may be provided to any component of the Department of Defense.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be referred to and used by law enforcement or investigative authorities for investigations and possible criminal prosecution, civil court action, or regulatory order. See also the Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Primary files are paper records in file folders and punched cards, and computer disks.

RETRIEVABILITY:

Filed alphabetically by last name.

SAFEGUARDS:

Building is locked during nonbusiness hours. File storage is in locked file cabinets. Only authorized personnel have access to files.

RETENTION AND DISPOSAL:

Files are retained for one year after individual transfers separates or retries; then are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Administrative and Personnel Services, Defense Systems Management College, Ft. Belvoir, VA 22060–5426.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager, Telephone: 703–664–1175.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to: Commandant, Defense Systems Management College, ATTN.: DCOS–AP, Ft. Belovir, VA 22060–5426

Written requests for information should contain full name and current address of the individual.

For personal visits, the individual must provide acceptable identification, such as ID card or driver's license.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR Part 286b and OSD Administrative Instruction No. 81.

RECORD SOURCE CATEGORIES:

Data is obtained from the individual, from official personnel folders (201 files), from Standard Form 171, and from supervisory officials.

EXEMPTIONS CLAIMED FOR THIS SYSTEM:

None.

SYSTEM NAME:

Defense Systems Management College (DSMC) Student Files.

SYSTEM LOCATION:

Office of the Registrar, Defense Systems Management College (DSMC), Building 202, Ft. Belvoir, VA 22060–5426.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All current, former, and nominated students of the Defense Systems Management College, (DSMC).

CATEGORIES OF RECORDS IN THE SYSTEM:

Data includes name, dependent data, SSAN, career brief application form, security clearance, college transcripts, correspondence, DSMC grades, instructor and advisor evaluations, education reports, official orders, current address, and individual's photograph, and other personal and experience historical data on past and present students.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136, and Department of Defense Directive 5160.55, "Defense Systems Management College," January 5, 1977.

PURPOSE(S):

This data is used by College officials to provide for the administration of and a record of academic performance of current, former, and nominated students; to verify attendance and grades; to select instructors; to make decisions to admit students to programs and to release students from programs; to serve as a basis for studies to determine improved criteria for selecting students; to develop statistics relating to duty assignments and qualifications. This data is used by the Registrar in preparing locator directories of current and former students which are disseminated to students, former students and other appropriate individuals and agencies for purposes of administration; by College officials in preparing student biographical booklets, student rosters, and press releases of student graduations, and to evaluate quality and content of various courses. This data may be transferred to any agency of the Department of Defense having an official requirement for the information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To law enforcement or investigatory authorities for investigations and possible criminal prosecution, civil court action, or regulatory order. See OSD Blanket Routine Uses at the head of this Component's published system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and computer disks.

RETRIEVABILITY:

Filed records are sequenced alphabetically by last name, by class, and course. Locator cards are filed alphabetically in two categories; active students (by course) and former students.

SAFEGUARDS:

Records are maintained in locked cabinets, in an area accessible only to authorized personnel. Building is locked during non-business hours.

Only individuals designated as having a need for access to files by the System Manager are authorized access to information in the files.

RETENTION AND DISPOSAL:

Records are permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Defense Systems Management College, ATTN.: Registrar, Ft. Belvoir, VA 22060–5426.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager, Telephone: 703–664–3120.

RECORD ACCESS PROCEDURE:

Requests from individuals should be addressed to: Commandant, Defense Systems Management College, ATTN.: DCOS–AD, Ft. Belvoir, VA 22060–5426.

Written requests for information should contain full name, current address and telephone number, and course and class of individual, and must be signed.

For personal visits, the individual must provide acceptable identification, such as an ID card or driver's license.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32

CFR Part 286b and OSD Administrative Instruction No. 81.

RECORD SOURCE CATEGORIES:

Information is provided by the individual, supervisors, employers, instructors, advisors, examinations, and official military records.

EXEMPTIONS CLAIMED FOR THIS SYSTEM:

None.

[FR Doc. 87-13688 Filed 6-15-87; 8:45 am]
BILLING CODE 3810-01-M

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, July 7, 1987; Tuesday, July 14, 1987, Tuesday, July 21, 1987; and Tuesday, July 28, 1987; at 10:00 a.m. in Room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Pub. L. 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92-463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, DC 20301.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

June 11, 1987.

[FR Doc. 87-13687 Filed 6-15-87; 8:45 am]
BILLING CODE 3810-01-M

Department of the Army

Agency Information Activities Under OMB Review

ACTION: Public information collection requirement submitted to OMB for review.

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information; Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact for whom a copy of the information proposal may be obtained.

Extension

Lock Performance Monitoring System (PMS) Waterway Traffic Report; ENG Forms 3102c and 3102d (OMB Control Number 0702-0001)

Title 33, Code of Federal Regulations, Part 207, (26 Stat. 766) requires that statistics be gathered from users of navigable waters. Statistics gathered relate to vessels, passengers, freight and tonnage. The data are used to conduct system-wide planning and management of navigable waterways.

Businesses or other for-profit.
Responses: 753,600.
Burden Hours: 44,010.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone number (202) 746-0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Ms. Angela R. Petrarca, SAIS-ADR, Room 1C638, The Pentagon, Washington, DC 20310-0107, telephone (202) 694-0754.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

June 11, 1987.

[FR Doc. 87-13689 Filed 6-15-87; 8:45 am]
BILLING CODE 3810-01-M

Intent to Prepare a Draft Environmental Impact Statement for a Proposed Housing Project; Helomano Military Reservation, Oahu, HA

AGENCY: Department of Army, DOD.

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: The U.S. Army Support Command, Hawaii (USASCH) proposes to construct in increments over a period of several years, a 1,000 multiple dwelling unit, triservice housing project at Helomano Military Reservation, Oahu, Hawaii. The project will provide affordable housing for lower ranking enlisted personnel. Construction is proposed as follows: 150-200 units in FY 1988; 200 units in FY 1989; 250-300 units in FY 1990; and 350 units in FY 1991. The following new support facilities will be constructed throughout the project period: site improvements and landscaping; electrical and communication service; a potable water collection and distribution system; a new sewage collection and disposal system; roads and storm drainage; and other community support facilities.

Alternatives to the proposed project are:

A. No Action

B. Siting the units at Schofield Barracks.

C. Alternative configurations or design of the dwelling units and support facilities.

D. Different scheduling of support facilities vs. housing

Potential significant environmental concerns include a population increase from 300 to 3,800; urban development policy; current surrounding agricultural operations; easement acquisition; water supply; sewage effluent; impacts to schools; traffic movement; radio

frequency interferences; and institutional implementation. Fish and wildlife and historic sites are not expected to be significant issues.

Public involvement and project scoping will consist of processing the NOI through the Statewide Clearinghouse and State Office of Environmental Quality Control bulletin, and various meetings and correspondence with local neighborhood boards and other community groups, affected government agencies, and private organizations and individuals. Public workshops may be held and one or more public hearings will be held after distribution of the DEIS. All interested persons, organizations, or agencies are encouraged to provide input into the NEPA process, which involves formulating alternative plans, identifying potential environmental and social concerns, and developing mitigation measures to minimize those impacts.

The DEIS is scheduled to be available for public review in September 1987.

Questions regarding this proposal and the DEIS should be addressed to:

Dr. James Maragos, Chief,
Environmental Resources Section,
Planning Branch, U.S. Army Engineer District, Honolulu, Building T-1, Fort Shafter, Hawaii 96858-5440,
Telephone: (808) 438-2263.

Dated: June 10, 1987.

Lewis D. Walker,

Deputy for Environment, Safety and Occupational Health, OASA (I&L).

[FR Doc. 87-13629 Filed 6-15-87; 8:45 am]

BILLING CODE 3710-08-M

DELAWARE RIVER BASIN COMMISSION

Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, June 24, 1987 beginning at 1:30 p.m. in the Auditorium of the Department of Natural Resources and Environmental Control at 89 Kings Highways, Dover, Delaware. The hearing will be part of the Commission's regular business meeting which is open to the public.

An informal pre-meeting conference among the Commissioners and staff will be open for public observation at about 10:30 a.m. at the same location.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact:

1. *Holdover Project: Country Place Water Company D-87-33 CP.* An application for approval of a ground water withdrawal project to supply up to 4.32 and 6.48 million gallons (mg)/30 days of water to the applicant's distribution system from new Well Nos. 3 and 4, respectively, and to increase the existing withdrawal limit of 8.64 mg/30 days from all wells to 13.5 days. The project is located in Coolbaugh Township, Monroe County, Pennsylvania. This hearing continues that of May 27, 1987.

2. *Dublin Borough Authority D-86-70 CP.* An application to upgrade and expand the Dublin Borough Authority Sewage Treatment Plant located adjacent to Deep Run off Stone Bridge Road in Bedminster Township, Bucks County, Pennsylvania. The existing secondary treatment plant has a design average flow capacity of 0.30 million gallons per day (mgd). The proposed high quality secondary plant will be designed to process 0.50 mgd. The treatment plant will continue to serve residents of Dublin Borough. The plant effluent will continue to be discharged to Deep Run tributary of Tohickon Creek.

3. *Township of Worcester D-87-9 CP.* An application to expand a 0.045 mdg sewage treatment plant located just south of the intersection of Pennsylvania State Highways 363 and 73 in Worcester Township, Montgomery County, Pennsylvania. The applicant proposes to expand the high quality secondary treatment plant to process 0.08 mdg as a total design average flow. The plant will continue to provide high quality secondary treatment of domestic waste from a portion of Worcester Township only. Treatment plant effluent will continue to be discharged to Zacharias Creek through the existing outfall.

4. *Whitehall Township Authority D-87-16 CP.* An applicaton for approval of ground water withdrawal project to supply up to 27.2 mg/30 days of water of the applicant's distribution system from the new Seventh Day Well, and to increase the existing withdrawal limit from all wells to 73.0 mg/30 days. The project is locaterd in Whitehall Township, Lehigh County, Pennsylvania.

5. *Chester County Water Resources Authority D-87-35 CP.* Revision of the Comprehensive Plan is sought to include changes in the Brandywine Creek PL-566 Watershed Work Plan. The Creek flows through Chester and Delaware Counties in Pennsylvania and New Castle County in Delaware. The original Plan was placed in the DRBC Comprehensive Plan in 1962. The revised Plan reflects various changes in the Brandywine watershed which have altered the costs and benefits of the original Plan. Major changes include: PA-435A and PA-427 will not be constructed; PA-430 will be constructed on Rock Run, near Coatesville, Chester County, Pennsylvania, as a multiple purpose facility by the addition of water supply storage; a multiple purpose facility (PA-436F) will be constructed at a new site on Birch Run, also near Coatesville; PA-436 (Icedale site) has been removed from the PL-566 plan but the applicant requests that it remain in the DRBC Comprehensive Plan for considreation in the future. The ratio of average annual benefits ($593,000) to costs ($450,000) for the strucural measures is 1.3 to 1.0.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact David B. Everett concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Susan M. Weisman,

Secretary.

June 9, 1987.

[FR Doc. 87-13630 Filed 6-15-87; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF EDUCATION

[CFDA No. 84.094B]

Notice Inviting Applications for New Awards Under the Patricia Roberts Harris Fellowships Program—Graduate and Professional Study Fellowships

Purpose: Provides grants to institutions of higher education to support fellowships for graduate and professional study to students who demonstrate financial need and who are predominantly from groups which are traditionally underrepresented in graduate and professional study areas of high national priority.

Deadline for Transmittal of Applications: July 20, 1987.

Applications Available: June 19, 1987.

Available Funds: $1,070,000.

Estimated Range of Awards: $12,900-$38,700.

Estimated Average Size of Awards: $25,800.

Estimated Number of Awards: 40.

Project Period: 12 months.

Applicable Regulations: (a) The Patricia Roberts Harris Fellowships Program Regulations, 34 CFR Part 649, and when effective, the amendment to the regulations published in the **Federal Register**, June 10, 1987, 52 FR 22284–22286, and (b) the Education Department General Administrative Regulations (EDGAR) 34 CFR Parts 75 and 77, as provided in 34 CFR 649.3.

For Applications or Information Contact: Dr. Charles H. Miller on (202) 732–4395, Mrs. Barbara J. Harvey on (202) 732–4863, U.S. Department of Education, Mail Stop 3327, 400 Maryland Avenue, SW., Room 3022, ROB–3, Washington, DC 20202.

Program Authority: 20 U.S.C. 1124d–1134f.

Dated: June 11, 1987.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 87–13672 Filed 6–15–87; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No. 84.094C]

Notice Inviting Applications for New Awards To Apply for the Patricia Roberts Harris Fellowship Program—Pubic Service Education Fellowships Support for the Academic Year 1987–88

Purpose: Provides grants to institutions of higher education to support fellowships for graduate and professional study to students who demonstrate financial need and who plan to pursue a career in public service at all levels of government or in non-profit community service organizations. Public Service Education Fellowships are intended to provide opportunities for qualified students, particularly individuals from traditionally underrepresented groups.

Deadline for Transmittal of Applications: July 20, 1987.

Applications Available: June 19, 1987.

Available Funds: The Congress has made $2,500,000 of appropriated funds available for this program for fiscal year 1987.

Estimated Range of Awards: $12,900 to $167,700.

Estimated Average Size of Awards: $33,600.

Estimated Number of Awards: 52.

Project Period: 9 to 24 months.

Applicable Regulations: (a) The Patricia Roberts Harris Fellowship Program Regulations, 34 CFR Part 649, and when effective, the amendments to the regulations published in the **Federal Register** June 10, 1987, 52 FR 22284–22286, and (b) the Education Department General Administrative Regulations (EDGAR) 34 CFR Parts 74, 75, 77, and 78.

For Applications or Information Contact: Dr. Charles H. Miller on (202) 732–4395 or Mrs. Barbara J. Harvey on (202) 732–4863, U.S. Department of Education, Mail Stop 3327, 400 Maryland Avenue, SW., Room 3022, ROB–3, Washington, DC 20202.

Program Authority: 20 U.S.C. 1134d–1134f.

Dated: June 11, 1987.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 87–13673 Filed 6–15–87; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Mission Plan Amendment for the Civilian Radioactive Waste Management Program

AGENCY: Office of Civilian Radioactive Waste Management, DOE.

ACTION: Notice of availability of a Mission Plan Amendment for the Civilian Radioactive Waste Management Program.

SUMMARY: Section 301 of the Nuclear Waste Policy Act of 1982 (NWPA, Pub. L. 97–425), requires the Secretary of Energy to ". . . prepare a comprehensive report, to be known as the Mission Plan, which shall provide an information basis sufficient to permit informed decisions to be made in carrying out the repository program and the research, development, and demonstration programs required under this Act."

After incorporating changes in response to comments received on a draft version of the Plan, the Department of Energy prepared and submitted the Mission Plan (DOE/RW–0005, June 1985) to Congress. On January 28, 1987 a Draft Mission Plan Amendment was sent to States, affected Indian Tribes and Federal agencies for comment. Copies were also mailed to the approximately 7,000 other parties on the program mailing list. Comment letters were received from 58 parties. On June 9, 1987 the Mission Plan Amendment, which responds to these comments, was submitted to Congress.

Copies of the Amendment which contains all the comments received and responses to the comments are being sent to all commenters and to parties on the program mailing list.

A copy of the Mission Plan Amendment may be obtained by contacting the Office of Civilian Radioactive Waste Management's Washington, DC office or any one of the Project Offices at the following addresses:

U.S. Department of Energy, Office of Civilian Radioactive Waste Management, Office of Policy and Outreach, RW–40, 1000 Independence Avenue SW., Washington, DC 20585, Tel: (202) 586–2277

Salt Repository Project Office, U.S. Department of Energy, 505 King Avenue, Columbus, Ohio 43201, Tel: (614) 424–5916

Nevada Nuclear Waste Storage Investigations, Waste Management Project Office, U.S. Department of Energy, Nevada Operations Office, 2753 South Highland Street, Las Vegas, Nevada 89109, Tel: (702) 295–3521

Basalt Waste Isolation Project, U.S. Department of Energy, Federal Building, 825 Jadwin Avenue, Room 630 Richland, Washington 99352, Tel: (509) 376–7501

Repository Technology and Transportation Division, U.S. Department of Energy, 9800 South Cass Avenue, Argonne, Illinois 60439, Tel: (312) 972–2570

Issued in Washington, DC, June 9, 1987.

Ben C. Rusche,

Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 87–13680 Filed 6–15–87; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Cases Filed; Week of May 8 Through May 15, 1987

During the Week of May 8 through May 15, 1987, the applications for relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

June 8, 1987.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARING AND APPEALS

[Week of May 8 through May 15, 1987]

Date	Name and location of applicant	Case No.	Type of Submission
May 1, 1987	Economic Regulatory Administration, Washington, DC	KRR-0026	Request for modification/rescission. If Granted: April 16, 1987 Remedial Order (Case No. HRO-0266) issued to Brio Petroleum, Inc. & L.B. White would be modified in order to correct an ordering paragraph contained in that Decision and Order.
May 11, 1987	Baker R. Littlefield & Robert L. McAdams, Washington, DC	KRR-0025	Request for modification/rescission. If granted: The April 7, 1987 Decision and Order which joined Baker R. Littlefield and Robert L. McAdams as parties in the Ball Marketing, Inc. enforcement proceeding would be modified and the Economic Regulatory Administration would be requred to furnish Messers. Littlefield and McAdams with certain information pertaining to Ball Marketing, Inc.
May 12, 1987	Ernest E. Allerkamp, et al., Washington, DC	KFX-0033	Supplemental order. If granted: The Office of Hearings and Appeals would establish procedures consistent with the Modified Statement of Restitutionary Policy for certain crude oil Subpart V cases, in which final refund procedures were announced prior to the adoption of that policy.
May 14, 1987	Economic Regulatory Administration, Washington, DC	KRD-0321	Motion of discovery. If granted: Discovery would be granted to the Economic Regulatory Administration in connection with the Statement of Objections submitted in response to the October 23, 1987 Proposed Remedial Order issued to Mt. Airy Refining Company et al. (Case No. KRO-0320).
May 14, 1987	Gary Energy/H.S. Sowards, Inc., Salt Lake City, UT	RR47-1, RR47-2	Request for modification/rescission. If granted: The Sepetember 12, 1986 Decision and Order (Case Nos. RF47-5 and RF47-6) issued to H.S. Sowards & Sons, Inc. would be modified regarding the firm's application for refund submitted in the Gary Energy refund proceeding.

WEEK OF MAY 8 TO MAY 15, 1987

Date received	Name of refund proceeding/ name of refund applicant	Case No.
5/3/87	Harbor Oil Corporation	RF225-10804 thru RF225-10805
5/8/87 thru 5/15/87.	Getty Oil Refund Applications.	RF265-1280 thru RF265-1371
5/8/87 thru 5/15/87.	Cranston Oil Refund Applications.	RF276-204 thru RF276-216
5/8/87 thru 5/15/87.	Pyrofax Gas Refund Applications.	RF277-18 thru RF277-26
5/11/87	Mission Lumber Company	RF294-1
5/11/87	County of Rockland	RF272-448
5/12/87	A-R Fuels, Inc	RF225-10797 thru RF225-10800
5/12/87	Herb Brown's Friendly Service.	RF225-10801
5/12/87	Bill's Mobil	RF225-10802
5/12/87	Howard Scarban	RF225-10803
5/12/87	Caterpillar, Inc	RF272-449
5/12/87	Hudson Foods, Inc	RF272-450
5/12/87	Gerhart Oil Inc	RF225-10806
5/12/87	Swifty Oil Company	RF295-1
5/12/87	Hudson & Hudson Fuel Oil, Inc.	RF295-2
5/12/87	Kent Oil & Trading Company	RF295-3
5/15/87	Riverside Transit Agency	RF272-452
5/15/87	Princess Cruises	RF272-453
5/14/87	University of Missouri-Rolla	RF293-4
5/14/87	Your Comfort Heating Company.	RF220-488
4/27/87	Indiana University	RF272-451
12/1/86	Park Oil Company	RF250-2727
6/27/86	Morris Oil Services, Inc	RF225-10807

[FR Doc. 87-13676 Filed 6-15-87; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed; Week of May 15 Through May 22, 1987

During the Week of May 15 through May 22, 1987, the applications for relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

June 8, 1987.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS, WEEK OF MAY 15 THROUGH MAY 22, 1987

[Refund Applications Received]

Date received	Name of refund proceeding/ name of refund applicant	Case No.
1/15/87 thru 5/22/87.	Getty Oil Refund Applications.	RF265-1371 RF265-1425
5/22/87	Certainteed Corporation	RF272-456
5/21/87	The North American Coal Corp.	RF272-457
5/21/87	The Falkirk Mining Company	RF272-458
5/21/87	New Orleans Public Belt Rail	RF272-459
5/21/87	Hackney Farmers Union Association.	RF270-2480
5/21/87	Flame Rite Gas, Inc	RF277-30
5/21/87	Grumman Flexible Corporation.	RF277-31

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS, WEEK OF MAY 15 THROUGH MAY 22, 1987—Continued

[Refund Applications Received]

Date received	Name of refund proceeding/ name of refund applicant	Case No.
5/21/87	Helen M. Saravo	RF276-224
5/21/87	Anna M. Paolino	RF276-225
5/21/87	Beverly McGinnis	RF276-226
5/20/87	Abraham Levine	RF276-220
5/20/87	Albert P. Wholey	RF276-221
5/20/87	Pasco Seungio	RF276-222
5/20/87	Frederick A. Conca	RF276-223
5/20/87	Kerr Glass Manufacturing	RF277-28
5/20/87	Andrew J. Visotsky	RF277-29
5/20/87	Rolla Public Schools	RF293-6
5/19/87	Jem LP Gas Company	RF225-10814
5/19/87	Eureka Twelfth Service Center.	RF225-10815
5/19/87	D.C. Wallace Mobil	RF225-10816
5/18/87	Northern States Power Company.	RF139-168
5/18/87	Hamilton & Son, Inc	RF293-5
5/18/87	Marcum Distributing Company.	RF294-3
5/18/87	City of New York	RF272-454
5/18/87	Pasco Diorio	RF276-217
5/18/87	Vincent J. Nardacci	RF276-218
5/18/87	Carr-Lowrey Glass Company	RF277-27
5/18/87	Shaffers Oil Company	RF225-10811 thru RF225-10812
5/15/87	Magee Business Service	RF294-2
5/12/87	T & G Auto	RF225-10813
6/29/87	Clarke Oil Company	RF225-10808
6/29/87	Nansel Oil Company	RF225-10809
6/29/87	Sippel Oil Company	RF225-10810

[FR Doc. 87-13677 Filed 6-15-87; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decision and Order; Week of May 11, Through May 15, 1987

During the week of May 11 through May 15, 1987, the proposed decision and

order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:p.m., except federal holidays.

George B. Breznay,

Director, Office of Hearings and Appeals.

June 8, 1987.

National Oil & Supply Co., Inc., Springfield, Missouri; KEE-0122 Reporting Requirements

On March 23, 1987, National Oil & Supply Co., Inc. filed an Application for Exception from the provisions of the EIA's requirement to complete and submit Form EIA-782B on a monthly basis. The exception request, if granted, would relieve National of this responsibility. In considering National's request, the Department of Energy found that the firm failed to demonstrate that it was affected in a particularly adverse manner by the filing requirement. Accordingly, on May 13, 1987, the DOE issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 87-13678 Filed 6-15-87; 8:45 am]

BILLING CODE 6450-01-M

Objection to Proposed Remedial Order Filed; Period of April 6 Through May 15, 1987

During the period of April 6 through May 15, 1987, the notice of objection to proposed remedial order listed in the Appendix to this Notice was filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wished to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial order described, in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of the Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in this proceeding should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

June 8, 1987.

West Coast Oil Co., Westminster, California; KRO-0500 Crude Oil

On May 12, 1987, West Coast Oil Company, Westminster, California, filed a Notice of Objection to a Revised Proposed Remedial Order which the DOE's Office of the Solicitor of the Economic Regulatory Administration issued to the firm on April 20, 1987. In the Revised PRO, the ERA found that during October 1973 to January 1976, West Coast overcharged its customers in sales of petroleum products. According to the Revised PRO, the violation resulted in $763,449 of overcharges.

[FR Doc. 87-13679 Filed 6-15-87; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL COMMUNICATIONS COMMISSION

[File No. BPH-850712GR et al.]

Rebecca Broadcasting Corp. et al.; Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city, and state	File No.	MM Docket No.
A. Rebecca Broadcasting Corporation, Waimea, Hawaii.	BPH-850712GR	87-164
B. Hawaii Broadcasting Company, Inc., Waimea, Hawaii.	BPH-850712QY	
C. Mid-Pacific Broadcasting Company, Waimea, Hawaii.	BPH-850712QZ	
D. Tropic-Air, Ltd., Waimea, Hawaii.	BPH-850712RA	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Environmental, A, B, C
2. Main Studio, B
3. Air Hazard, B
4. Comparative, A, B, C, D
5. Ultimate, A, B, C, D

3. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87-13700 Filed 6-15-87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Vessel Sanitation Program; Meeting

ACTION: Notice of Meetings: Substitute Notice.

Federal Register Citation of Previous Announcement: A notice of two meetings with the cruise ship industry, private sanitation consultants, and other interested parties to be convened by the Centers for Disease Control (CDC), on June 24 and September 23 was published

in the **Federal Register**, Vol. 52, No. 48, page 7664, Thursday, March 12, 1987.

The dates and times of the meetings remain the same.

The "Matters to be considered" sections have been amended. A different contact person and a new location for the two meetings have been named. A period following the June 24 meeting during which material may be submitted for the record has been designated. A paragraph has been added regarding the organizational location of the program.

The revised notice follows:

Meetings

1. A meeting with the cruise ship industry, private sanitation consultants, and other interested parties will be convened by the Centers for Disease Control (CDC), on June 24:

Time and Date: 9 am, Wednesday, June 24, 1987.

New Location: Miami Port Authority, Passenger Terminal No. 10, 1007 North America Way, Miami, Florida.

Status: Open to the public for participation, comment, and observation, limited only by the space available.

Matters To Be Considered: Experience to date with the operation of the Vessel Sanitation Program. Consideration of contracting, by CDC, the inspection portion of the Vessel Sanitation Program. (A contractor would act as an agent of CDC in conducting physical inspections only and would report the results to CDC. CDC would retain primary responsibility for the program including scheduling inspections, oversight of inspections, and reporting results.)

Copies of CDC's operations manual describing the Vessel Sanitation Program in detail are available on request.

For a period of 12 days following the meeting, through July 6, 1987, the official records of the meeting will remain open so that additional material may be submitted to be made part of the record of the meeting.

2. A meeting with the cruise ship industry, private sanitation consultants, and other interested parties will be convened by the CDC on September 23:

Time and Date: 9 am, Wednesday, September 23, 1987.

New Location: Miami Port Authority, Passenger Terminal No. 10, 1007 North America Way, Miami, Florida.

Status: Open to the public for participation, comment, and observation, limited only by the space available.

Matters To Be Considered: All aspects of the Vessel Sanitation Program, including components of the operations manual, experience to date in implementing the program, and proposal to contract for inspections.

Copies of CDC's operations manual describing the Vessel Sanitation Program in detail are available on request.

Contact Person for More Information (both meetings): Vernon N. Houk, M.D., Director, Center for Environmental Health, CDC, Atlanta, Georgia 30333. Telephones: FTS: 236–4111, Commercial: (404) 452–4111.

3. Effective June 7, 1987, the Vessel Sanitation Program became part of the Center for Environmental Health, CDC.

Dated: June 12, 1987.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 87–13834 Filed 6–15–87; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 87M–0147]

Bausch & Lomb Optics Center; Premarket Approval of Bausch & Lomb® Disinfecting Solution

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Bausch & Lomb Optics Center, Rochester, NY, for premarket approval, under the Medical Device Amendments of 1976, of BAUSCH & LOMB® Disinfecting Solution. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by July 16, 1987.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Land, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration 8757 Georgia Ave., Silver Spring, MD 20910, 303–427–7940.

SUPPLEMENTARY INFORMATION: On June 16, 1986, Bausch & Lomb Optics Center, Rochester, NY 14692, submitted to CDRH an application for premarket approval of BAUSCH & LOMB® Disinfecting Solution. The BAUSCH & LOMB® Disinfecting Solution is indicated for use in rinsing, chemical disinfection, and storage of daily and extended wear soft (hydrophilic) contact lenses.

On February 27, 1987, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On April 10, 1987, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ–460), address above.

The labeling of BAUSCH & LOMB® Disinfecting Solution states that the solution is indicated for use in rinsing, chemical disinfection, and storage of daily and extended wear soft (hydrophilic) contact lenses. Manufacturers of soft (hydrophilic) contact lenses that have been approval for marketing are advised that whenever CDRH publishes a notice in the **Federal Register** of the approval of a new solution for use with an approved soft contact lens, the manufacturer or PMA holder of each lens shall correct its labeling to refer to the new solution at the next printing or at such other time as CDRH prescribes by letter to the applicant.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting

data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before July 16, 1987, file with the Docket Management Branch (address above) two copies of each perition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: June 8, 1987.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 87–13633 Filed 6–15–87; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 87M–0166]

Paco Pharmaceutical Services, Inc.; Premarket Approval of Charter Labs Sterile Disinfecting Solution

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Paco Pharmaceutical Services, Inc., Lakewood, NY, for premarket approval, under the Medical Device Amendments of 1976, of the CHARTER LABS STERILE DISINFECTING SOLUTION. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by July 16, 1987.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7940.

SUPPLEMENTARY INFORMATION: On February 25, 1985, Paco Pharmaceutical Services, Inc., Lakewood, NJ 08701, submitted to CDRH an application for premarket approval of the CHARTER LABS STERILE DISINFECTING SOLUTION. The solution is indicated for use in the rinsing, chemical disinfection, and storage of soft (hydrophilic) contact lenses.

On January 24, 1986, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On April 30, 1987, CDHR approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requester should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ–460), address above.

The labeling of the CHARTER LABS STERILE DISTINFECTING SOLUTION states that the solution is indicated for use in the rinsing, chemical disinfection, and storage of soft (hydrophilic) contact lenses. Manufacturers of soft (hydrophilic) contact lenses that have been approved for marketing are advised that whenever CDRH publishes a notice in the **Federal Register** of the approval of a new solution for use with an approved soft contact lens, the manufacturer or PMA holder of each lens shall correct its labeling to refer to the new solution at the next printing or at such other time as CDRH prescribes by letter to the applicant.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before July 16, 1987, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: June 8, 1987.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 87–13634 Filed 6–15–87; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 87M–0173]

Orthopedic Products Division/3M; Premarket Approval of 3M Kennedy Lad™ Ligament Augmentation Device

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Orthopedic Products Division/3M, St. Paul, MN, for premarket approval, under the Medical Device Amendments of

1976, of the 3M Kennedy LAD™ Ligament Augmentation Device. After reviewing the recommendation of the Orthopedic and Rehabilitation Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by July 16, 1987.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nirmal K. Mishra, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7156.

SUPPLEMENTARY INFORMATION: On April 16, 1986, Orthopedic Products Division/3M, St. Paul, MN 55144, submitted to CDRH an application for premarket approval of the 3M Kennedy LAD™ Ligament Augmentation Device. The device is a prosthetic ligament augmentation device fabricated from high tenacity polypropylene, heatsealed at both ends. It is indicated for the augmentation and strengthening of an autogenous tissue graft used in the reconstruction of anterior cruciate ligament (ACL) deficient knees. The autogenous graft consists of a portion of the quadriceps tendon—prepatellar tissue—central one-third of the patellar tendon routed through the joint and placed "over the top" of the femoral condyle.

On October 31, 1986, the Orthopedic and Rehabilitation Devices Panel, and FDA advisory committee, reviewed and recommended approval of the application. On May 7, 1987, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Nirmal K. Mishra (HFZ–410), address above.

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).

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that their is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before July 16, 1987, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: June 8, 1987.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 87–13635 Filed 6–15–87; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

[ORD–57–N]

Medicare and Medicaid Programs; Health Care Financing Research and Demonstrations Special Solicitation; Availability of Funds for Cooperative Agreements for Research Centers

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

ACTION: General notice.

SUMMARY: This notice announces the availability of HCFA funds for Federal fiscal year 1988 for research centers to participate in the study of health care financing, delivery, and access and quality of care issues. In response to this notice, the research centers now being funded by HCFA—Brandeis University (Waltham, Massachusetts) and the Rand Corporation (Santa Monica, California)—should also apply for any funding beyond their current five year cooperative agreement (through April 30, 1989). These projects will be funded under the Cooperative Research or Demonstration Projects provisions of section 1110 of the Social Security Act.

This solicitation contains information about research center functions, project requirements, application procedures, criteria to be used in reviewing applications, and the amount and duration of awards.

DATES: Closing date for receipt of cooperative agreement applications will be September 14, 1987, 4:30 p.m.

APPLICATION KITS: Standard application forms and guidance for the completion of the forms are available from: Paul McKeown, Health Care Financing Administration, Office of Management and Budget, Administrative Contracts and Grants Branch, Room 364, East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, (301) 594–3333.

FOR FURTHER INFORMATION CONTACT: Michael Spodnik, Health Care Financing Administration, Office of Research and Demonstrations, Program Support, Support and Administrative Services Branch, Area 2–B–12, Oak Meadows Building, 6325 Security Boulevard,

Baltimore, Maryland 21207, (301) 594–3825.

SUPPLEMENTARY INFORMATION: This solicitation announces the availability of funding under a cooperative agreement for research centers which will focus on issues in the financing and delivery of health care, including access to and measurement of quality health care. The purpose of these awards is to increase the number of researchers working on health financing and delivery issues, and issues related to health care quality, and thereby build a knowledge base to solve long term problems of financing and delivering quality health care in the United States. The selected centers will work closely with the staff of HCFA's Office Research and Demonstrations (ORD).

Project applications may be submitted by nonprofit organizations, public agencies, private (for-profit) agencies or other organizations with the necessary research capacity.

I. Background

Payment for health services, primarily through the Medicare and Medicaid programs, constitutes one of the largest single segments of Federal and State budgets. Because of increases in costs, the Federal government must reassess current methods of payment for publicly financed health programs and look for innovative methods of paying for health care services in the future, while continuing to support quality of care provided.

We believe that if we are to reach the goal of improving health care delivery and financing, we must draw upon resources outside the Federal setting. This is vital for new insights and approaches to long- and short-range problem solving. Therefore, we believe that we must promote the further development of information in this area by supporting the work of researchers in non-Federal centers.

With these points in mind, HCFA proposes to support the activities of research centers whose purposes will be to advance knowledge in health care financing/delivery and quality of care, and to develop ways of applying that knowledge to improve the administration of health care programs and ensure access to quality health care. We believe this assistance will have a long term and vital public purpose: to increase the efficiency and effectiveness of the entire health care system by changing the ways in which health care is financed, reimbursed, and delivered.

The research centers selected by HCFA will conduct a broad range of studies. We anticipate that those research studies will be valuable to the health care community in general and to Federal, State and private health financing programs because the studies will generate further information on health care financing and delivery issues, as well as issues concerning quality of health care. We expect the centers to study the impact (both short and long term) of financing/delivery programs on the health care industry, program beneficiaries, and health care providers; the impact of technological change and regulatory policies in the health care sector; the growth, coverage and structure of private health insurance; the trends related to and factors affecting health care costs, and the financing of health care delivery in the United States, including the financing of capital improvements; the quality of health care delivered to program beneficiaries, how to measure it and how to ensure continued access to it.

We anticipate that the research centers, along with HCFA, will undertake long-term research studies as well as some short-term analyses of data or developmental work in study design. Consultation and technical assistance, such as participation in workshops and conferences, are other types of activities in which the center may participate.

We expect the selected research centers to have the capacity to respond quickly to the need for analytical papers based on a synthesis and integration of research underway in both the public and private sectors. This will increase our capability to answer difficult questions on a variety of financing issues.

HCFA currently funds two research centers (Brandeis University (Waltham, Massachusetts) and the Rand Corporation (Santa Monica, California)) as a result of awards from the research center solicitation published in the **Federal Register** on August 12, 1983. These centers were awarded as five year cooperative agreements (through April 30, 1989). We do not plan another special solicitation for research centers prior to the expiration of these two centers' current awards; therefore, these centers should respond to this solication for any funding beyond their current awards.

We expect to award at least three centers from this solicitation, including either Rand and/or Brandeis, should either or both successfully recompete under this solicitation. Awards are expected to be made for a 5-year period, subject to annual renewal.

II. Objectives

A. General

We expect the centers to promote the design, implementation, and operation of research projects which address major health care financing and delivery issues. The current issues of greatest concern are our private health care option (capitation), improving quality of care and its measurement, and research that leads to improvements in the delivery and financing of health care. These and other goals are reflected in the following categories of research interest:

- Quality of Care
- Alternative Payment Systems
- Hospital Payment
- Physician Payment
- Efficiencies, Analyses and Refinements in Health Care Delivery and Financing
- Long-Term Care

B. Specific Functions of the Research Center

In order to meet the objectives listed in the previous section, the research centers to be selected through this special solicitation will work cooperatively with HCFA staff in the:

- Study of health care financing, delivery, and quality of care issues;
- Provision of technical assistance and advice in research design, methodology, implementation and analysis;
- Department, preparation and presentation of research papers at conferences, seminars and workshops; and
- Preparation of background reports and issue papers.

1. *Studies of Health Care Issues.* Activities in this area would include all the usual steps in the preparation of a research project and its implementation. On a particular research topic, a protocol is developed, the project discussd in terms of its relevance and feasibility, the objectivs specified, the literature reviewed, study hypothesis presented, research methodology defined, the data collection instruments, procedures, measurement techniques and analysis plans drafted, and the entire research plan laid out. Research projects may be short- or long-term and may involve collaboration in which segments of the research are done by different parties. Activities may also involve the collection of primary data through interviews or the adiministration of survey instruments and/or the assembly of secondary data; the coding, editing, tabulating and

analysis of data; and the development of models for testing new approaches.

Typical products from studies such as these would include the preparation of the complete research protocol or various segments of it, such as the research design module, a literature review with annotated summaries, the development of the survey instruments, and the specification of the analysis plan. The centers may be involved in the development of the data base and the computer software to analyze the data. We anticipate that the centers will prepare research reports, papers and journal articles based on the results of the research as well as present the research findings at professional meetings and staff seminars.

The actual number of such studies to be undertaken and their timetable for implementation would be worked out jointly between the research centers and HCFA. Applicants should anticipate that at least one such major activity will be underway at all times and that the centers will also participate in a collaborative role in parts of other research. Examples of major studies of the programs follow.

- Development of a research program in quality of care measures for Medicare services, in a variety of settings (including ambulatory, long-term care, and rehabilitation). Included under this area of study would be an examination of the impact of innovative payment systems (including the Medicare hospital prospective payment system and capitated payment systems) on access to and quality of care.
- Examination of the constraints and incentives affecting the growth and effectiveness of capitated payment systems.
- Examination of potential alternative payment systems for physician services, the incentives engendered in such systems, and the impact of such systems on quality, access, and efficiency of care.
- Developing a methodology to identify and analyze mispriced procedures.
- Developing potential alternatives to the current payment method for outpatient services, both ambulatory and other than ambulatory services.

Performing an analysis of the appropriateness of current payment methods for various types of services; e.g., clinical laboratories, durable medical equipment, etc.

- Conducting a study of the variations in assignment and participation rates of physicians by geographic area, specialty, site of services, etc.
- Performing an analysis of utilization and expenditure data to see whether regional variation in the use of selected medical services are attributable to characteristics of the population.

2. *Provision of Technical Assistance and Advice in Research Design, Methodology, Instrumentation and Analysis.* With the assistance of this award, HCFA hopes to stimulate a capacity to respond to requests for assistance in formulating a research or demonstration design, or in developing research methodology. The centers could review and comment on papers or prepare presentations, lectures or seminars on specific topics.

For example, the centers may be asked to provide technical advice and make presentations at seminars. Many of these requests for assistance will be simple and require only a short time to perform. Others may require considerable thought and planning to complete. We anticipate that all staff at the centers may be asked at different times to become involved in this activity. Brief requests for informal review of papers or suggestions for additional approaches can also be expected. We anticipate that at least one technical assistance project will be scheduled at all times. Examples of the kinds of longer range technical assistance requests are presented below:

- Present a series of research seminars on the application and use of exploratory and confirmatory data analyses techniques, model-building techniques and other selected topics related to studies or program activities.
- Discuss the application and possible utility of simulation modeling in analyzing medical spending behavior and decisions at the State level

3. *Development, Preparation and Presentation of Research Conferences, Seminars and Workshops.* The centers may participate in the development of research conferences, seminars, and workshops and make presentations at those events. The centers may be asked to develop the agenda and conference announcements, the conference logistics, and prepare the summary proceedings. The centers should anticipate that at least one major conference or seminar will be planned each year.

The following topics may be the subject of conferences or workshops:

- The implications of prospective payment for the hospital industry or specific categories of hospitals and/or hospital outpatient departments.
- The social, legal and medical considerations in making resource allocations and resource rationing decisions in publicly financed health programs.
- Maximizing health care benefits from more cost-effective medical technologies.
- Measurement of outcome/severity in the assessment of quality of care.

4. *Preparation of Background Reports and Issue Papers.* Health care financing groups must continually study hypothetical changes in financing mechanisms. This may involve extended studies and demonstrations or relatively limited studies. Frequently, there is a need to develop papers to explain complex issues. This activity may include clarifying and specifying issues or questions; reviewing published literature on a subject; conducting surveys and interviews; developing explanatory models; synthesizing and integrating the results of studies; and developing alternative courses of action in the context of existing objectives and assessing their feasibility for implementation. The research centers should have the capacity to develop and present such papers.

We should expect the centers to include relatively short statements of the issue, descriptive narratives of the problem under study, documentation of the survey or interviews which were made, and the formulation of alternate courses of action.

Depending upon the nature of the problem and the time frame, a more thorough treatment of the subject may be required.

The full agenda of topics to be undertaken and time tables for implementation will be worked out jointly between the centers and HCFA. Two specific examples of the kinds of activities that we expect in this area are as follows:

- Preparation of a background report on the current methodologies for evaluating the quality of care provided in a variety of treatment settings.
- Preparation of a report about alternative metods for calculating payment rates in capitated systems, as increasing numbers of beneficiaries move from fee-for-service settings to capitated systems.

C. Other Research Center Activities

We encourage researchers to publish the studies performed by the research centers in professional journals, inlcuding the quarterly Health Care Financing Review.

III. Coordination

Specific activities to be performed by the centers will be agreed upon jointly by HCFA and the centers. As a part of the agreement between HCFA and the

centers, we will regularly meet to review past activities, and to set agendas.

The project, funded through as cooperative agreement, requires a close working relationship between the professional staff of the centers and HCFA staff. For purposes of management and accountability, however, we ask that the centers designate one project manager who, with a HCFA project officer, will be responsible for coordinating activities between HCFA and the centers.

IV. Number, Size and Duration of Projects.

HCFA plans to award a cooperative agreement of approximately $750,000 per year for a new research center (irrespective of the decision made with respect to funding of the two research centers currently funded by HCFA). However, depending on the quality of the applications and the types of specific areas of expertise evidenced in the applications (e.g., one set of proposals may evidence a great deal of expertise in the area of studying quality of care, while other applications may evidence expertise in general health care delivery and financing issues), we may award a larger project or a combination of projects.

V. Funding

Funding for the cooprative agreement will be awarded for a period of one year, and may be continued on a non-competitve basis for up to five years. Continuation of funding is dependent upon the availability of future year funds and the ability of the centers to meet prior year objectives. In addition, the cooperative agreement document will contain special conditions that will define the specific relationship between the government and the awardee.

If, following review of a proposed research activity, HCFA determines that a research or demonstration project presents a danger to the physical or mental well-being of a participant of the project, then Federal funds will not be made available for that project without the written, informed consent of each participant.

VI. Selection Procedures

A. Review of Applications

The Director of the Office of Research and Demonstrations, in consultation with senior HCFA officials (including the Administrator and Deputy Administrator), determines which projects will be awarded. These decisions are based on the recommendations and advice of experts who review proposals for technical merit.

An independent review will be conduced by a panel of not less than three experts (who are not staff members of ORD). The panel will include both individuals from the Department and individuals who are not government employes. The panel's recommendation will contain numercial ratings, ranking of all applications, and a written assessment of each application based on the project requirements shown below.

B. Specific Project Requirements

Applications must meet the specific requirements that follow:

1. The application must include a description of the organization that will serve as the research center, including relationship with other groups with which the organization may consult. The organizations' experience with related projects should be described and discussion should be included on the existing and anticipated workload of the organization.

2. Applicants must provide information on their experience and skills in each of the areas relating to the work of the proposed centers. This information should be presented in sufficient detail to permit an assessment of general capabilities as well as the applicant's expertise in specific subjects. To make the review process comparable, applicants are encouraged to present a sample project that will demonstrate all the necessary research skills, and describe, in detail, how they would undertake the project. We suggest that the sample project address one of the following:

- Development of a research program relating to measures of quality of care and access to care for Medicare services;
- Expansion/refinement of the Medicare hospital prospective payment system to include at least the following issues:
  - Severity of illiness
  - Payment for medial education and/or capital,
  - Physician and outpatient reimbursement;
- Refinement of the adjusted average per capita cost (AAPCC) methodology to better account for variations in utilization and costs, or alternatives to the AAPCC;
- Development of a methodology to identify and analyze overpriced procedures.

This will permit us to evaluate specific capabilities a well as the general capacity reflected in other, broader discussions in the application.

3. Applicants must provide documentation of a commitment of the parties necessary to the success of the planned centers when the applicant proposes the cooperation of multiple parties. Given the complexity of the work and subject areas that will be covered by this cooperative agreement, applicants should give serious consideration to relationships which would provide them with a wide variety of skills and experience.

4. The application must specify the availability of adequate facilities and equipment for the project or clearly state how these are to be obtained.

5. The application must include the qualifications and experience of the personnel and demonstrate how their qualifications make the individuals capable of performing the tasks of the centers. The application must also specify how personnel are organized in the centers (including all organizations expected to contribute to the research centers work under the award), to whom they report, and how they will be used to accomplish specific objectives. The application must also indicate if supplemental staff will be available when special expertise is required, and from where this staff will be drawn. The applicant must also demonstrate administrative and management capability to manage a large research center efficiently.

6. The applicant must describe data collection, analysis procedures, and problems for an evaluation that will indicate the degree to which the objectives of a program are met.

7. An applicant must demonstrate an understanding of adequacy and creativity in research design, formulation of testable hypotheses, validity and appropriateness of data base(s), and application of research results. This should be done (a) in the context of the sample task or problem, and (b) in a general discussion that demonstrates the applicant's understanding of all these elements in a good research project.

8. The applicant must discuss data it might expect to use in the specific areas and the source of those data. The applicant must also discuss situations in which data must be collected. The discussion must describe the design of data collection instruments, sample design and controls, and problems that may be encountered in a data collection and reduction effort. Data that are collected under this cooperative agreement must be available to HCFA and its agents. However, the applicant

must ensure the confidentiality of any personally identifiable information collected under the auspices of HCFA. (see item C.1 below for more information about confidentiality).

9. Applicants must include a discussion of the Medicare and Medicaid programs which demonstrates an understanding of the context in which the programs were originally conceived, changes in their development, the problems faced by each program, and the recent changes or proposed changes for each program (especially changes in the area of provider reimbursement).

10. The applicant must demonstrate an understanding of waivers of Federal requirements (for example, those waivers which permit States to make changes in their Medicaid programs). The applicant must discuss the implications of waivers and demonstrate an understanding of the relationship to Federal and State programs as well as the beneficial or adverse effect on the individuals enrolled in the programs.

11. Applicants must support the feasibility of their implementation approach. In the specific example selected to show detailed skills, the applicant must include an example of the task and milestones that would be involved in a project and must include a schedule of appropriate reports. Attention should be paid to the development of reports at the early interim stages of projects that have immediate usefulness.

12. The application must include a well developed budget for the sample project and explanations of the amounts requested. The estimated costs must be reasonable considering the anticipated results. Applicants should be aware that no budget may include costs for construction or remodeling, or for project activities that take place before the applicant has received official notification of approval of the project.

C. Other Requirements

The application must also contain detailed plans to protect the confidentiality, of all information that identifies individuals in the project. The plan must specify that such information is confidential, that it may not be disclosed directly or indirectly except for purposes connected with the conduct of the project and that informed written consent of the individual must be obtained for any disclosure.

D. Reports

1. Interim reporting requirements will be developed jointly by the HCFA project officer and the center's project manager and included in the workplan for each task when appropriate.

2. A final report on each study or project must be submitted to ORD and the Administrative Contracts and Grants Branch of HCFA's Office of Management and Budget.

VII. Application Procedures

A. Submitting Applications

Standard application forms and guidance for completion of the forms are available from HCFA's Administrative Contracts and Grants Branch at the address indicated in the Address section at the beginning of this notice. The application form has been approved under OMB #0938–0078 for use through May 31, 1988.

Requirements including awardee responsibilities, awarding and payment procedures, special provisions and assurances are described in the following documents that are included in the application kit: HCFA Grants Policy Handbook DHHA Publication No. (HCFA), 79–04001 (Rev. 6/79) and 45 CFR Part 74, Administration of Grants.

When submitting the application, applicants must include the research center title in the project title block of the application face page. The title of the center must also be clearly marked on the outside of the package or envelope.

Applications should be addressed to the Projects Grants Branch at the address shown in the Address section at the beginning of this notice.

The applicant must indicate when the same or similar application has been or will be submitted to another HHS agency; for example the Social Security Administration, the Office of Human Development Services, or Public Health Service.

B. Closing Date and Time

Applications are due September 14, 1987, 4:30 p.m. eastern standard time.

Applications mailed through the U.S. Postal Service or a commercial delivery service will be "on time" if they are received on or before the closing date, or sent on or before the closing date and received in time for submission to the independent review group. Applicants are cautioned to request a legible U.S. Postal Service postmark or to obtain a legibly dated receipt from the commercial carrier or the U.S. Postal Service. Privately metered postmarks will not be accepted as proof of timely mailing.

Applications that do not meet the above criteria will be considered late applications. Those submitting late applications will be notified that the applications were not considered in the current competition.

(Sec. 1110 of the Social Security Act (42 U.S.C. 1301, 139511))

(Catalog of Federal Domestic Assistance Program No. 13.766 Health Financing Research, Demonstrations and Experiments)

Dated: May 19, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 87–13671 Filed 6–15–87; 8:45 am]

BILLING CODE 4120–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–050–07–4212–13; A–22311]

Realty Action; Mohave County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—land exchange with private party, Mohave County, Arizona.

SUMMARY: The Bureau of Land Management (BLM) proposes to exchange public land in order to achieve more efficient management through consolidation of ownership. The following public land is being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

T. 15 N., R. 19 W., Gila and Salt River Meridian, Arizona
Sec. 6, lots 1–7, S½NE¼, SE¼NW¼, E½SW¼, SE¼

Containing 628.05 acres.

In exchange for these lands, the United States will acquire the following described lands from Paul L. Overman and Delores M. Overman of Phoenix, Arizona:

T. 14 N., R. 18 W., Gila and Salt River Meridian, Arizona
Sec. 11, W½

Containing 320 acres, more or less.

The public land to be transferred will be subject to the following terms and conditions:

(1) Excepting and reserving to the United States: (a) A right-of-way thereon for ditches or canals, and (b) all the oil and gas.

(2) Subject to: (a) Telephone line granted to the Citizens Utilities Rural Company, Inc., right-of-way No. A–7475, (b) 69 kV power transmission line granted to Citizens Utility Company, right-of-way No. PHX–034352, and (c) road granted to the Mohave County Board of Supervisors, right-of-way No. A–22449.

The value of the lands to be exchanged is approximately equal and the acreage will be adjusted or money will be used to equalize the values upon completion of the final appraisal of the lands.

Publication of this Notice will segregate the subject lands from all appropriations under the public land laws, including the mining laws, but not the mineral leasing laws or Geothermal Steam Act. The segregation will terminate upon issuance of a document conveying such lands, publication of a Notice of Termination, or 2 years from the date of this publication, whichever occurs first.

DATES: For a period of forty-five (45) days from the date of publication, interested parties may submit comments to the District Manager, Yuma District Office, Post Office Box 5680, Yuma, Arizona 85364. Any adverse comments will be evaluated by the 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 Interior.

FOR FURTHER INFORMATION CONTACT: Mike Ford, Area Manager, Havasu Resource Area Office, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86403, 602–855–8017.

Dated: June 5, 1987.

J. Darwin Snell,

District Manager.

[FR Doc. 87–13631 Filed 6–15–87; 8:45 am]

BILLING CODE 4310–32–M

[CA–010–07–4212–13; CA 20180]

Realty Action; Exchange of Public and Private Lands in Placer, Stanislaus and Santa Clara Counties, CA

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Exchange of public and private lands in Placer, Stanislaus and Santa Clara Counties, California.

SUMMARY: The following described public land 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):

Mount Diablo Meridian, California, Stanislaus and Santa Clara Counties

T. 6 S., R. 5 E.,
Sec. 7: lots 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and the E½ SE¼.

Aggregating 498.05 acres of public land, more or less.

In exchange for the above parcel, the United States will acquire the following described private land from the Trust for Public Land, 116 New Montgomery Street, San Francisco, California 94105–3607:

Mount Diablo Meridan, California, Placer County

Parcel A

T. 15 N., R. 10 E.,
Mineral Survey 1215, located within the SW¼ of Sec. 15 and the E½ SE¼ SE¼ of Sec. 16, (12.82 acres, more or less).

Parcel B

T. 15 N., R. 10 E.
Sec. 29: lots 5, 10, 11, and 12 (164.57 acres, more or less).

Aggregating 177.37 acres of private land, more or less.

The purpose of this exchange is to acquire non-federal lands located within the North Fork of the American River Canyon. Because of its unspoiled nature and the spectacular scenery within the canyon, the river was designated a Wild and Scenic River by Congress in 1978. The acquisition, which includes approximately one mile of river, will afford added protection for this valuable resource. In contrast, the Federal land to be exchanged has little value of the public and has no public access. In view of the above, this exchange is considered to be in the public interest.

The values of the properties to be exchanged (which include both the surface and mineral estates) are approximately equal; full equalization of values will be achieve by payment to the United States by the Trust for Public Land an amount not to exceed 25 percent of the total value of the lands to be transferred out of federal ownership.

A right-or-way for ditches and canals (43 U.S.C. 945) will be reserved to the United States on the public lands to be transferred (43 U.S.C. 945).

SUPPLEMENTARY INFORMATION: Publication of this notice in the **Federal Register** segregates the public lands from settlement, location and entry under the public land laws and the mining laws for a period of two years from the date of first publication.

FOR ADDITIONAL INFORMATION: Contact Mike Kelley, Folsom Resource Area Office, (916) 985–4474, at the address listed below. Also available for review is the environmental assessment/land report.

DATE: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Area Manager, Folsom Resource Area.

ADDRESSES: Comments should be sent to the Area Manager, Folsom Resource Area, 63 Natoma Street, Folsom, California 95630; (916) 985–4474. Any adverse comments will be forwarded to and evaluated by the District Manager, Bakerfield District, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become a final determination of the Department of Interior.

Dated: June 9, 1987.

K.D. Swickard,

Area Manager.

[FR Doc. 87–13735 Filed 6–15–87; 8:45 am]

BILLING CODE 4310–40–M

[ES–030–07–4212–11; ES–00157–010, ES–16306]

Realty Action; Recreation and Public Purposes Classification—Land Classification for Recreation and Public Purposes, Door County, WI

SUMMARY: The following public island has been examined and found to be suitable for classification and patent under the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 et seq.):

Fourth Principal Meridia, Wisconsin

ES–16306, Rock Island State Park, Door County

T. 34 N., R. 30 E.,
Fractional Sec. 14, Lot 2 (48.20 acs.) and Lot 3 (60.80 acs.)
Fractional Sec. 15, (20.37 acs.) all except approximately 0.01 of an acre (400 square feet) more particularly described as follows:

Commencing at the SE corner of fractional Sec. 15, T. 34 N., R. 30 N., thence due North 1,885 feet, thence due West 130 feet, to the point of beginning, being the SE corner of the parcel, thence due West 20 feet, thence due North 20 feet, thence due East 20 feet, thence due South 20 feet, to the point of beginning; also excepting an easement of visibility over the land lying in an arc between 200° true measured from the center of the above described excepted parcel, around clockwise, to 95° true, with the right of the United States Coast Guard to enter upon the above described land and raze, cut, and/or remove any structure, vegetation, or object of any shape or form which has been determined by the Commander, Ninth Coast Guard District his designee or successor, to obstruct such visibility of the Pottawatomi Light to mariners at sea.

From June 7, 1977, to June 7, 1987, the above described lands were under an R&PP Lease to the Wisconsin Department of Natural Resources as an addition to Rock Island State Park for

recreational purposes. This action was an interim procedure to allow BLM sufficient time to determine, through land use planning, the appropriate disposition of the island that would best serve the national interests. Transfer of the island to the State is consistent with the Wisconsin Resource Management Plan, Appendix A, Section 1, A.3., approved August 29, 1985.

The island is physically suited to the proposed use and is not of national significance. The island is valuable for a State program and is considered chiefly valuable for public purposes and is therefore suitable for classification and patent under the Recreation and Public Purposes Act. This action is consistent with local Federal government plans, programs and policies.

The patent issued under this notice is subject to the provision in 43 CFR 2741.8. In the event of noncompliance with the terms of the patent, title to the island shall revert to the United States.

The classification of this island will segregate it from all appropriation except as to applications under the mineral leasing laws and the Recreation and Public Purposes Act. Segregation will terminate upon issuance of a patent; or eighteen (18) months from the date of this notice; or upon publication of a notice of termination, whichever occurs first.

COMMENTS: For a period of 45 days from the date of first publication of this notice, interested parties may submit comments to: District Manager, Milwaukee District Office, Bureau of Land Management, P.O. Box 631, Milwaukee, Wisconsin 53201–0631.

FOR FURTHER INFORMATION: Detailed information concerning this application is available for review at the Milwaukee District Office, Suite 225, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203, or be calling Paulette Francis at (414) 291–4415.

Bertt Rodgers,

District Manager.

[FR Doc. 87–13736 Filed 6–15–87; 8:45 am]

BILLING CODE 4310–GJ–M

[CA–940–07–4520–12; Group 916]

Plat of Survey; California

June 8, 1987.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Modoc County

T. 39 N., R. 14 E.

2. This plat representing the dependent resurvey of a portion of the west boundary, and the informative traverse along certain subdivisional lines, Township 39 North, Range 14 East, Mount Diablo Meridian, California, under Group No. 916, California, was accepted May 28, 1987.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Modoc National Forest.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Public Information Section.

[FR Doc. 87–13737 Filed 6–15–87; 8:45 am]

BILLING CODE 4310–40–M

[CA–940–07–4520–12; Group 892]

Plat of Survey; California

June 8, 1987.

1. These plats of the following described lands will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Plumas County

T. 23 N., R. 11 E.

a. This plat represents the dependent resurvey of a portion of the boundaries of section 4, and the survey of the subdivision of section 4, Township 23 North, Range 11 East, Mount Diablo Meridian, California,

Mount Diablo Meridian, Plumas County

T. 24 N., R. 11 E.

b. This plat, in 2 sheets, represents the dependent resurvey of a portion of the south and west boundaries, a portion of the subdivisional lines, and certain mining claims, and the survey of the subdivision of sections 19, 20, 21, 27, 28, 29, 33, and 34, Township 24 North, Range 11 East, Mount Diablo Meridian, California, under Group No. 892, California. These plats were accepted May 28, 1987.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs to the Plums National Forest.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Public Information Section.

[FR Doc. 87–13738 Filed 6–15–87; 8:45 am]

BILLING CODE 4310–40–M

Fish and Wildlife Service

Marine Mammals Permit Application; Receipt of Application for Permit

The public is invited to comment on the following applications for permits to conduct certain activities with marine mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended (16 U.S.C. 1361 et seq.)* and the regulations governing marine mammals (50 CFR Part 18).

Applicant Name: Hiroo Aquarium, 989, Nozuka, Hiroo-choo, Hokkaido, Japan; File No. PRT–718972
Type of Permit: Public Display
Name of Animals: Alaskan sea otter (*Enydra lutris lutris*); 5
Summary of Activity to be Authorized: The applicant proposes to take (capture) these animals and export them to Hiroo Aquarium for public display.
Source of Marine Mammals for Display: Prince William Sound, Green Island, or as designated by Alaska Department of Fish & Game.
Period of Activity: From date of issuance through November 1987

Applicant Name: Marine Palace (Oita Ecological Aquarium) 3078–6, Uto, Kanzaki, Oita 870, Japan; File No. PRT–718896
Tye of Permit: Public Display
Name of Animals: Alaskan sea otter (*Enhydra lutris lutris*)-5
Summary of Activity to be Authorized: The applicant proposes to capture these animals and export them to Oita Ecological Aquarium for public display
Source of Marine Mammals for Display: Prince William Sound, Alaska
Period of Activity: From date of issuance through November 1987.

Concurrent with the publication of this notice in the **Federal Register**, the Federal Wildlife Permit Office is forwarding copies of these applications to the Marine Mammal Commission and

the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete applications, or requests for a public hearing on these applications should be submitted to the Director, U.S. Fish and Wildlife Service (FWPO), 1000 North Glebe Road, Room 611, Arlington, Virginia 22201, within 30 days of the publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connections with the above applications are available for review during normal business hours (7:45 am to 4:15 pm) in Room 601 N. Glebe Road, Arlington, Virginia.

Dated: June 11, 1987.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 87-13720 Filed 6-15-87; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 6, 1987. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by June 16, 1987.

Carol D. Shull,

Chief of Registration, National Register.

COLORADO

Boulder County

Estes Park vicinity, *Thunder Lake Patrol Cabin (Rocky Mountain National Park MRA)*, Thunder Lake

Estes Park vicinity, *Wild Basin House (Rocky Mountain National Park MRA)*, Wild Basin

Estes Park vicinity, *Wild Basin Ranger Station and House (Rocky Mountain National Park MRA)*, Wild Basin

Grand County

Estes Park vicinity, *Milner Pass Road Camp Mess Hall and House (Rocky Mountain National Park MRA)*, Milner Pass Rd.

Estes Park vicinity, *Timber Creek Campground Comfort Station No. 245 (Rocky Mountain National Park MRA)*, Timber Creek Campground

Estes Park vicinity, *Timber Creek Campground Comfort Station No. 246 (Rocky Mountain National Park MRA)*, Timber Creek Campground

Estes Park vicinity, *Timber Creek Campground Comfort Station No. 247 (Rocky Mountain National Park MRA)*, Timber Creek Campground

Estes Park vicinity, *Timber Creek Road Camp Storage Building (Rocky Mountain National Park MRA)*, Timber Creek Rd.

Estes Park vicinity, *Timberline Cabin (Rocky Mountain National Park MRA)*, Fall River Rd.

Larimer County

Estes Park vicinity, *Bear Lake Comfort Station (Rocky Mountain National Park MRA)*, Bear Lake

Estes Park vicinity, *Bear Lake Ranger Station (Rocky Mountain National Park MRA)*, Bear Lake

Estes Park vicinity, *Fall River Entrance Historic District (Rocky Mountain National Park MRA)*, Fall River Entrance

Estes Park vicinity, *Fall River Ranger Station (Rocky Mountain National Park MRA)*, Fall River Pass

Estes Park vicinity, *Fall River Pass Store (Rocky Mountain National Park MRA)*, Fall River Pass

Estes Park vicinity, *Fern Lake Patrol Cabin (Rocky Mountain National Park MRA)*, Fern Lake

Estes Park vicinity, *Glacier Basin Campground Ranger Station (Rocky Mountain National Park MRA)*, Glacier Basin

Estes Park vicinity, *Willow Park Patrol Cabin (Rocky Mountain National Park MRA)*, Fall River Rd.

Estes Park vicinity, *Willow Park Stable (Rocky Mountain National Park MRA)*, Fall River Pass

GEORGIA

Bartow County

Cassville vicinity, *Noble Hill School*, Gaddis Rd.

Oconoee County

Watkinsville, *Farmers and Citizens Supply Company Block*, US 129

KANSAS

Leavenworth County

Leavenworth, *Burt, Nathaniel H., House*, 400 Fifth Ave.

KENTUCKY

Woodford County

Versailles, *South Main Street Historic District*, 298—321 S. Main St.

MASSACHUSETTS

Berkshire County

Pittsfield, *Providence Court*, 379 East St.

Essex County

Danvers, *Sprague House*, 59 Edicott St.

MISSISSIPPI

Jackson County

Graveline Mound Site (22-Jk-503)

NEW MEXICO

Curry County

Clovis, *1908 Clovis City Hall and Fire Station*, 308 Pile St.

Clovis, *Clovis Central Fire Station*, 320 Mitchell St.

Clovis, *First Methodist Church of Clovis*, 622 Main St.

NEW YORK

Dutchess County

Rhinebeck, *Pilgrim's Progress Road Bridge (Rhinebeck Town MRA)*, Miller Rd., S of NY 308

NORTH CAROLINA

Buncombe County

Democrat vicinity, *Carter-Swain House*, E side SR 2162, N of jct. with SR 2163

TENNESSEE

Hamilton County

Chattanooga, *Miller Brothers Department Store*, 629 Market St.

Madison County

Jackson, *Lane College Historic District*, Lane Ave.

Scott County

Huntsville, *Huntsville High School*, 220 E. Main St.

WISCONSIN

Waukesha County

Oconomowoc, *Schuttler, Henry and Mary, House*, 371 E. Lisbon Rd.

Winnebago County

Neenah, *Gram, Hans, House*, 345 E. Wisconsin Ave.

[FR Doc. 87-13715 Filed 6-15-87; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Section 5a Application No. 61]

National Classification Committee; Agreement

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time to file comments and reply.

SUMMARY: By a decision served May 18, 1987, the Commission provisionally approved the amended rate bureau agreement submitted by the National Classification Committee (NCC) and solicited public comment on the decision. Notice of the action was published May 18, 1987, in the **Federal Register**, at 52 FR 18618, and in the *I.C.C. Register*. June 17, 1987 was specified as the due date for the NCC's reply. At NCC's request, the time for filing

comments has been extended until August 20, 1987, and the time for filing a reply has been extended until September 4, 1987.

DATE: Comments must be received by August 20, 1987, and NCC's reply must be received by September 4, 1987.

ADDRESS: The original and 10 copies of comments or of a reply referring to section 5a Application No. 61 should be addressed to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:
Jane Udovic (202) 275–7831
or
Andrew L. Lyon (202) 275–7691

Decided: June 9, 1987.

By the Commission, Neather J. Gradison, Chairman.

Noreta R. McGee,

Secretary.

[FR Doc. 87–13590 Filed 6–15–87; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–55 (Sub-No. 193)]

CSX Transportation, Inc.; Abandonment in Vermilion County, IL; Findings

The Commission has found that the public convenience and necessity permit CSX Transportation, Inc. (CSXT), to abandon the 13.98-mile portion of its Brothers Branch of railroad between milepost ZE 112.00 at Henning and milepost 125.98, a short distance south of Brothers, in Vermilion County, IL.

The Commission has also found that interim trail use/rail banking is feasible for a portion of the line under the National Trails System Act, 16 U.S.C. 1247(d). If, within 10 days from publication of this notice, CSXT agrees to negotiate an interim trail use/rail banking agreement, a Certificate of Interim Trail Use of Abandonment will be issued for that portion of the line that will be the subject of trails use negotiation, authorizing CSXT to discontinue service (if an Interim Trail Use Agreement is reached) or abandon (if an Interim Trail Use Agreement is not reached). A regular Abandonment Certificate will be issued for that portion of the line that will not be the subject of trails use negotiations. Also, if CSXT refuses to negotiate an Interim Trails Use Agreement, a regular Abandonment Certificate will be issued.

Whatever type of certificate is appropriate will be issued unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the officer: **"RAIL SECTION, AB–OFA"**. Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

Dated: June 4, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Commissioner Andre concurred in the result with a separate expression. Vice Chairman Lamboley and Commissioner Simmons dissented with separate expressions.

Noreta R. McGee,

Secretary.

[FR Doc. 87–13703 Filed 6–15–87; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–55 (Sub-No. 202X)]

CSX Transportation, Inc.; Abandonment Exemption in Perry County, KY

CSX Transportation, Inc. has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 1.32-mile line of railroad between milepost LWX 243.97 and milepost LWX 245.29 near Buffen, Perry County, KY. The Railway Labor Executives' Association seeks imposition of labor protective conditions.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.–Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective July 16, 1987 (unless stayed pending reconsideration). Petitions to stay must be filed by June 26, 1987, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by July 7, 1987 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Peter J. Shudtz, 100 North Charles Street, Baltimore, MD 21201.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: June 10, 1987.

By the commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87–13776 Filed 6–15–87; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Colonial Manufacturing Co. et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period May 25, 1987–May 29, 1987 and June 1, 1987–June 5, 1987.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or portion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the

separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-19,370; Colonial Manufacturing Co., Roseland, NJ
TA-W-19,523; Hartford Mills, Hopedale, MA
TA-W-19,579; Brazos Petroluem Co., Midland, TX
TA-W-19,528; Penn Capillary & Tube Div., New Ross, IN
TA-W-19,437; The Hoosier Panel Co., Inc., New Albany, IN
TA-W-19,445; Pacific Chloride, Inc., Beaverton, OR
TA-W-19,423; Borg Textile Corp., Jefferson, WI
TA-W-19,224; Viking Wire, Inc., Danbury, CT
TA-W-19,502; Scovill Apparel Fasteners, Inc., Watertown, CT
TA-W-19,435; GAF Chemicals Corp., Bound Brook, NJ
TA-W-19,430; Coats & Clarke, Inc., Newport News, VA
TA-W-19,453; Verson Allsteel Press Co., Dallas, TX
TA-W-19,401; Portage Casting & Mold Springfield, Inc., Longmeadow, MA
TA-W-19,394; Liquid Energy Corp., Mitchell Carbon Dioxide Plant, Bridgeport, TX
TA-W-19,363; American Steel Foundries, Alliance, OH
TA-W-19,450; Sealed Power Division, Muskegon, MI
TA-W-19,364; BWAB, Inc., Denver, CO
TA-W-19,362; Aluminum Co. of America, Alcoa, TN
TA-W-19,404; Remington Arms Co., Inc., Lonoke, AR

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-19,635; Pilkington-Electro-Opt Communication Systems, Simi Valley, CA

The workers' firms does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-19,491; Allied Eastern State Maintenance Corp., A Subsidiary of Ogden Allied Service Corp., Pittsburgh, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-19,421; Bay Shipping Corp., Sturgeon Bay, WI

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-19,515; Belle Counter Co., Belle, MO

U.S. imports of shoe counters are negligible.

TA-W-19,513; Alcatel NV Advanced Technology Center, Shelton, CT

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-19,500 and TA-W-19,501; Ranchers Cotton Oil Co., Bakersfield, CA

U.S. imports of cotton seed oil products declined absolutely and relative to domestic shipments in 1986 compared to 1985.

TA-W-19,462; American Motors Jeep Corp., Toledo, OH

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-19,263; Harve Benard, New York, New York

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-19,556; Potlatch Corp., Rutledge Unit Coeur d' Alene, ID

U.S. imports of softwood lumber in quantity declined both absolutely and relative to U.S. production in 1986 compared with 1985.

TA-W-19,490; North American Systems Clifton, NJ

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-19,432; Exxon Co. International (Formerly Esso Exploration, Inc., Houston, TX

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-19,454; The West Bend Co., West Bend, WI

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-19,469; Beckley Lick Run Co., Bonny Mine, Raleigh County, WV

U.S. imports of coal are negligible.

TA-W-19,472; Caterpillar Industries Inc., Dallas, OR

The investigation revealed that criterion (1) has not been met. Employment did not decline during the relevant period as required for certification.

TA-W-19,572; USENCO, Inc., Midland, TX

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-19,568; Texas Oil & Gas Corp., Jackson, MS

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-19,578; Blaw-Knox Corp., Foundry Division, East Chicago, IL

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-19,448; The Protech Group, Inc., Munster, IN

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-19,679; Omega Mud Logging, Inc., Laredo, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-19,400; HI-Bred International, Inc., Tipton Parent Corn Plant, Tipton, IN

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-19,399; Navistar International, Indianapolis, IN

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-19,405; Resistoflex, Roseland, NJ

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-19,681; Reading & Bates Drilling Co., Broussard, LA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-19,552; National Flame & Forge, Inc., Houston, TX

U.S. imports of oil field machinery are negligible.

TA-W-19,397; Moxness Products, Inc., Racine Plant, Racine, WI

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-19,497; Primary Fuel, Inc., Houston, TX

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the

relevant period as required for certification.

TA-W-19,498; Frontier Fuel, Inc., A Subsidiary of Primary Fuel, Midland, TX

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-19,499; Frontier Fuel, Inc., A Subsidiary of Primary Fuel, Denver, CO

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-19,601; Porta-Test Systems, Casper, WY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-19,541; Circle Drilling, Inc., Stanton, KY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-19,508; United Detector Technology Caribe, Inc., Juncos, PR

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-19,494; Oster Company, Milwaukee, WI

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-19,527; North American Royalties, Inc., Oil and Gas Div., Midland, TX

U.S. imports of dry natural gas declined absolutely and relative to domestic shipments in 1986 compared to 1985.

TA-W-19,509; Valero Producing Co., Midland, TX

U.S. imports of dry natural gas declined absolutely and relative to domestic shipments in 1986 compared to 1985.

TA-W-19,610; Vickers, Inc., Joplin, MO

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-19,471; Carberry Fabrication Co., Inc., Odessa, TX

U.S. imports of oilfield equipment are negligible.

TA-W-19,554; United Mine Workers of America, District 29, Beckley, WV

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-19,598; John E. Graham & Sons, Bayou LaBatre, AL

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-19,474; Copperweld Corp., District Sales Office, Marietta, GA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-19,488; Marathon International Oil Co., Reservoir Geology & Production Operation, Houston, TX

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-19,680; Purolator Products, Inc., Headquarters Office, Edison, NJ

Increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations

TA-W-19,436; Georgia Converters, Inc., Brenen, GA

A certification was issued covering all workers of the firm separated on or after March 20, 1986.

TA-W-19,584; Dresser Manufacturing Div., Bradford, PA

A certification was issued covering all workers of the firm separated on or after April 14, 1986.

TA-W-19,473; Certified Brakes, Danville, KY

A certification was issued covering all workers of the firm separated on or after March 30, 1986.

TA-W-19,440; L.D. Van Valkenburg Co, Chicopee, MA

A certification was issued covering all workers of the firm separated on or after March 11, 1986.

TA-W-19,439; Johnson Controls, Inc., Milwaukee, WI

A certification was issued covering all workers of the firm separated on or after March 20, 1986.

TA-W-19,524; Hyster Co., Danville, IL

A certification was issued covering all workers of the firm separated on or after May 2, 1987.

TA-W-19,358; Therma Technology, Inc., Western Supply Div., Happy Div., Tulsa, OK

A certification was issued covering all workers of the firm separated on or after March 26, 1986.

TA-W-19,475; Colorado Electro-Optics, Inc., Boulder, CO

A certification was issued covering all workers of the firm separated on or after March 24, 1986.

TA-W-19,461; American Electric Co., Pittsfield, NH

A certification was issued covering all workers of the firm separated on or after March 1, 1987.

TA-W-19,433; Fina Oil & Chemical Co., Midland Exploration & Production District, Midland, TX and All Other Midland Exploration & Production District Locations in The State of Texas & New Mexico

A certification was issued covering all workers of the firm separated on or after March 19, 1986

TA-W-19,492; Optek Technologies, El Paso, TX

A certification was issued covering all workers of the firm separated on or after March 19, 1986.

TA-W-19,481; High Plains Oil Corp., Denver, CO

A certification was issued covering all workers of the firm separated on or after March 23, 1986.

TA-W-19,479; General Electric Co., Ohio Lamp Plant, Warren, OH

A certification was issued covering all workers of the firm separated on or after April 6, 1986.

TA-W-19,604; Santa Fe Energy Co., Denver, CO

A certification was issued covering all workers of the firm separated on or after April 7, 1986.

TA-W-19,605; Santa Fe Energy Co., Santa Fe Spring, CA

A certification was issued covering all workers of the firm separated on or after April 7, 1986.

TA-W-19,478; Ford Motor Co., Canton Forge Plant, Canton, OH

A certification was issued covering all workers of the firm separated on or after November 1, 1986.

TA-W-19,496; Perspectives, Inc., Blanchester, OH

A certification was issued covering all workers of the firm separated on or after April 6, 1986.

TA-W-19,641; Revelations Shoe Corp., Exeter, PA

A certification was issued covering all workers of the firm separated on or after April 23, 1986.

TA-W-19,663; Carroll Shoe Co., Mont Alto, PA

A certification was issued covering all workers of the firm separated on or after April 6, 1986.

TA-W-19,495; Paper Converting Machine Co., Green Bay, WI

A certification was issued covering all workers of the firm separated on or after March 25, 1986.

TA-W-19,480; Glassco Apparel Co., Inc., Scranton, PA

A certification was issued covering all workers of the firm separated on or after March 30, 1986.

TA-W-19,504; Smart Styles, Inc., Clarks Summit, PA

A certification was issued covering all workers of the firm separated on or after March 30, 1986.

TA-W-19,567; Texas American Oil Corp., Midland, TX

A certification was issued covering all workers of the firm separated on or after April 7, 1986.

TA-W-19,418; Wyman-Gordon Co., Danville, IL

A certification was issued covering all workers of the firm separated on or after March 11, 1986.

TA-W-19,468; Bata Shoe Co., Inc., Belcamp, MD

A certification was issued covering all workers of the firm separated on or after March 20, 1987.

TA-W-19,398; Natco, Inc., Richmond, IN

A certification was issued covering all workers of the firm separated on or after March 4, 1986.

TA-W-19,429; Climax Molybdenum Co., Henerson Mine, Empire, CO

A certification was issued covering all workers of the firm separated on or after February 7, 1986.

TA-W-19,543; Climax Molybdenum Co., Climax Mine, Climax, CO

A certification was issued covering all workers of the firm separated on or after April 5, 1986.

TA-W-19,396; Midcon Exploration Co., Exeter, Denver, CO

A certification as issued covering all workers of the firm separated on or after February 27, 1986.

TA-W-19,396A; Midcon Central Exploration Corp., Oklahoma City, OK

A certification was issued covering all workers of the firm separated on or after February 27, 1986.

TA-W-19,396B; Midcon Exploration Co.—Gulf Coast, Houston, TX

A certification was issued covering all workers of the firm separated on or after February 27, 1986.

TA-W-19,526; Newton Sportswear, Inc., Worcester, MA

A certification was issued covering all workers of the firm separated on or after April 1, 1986.

TA-W-19,569; Thebers Corp., Bridgeton, NJ

A certification was issued covering all workers of the firm separated on or after April 10, 1986 and before May 31, 1987.

TA-W-19,372; Continental Can Co., Inc., Weslaco, TX

A certification was issued covering all workers of the firm separated on or after March 5, 1986.

TA-W-19,451; Terry Corp., Windsor, CT

A certification was issued covering all workers of the firm separated on or after March 23, 1986.

TA-W-19,393; Liquid Emergy Corp., Mitchell Carbon Dioxide, Bridgeport, TX

A certification was issued covering all workers of the firm separated on or after March 31, 1986.

TA-W-19,384; KWB Oil Property, Tulsa, OK

A certification was issued covering all workers of the firm separated on or after March 16, 1986.

TA-W-19,385; KWB Oil Property, Denver, CO

A certification was issued covering all workers of the firm separated on or after March 16, 1987.

TA-W-19,386; KWB Oil Property, Seminole, OK

A certification was issued covering all workers of the firm separated on or after March 16, 1986.

TA-W-19,387; KWB Oil Property, Park Centraila, IL

A certification was issued covering all workers of the firm separated on or after March 16, 1986.

TA-W-19,561; Sonat Exploration Co., Houston, TX

A certification was issued covering all workers of the firm separated on or after April, 1986.

TA-W-19,562; Sonat Exploration Co., Denver CO

A certification was issued covering all workers of the firm separated on or after April 1, 1986.

TA-W-19,563; Sonat Exploration Co., Oklahoma City, OK

A certification was issued covering all workers of the firm separated on or after April 1, 1986

TA-W-19,564; Sonat Exploration Co., Shreveport, LA

A certification was issued covering all workers of the firm separated on or after April 1, 1986.

TA-W-19,565; Sonat Exploration Co., Charleston, WV

A certification was issued covering all workers of the firm separated on or after April 1, 1987.

TA-W-19,456; Westmoreland Plastics Co., Division 500, Latrobe, PA

A certification was issued covering all workers of the firm separated on or after March 19, 1986.

TA-W-19,431; Deming Division of Crane Co., Salem, OH

A certification was issued covering all workers of the firm separated on or after March 20, 1986.

I hereby certify that the aforementioned determinations were issued during the period May 25, 1987–May 29, 1987 and June 1, 1987–June 5, 1987. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor 601 D Street, NW., Washington, DC 20213 during normal business hours or will be mailed to perions who write to the above address.

Dated: June 19, 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87-13724 Filed 6-15-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-19, 314]

Phillips Petroleum Co., Eastern Division, Exploration and Production Group, Bellaire, TX; Negative Determination Regarding Application for Reconsideration

By an application dated May 21, 1987, a worker requested administrative reconsideration of the Department's negative determination on the subject petition for trade adjustment assistance for workers and former workers of Eastern Division, Exploration and Production Group of Phillips Petroleum Company, Bellaire, Texas. The denial notice was signed on April 20, 1987 and published in the **Federal Register** on May 12, 1987 (52 FR 17852).

Pursuant to CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

It is claimed that the Department's initial investigation was involved more with the refining aspect of Phillips Petroleum and not the exploration portion where geologists and geophysicists are employed. It is also claimed that geologists and geophysicists for Exxon and Texaco were certified eligible to apply for trade adjustment assistance. Lastly, the worker cites from Phillips' 1986 annual report that the company imported crude oil for its crude runs in 1986.

Phillips Petroleum is engaged in the exploration, production, refining and marketing or refined petroleum products and is a fully integrated producers of crude oil, natural gas, natural gas liquids and refined petroleum products. The Department's initial denial of trade adjustment assistance for workers at Phillips Petroleum was based on the fact that the increased import criterion for gasoline and dry natural gas was not met in 1986 and the fact that the production of natural gas liquids did not decline in 1986 compared to 1985.

Geologists and other support workers at Phillips do not qualify for adjustment assistance since workers producing crude oil, natural gas, natural gas liquids and other refined petroleum products at Phillips Petroleum are not currently under a certification for adjustment assistance. Support workers may become eligible for benefits if the reduction in demand for their services is determined to have originated at a production facility related to the workers' firm by ownership, whose workers independently meet the statutory criteria for certification. The reduction in demand for services must directly relate to the products adversely affected by increased imports.

Other findings in the investigation show that Phillips Petroleum imported some crude oil in 1986. However, company officials indicated that Phillips Petroleum is an integrated production company and that no one was laid off because of imported crude oil purchases in 1986. According to company officials, worker separations occurred at Phillips because of the restructuring of their operations caused by two major take-over attempts in 1985 and 1986. Several properties and facilities had to be closed as a result of the take-over attempts.

Service workers at Exxon and Texaco were certified for adjustment assistance since the demand for their services was determined to have originated at a production facility of their firm whose workers independently met the statutory criteria for certification.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error on misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied. Signed at Washington, DC, this 9th day of June 1987.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 87-13725 Filed 6-15-87; 8:45 am]

BILLING CODE 4510-01-M

[TA-W-18, 307 et al.]

Union Texas Petroleum Corp., Domestic Division; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In the matter of TA-W-18, 307 Midland, Texas, TA-W-18, 307A Houston, Texas, TA-W-18, 307B Lafayette, Louisiana, TA-W-18, 307C Oklahoma City, Oklahoma, TA-W-18, 307D Farmington, New Mexico, TA-W-18, 307E Denver, Colorado.

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 19, 1986 applicable to all workers of Union Texas Petroleum Corporation, Midland, Texas. The certification notice was published in the **Federal Register** on January 9, 1987 (52 FR 874).

Based on new information furnished to the Department, the certification notice is amended to properly reflect the correct worker group. All exploration and production workers at Union Texas Petroleum Corporation's Domestic Division operate crude oil properties in several states and report to Union Texas Petroleum Corporation's offices in the above mentioned five states.

The intent of the certification is to cover all workers of the Exploration and Production offices of the Domestic Division of Union Texas Petroleum Corporation. The amended notice applicable to TA-W-18, 307 is hereby issued as follows:

All workers of the Domestic Division of Union Texas Petroleum Corporation, Midland, Texas; Houston, Texas; Lafayette, Louisiana; Oklahoma City, Oklahoma; Farmington, New Mexico and Denver, Colorado who became totally or partially separated from employment on or after September 16, 1985 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 9th day of June 1987.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 87-13722 Filed 6-15-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-18, 759]

Wolverine World Wide, Inc., Hannibal, MO; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 13, 1987 applicable to all workers of Wolverine World Wide, Incorporated, Hannibal, Missouri. The certification notice was published in the **Federal Register** on March 10, 1987 (52 FR 7331).

On the basis of additional information, the Office of Trade Adjustment Assistance reviewed the certification. The additional information from the company revealed that some layoffs occurred a few weeks after the February 1, 1987 termination date because they were involved in the closure of the plant.

The intent of the certification is to cover all workers at Hannibal, Missouri plant of Wolverine World Wide, Inc., who were adversely affected by increased imports of men's work shoes. Accordingly, the certification is amended by changing the termination date to May 1, 1987.

The amended notice applicable to TA-W-18, 759 is hereby issued as follows:

All workers of Wolverine World Wide, Incorporated, Hannibal, Missouri who became totally or partially separated from employment on or after October 31, 1985 and before May 1, 1987 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 5th day of June 1987.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 87-13723 Filed 6-15-87; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

Virgin Islands Standards; Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State plan which as been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On September 11, 1973, notice was published in the **Federal Register** (38 FR 24896) of the approval of the Virgin Islands plan and adoption of Subpart S to Part 1952 containing the decision.

The Virgin Islands plan provides for the adoption of Federal standards as Virgin Islands standards by reference. The authority to adopt such standards is contained in Title 3, section 940. of the Virgin Islands Code. Health standards are adopted for application in the public sector. OSHA enforces its Federal health standards in the private sector. In response to Federal standards changes, the State has submitted supplements, and incorporated as part of the plan, State certification documenting promulgation of State standards comparable to Occupational Exposure to Ethylene Oxide, 29 CFR 1910.1047, technical amendments and corrections, as published in the **Federal Register** (51 FR 25053) dated July 10, 1986, and Electrical Standards for Construction, 29 CFR Part 1926, as published in the **Federal Register** (51 FR 25294) dated July 11, 1986.

These standards which are contained in the Virgin Islands Rules and Regulations 24 V.I.R.R. 36(b)1 and 36(b)3 were promulgated by resolution adopted by the Virgin Islands Department of Labor on September 22, 1986 pursuant to Title 24, Virgin Islands Code, section 36(b).

In response to Federal standards changes, the State has submitted supplements, and incorporated as part of the plan, State certification documenting promulgation of State standards comparable to Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite, 29 CFR 1910.1001 and 29 CFR 1926.55 and 1926.58, as published in the **Federal Register** (51 FR 22612) dated June 20, 1986.

These standards which are contained in the Virgin Islands Rules and Regulations 24 V.I.R.R. 36(b)1 and 36(b)3 were promulgated by resolution adopted by the Virgin Islands Department of Labor on November 21, 1986 pursuant to Title 24, Virgin Islands Code, section 36(b).

In response to Federal standards changes, the State has submitted supplements, and incorporated as part of the plan, State certification documenting promulgation of State standards comparable to Hazard Communication; Definition of Trade Secret and Disclosure of Trade Secrets to Employees, Designated Representatives and Nurses, 29 CFR 1910.1200, as published in the **Federal Register** (51 FR 34590) dated September 30, 1986.

This standard which is contained in the Virgin Islands Rules and Regulations 24 V.I.R.R. 36(b)1 was promulgated by resolution adopted by the Virgin Islands Department of Labor on March 20, 1987 pursuant to Title 24, Virgin Islands Code, section 36(b).

2. Decision

Having reviewed the Virgin Islands Regulations providing for the adoption of Federal standards by reference, it has been determined that Virgin Islands Regulations are identical to Federal standards and accordingly are hereby approved.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during the normal business hours at the following locations: Office of the Regional Administrator, Region II, 1515 Broadway, Room 3445, New York, New York 10036; Office of the Director for Federal-State Operations, Room N3476, 200 Constitution Avenue, NW., Washington, DC 20210; Department of Labor, Government of the Virgin Islands, Dronigans Gade, Charlotte Amalie, St. Thomas, V.I. 00801, and at Hospital Street, Christiansted, St. Croix, V.I. 00820.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Virgin Islands plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirement of State law and further participation would be unnecessary.

The decision is effective June 16, 1987.

(Sec. 18 Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at New York City, New York, this twenty first day of May, 1987.

James W. Stanley,

Acting Regional Administrator.

[FR Doc. 87-13721 Filed 6-15-87; 8:45 am]

BILLING CODE 4510-26-M

NUCLEAR REGULATORY COMMISSION

Illinois; Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Agreement With State of Illinois.

SUMMARY: Notice is hereby given that on May 14, 1987, Lando W. Zech, Jr., Chairman of the Nuclear Regulatory Commission and on May 18, 1978, James R. Thompson, Governor of the State of Illinois signed the Agreement set forth below for discontinuance by the Commission and assumption by the State of certain Commission regulatory authority. The Agreement is published in accordance with the requirements of Pub. L. 86-373 (Section 274 of the Atomic Energy Act of 1954, as amended). The exemptions from the Commission's licensing authority have been published in the **Federal Register** and codified as Part 150 of the Commission's regulations in title 10 of the Code of Federal Regulation.

On May 13, 1987, the Commission with Chairman Zech and Commissioners Asselstine, Bernthal and Carr agreeing, approved the Agreement between the State of Illinois and the NRC pursuant to section 274b of the Atomic Energy Act, as amended.

Commissioner Bernthal approved the Agreement between the State of Illinois and the Commission. In his judgment, however, all materials and contaminated areas which have resulted from operations of the West Chicago Rare Earths Facility would more

properly be classified as "byproduct material" under section 11e.(2) of the Atomic Energy Act. As such, Commissioner Bernthal believes that jurisdiction for these materials and contaminated areas should remain with the Commission until such time as the State of Illinois elects to seek authority for *all* byproduct material.

In addition, the Commission, with Chairman Zech and Commissioners Bernthal and Carr agreeing, approved an Order to Allied-Chemical, Placing its uranium conversion plant under continued NRC regulatory authority based on common defense and security considerations. Commissioner Asselstine disapproved the order.

Commissioner Roberts did not participate in these actions.

FOR FURTHER INFORMATION CONTACT: Joel O. Lubenau, State, Local and Indian Tribe Programs, Office of Governmental and Public Affairs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Phone (301) 492–9887.

SUPPLEMENTARY INFORMATION: On December 31, 1987, the Nuclear Regulatory Commission initially published for public comment a proposed agreement with the State of Illinois for discontinuance by the Commission and assumption by the State of certain regulatory authority and the staff's assessment of the proposed Illinois program for regulation of radioactive materials covered by the proposed agreement.

As required by Section 274 of the Atomic Energy Act, the proposed Agreement and the staff's assessment of the State's proposed radiation control program were to be published in the **Federal Register** once a week for four consecutive weeks. Interested persons were invited to submit comments by January 30, 1987. The 2nd publication was made on January 7, 1987. The December 31st and January 7th publications were determined to have been the subject of **Federal Register** printing errors. As a result, they were incomplete and also contained errors. A corrected notice was published January 21, 1987 at 52 FR 2309. Since the initial notice was incomplete and also contained significant errors, the 4 consecutive week publication cycle required by the Act was restarted beginning with the January 21, 1987 notice. A revision of the date for public comments was also published at the time (52 FR 2309) changing it to February 20, 1987. The 2nd consecutive weekly notice was published January 28, 1987 at 52 FR 2898. The 3nd consecutive weekly notice was published February 4, 1987 at 52 FR 3503 but printing errors again occurred, this time resulting in the omission of text. A correction notice for this omission was published February 12, 1987 at 52 FR 4569. The 4th consecutive weekly notice was published February 11, 1987 at 52 FR 4436.

The proposed agreement would have included the Allied Chemical plant which is one of plants in the United States licensed to convert uranium "yellowcake" to UF. (The other plant is Kerr-McGee's Sequoyah plant in Oklahoma). The Commission, in its **Federal Register** notices, noted that it was considering whether continued NRC regulation of the Allied Chemical Plant is necessary in the interest of the common defense and security of the United States. The Allied Chemical plant was identified by DOE as having a potential common defense and security significance. Section 274m of the Atomic Energy Act, as amended, provides that:

> No agreement entered into under subsection b., . . . shall affect the authority of the Commission under subsection 161b. or i to issue rules, regulations, or orders to protect the common defense and security . . .

The Commission has decided to retain regulatory authority over licensees subject to section 274b Agreements which have common defense and security significance. An order to effectuated this policy with respect to the Allied Chemical license has been issued and is published below. The order became effective May 14, 1987.

Public comments: Five written comments on the proposed Agreement and NRC staff assessment were received prior to the end of the comment period on February 20, 1987. Three comment letters were submitted by Conner and Wetterhahn, P.C., counsel for US Ecology which holds the license for the Sheffield low-level waste disposal site. One comment letter was received from A. Eugene Rennels, the Mayor of the City of West Chicago. One comment letter was received from Covington and Burling, counsel representing Kerr-McGee which holds a license for the Kerr-McGee West Chicago Rare Earths Facility where thorium processing and recovery operations were conducted under an AEC/NRC license. These comments were fully considered by the Commission in its deliberations on the Illinois request. Summaries of the comments and the staff's responses are available in the Commission's public document room at 1717 H Street, NW., Washington, DC and the Commission's Region III Office, 799 Roosevelt Road, Building No. 4, Glen Ellyn, Illinois.

Agreement Between the United States Nuclear Regulatory Commission and the State of Illinois for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended

Whereas, the United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) is authorized under section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and section 161 of the Act with respect to byproduct materials as defined in sections 11e.(1) and (2) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and,

Whereas, the Governor of the State of Illinois is authorized under Illinois Revised Statutes, 1985, ch. 111 ½, par. 216b and ch. 111 ½, par 241–19, to enter into this Agreement with the Commission; and,

Whereas, the Governor of the State of Illinois certified on October 2, 1986, that the State of Illinois (hereinafter referred to as the State) has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by this Agreement, and that the State desires to assume regulatory responsibility for such materials; and,

Whereas, the Commission found on May 13, 1987 that the program of the State for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect the public health and safety; and,

Whereas, the State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

Whereas, the Commission and the State recognize the desirability of reciprocal recognition of licenses and exemptions from licensing of those materials subject to this Agreement; and,

Whereas, this Agreement is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended;

Now, therefore, it is hereby agreed between the Commission and the Governor of the State, acting in behalf of the State, as follows:

Article I

Subject to the exceptions provided in Articles II, IV and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under Chapters 6, 7, and 8, and section 161 of the Act with respect to the following:

A. Byproduct material as defined in section 11e.(1) of the Act;

B. Source materials;

C. Special nuclear materials in quantities not sufficient to form a critical mass; and,

D. The land disposal of source, byproduct and special nuclear material received from other persons.

Article II

This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of:

A. The construction and operation of any production or utilization facility;

B. The export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;

C. The disposal into the ocean or sea of byproduct, source or special nuclear waste materials as defined in regulations or orders of the Commission;

D. The disposal of such other byproduct, source, or special nuclear material as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission; and,

E. The extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material.

Article III

This Agreement may be amended, upon application by the State and approval by the Commission, to include the additional area specified in Article II, paragraph E, whereby the State can exert regulatory control over the materials stated therein.

Article IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commissioner.

Article V

This Agreement shall not affect the authority of the Commission under subsection 161 b. or i. of the Act to issue rules, regulations or orders to protect the common defense and security, to protect restricted data or to guard against the loss or diversion of special nuclear material.

Article VI

The Commission will use its best efforts to cooperate with the State and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that State and Commission programs for protection against hazards of radiation will be coordinated and compatible. The State will use its best efforts to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that the State's program will continue to be compatible with the program of the Commission for the regulation of like materials. The State and the Commission will use their best efforts to keep each other informed of proposed changes in their respective rules and regulations and licensing, inspection and enforcement policies and criteria, and to obtain the comments and assistance of the other party thereon.

Article VII

The Commission and the State agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any Agreement State. Accordingly, the Commission and the State agree to use their best efforts to develop appropriate rules, regulations and procedures by which such reciprocity will be accorded.

Article VIII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State, or upon request of the Governor of the State, may terminate or suspend all or part of this agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to protect the public health and safety, or (2) the State has not complied with one or more of the requirements of secton 274 of the Act. The Commission may also, pursuant to section 274j of the Act, temporarily suspend all or part of this Agreement if, in the judgment of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the State has failed to take necessary steps. The Commission shall periodically review this Agreement and actions taken by the State under this Agreement to ensure compliance with section 274 of the Act.

Article IX

This Agreement shall become effective on June 1, 1987, and shall remain in effect unles and until such time as it is terminated pursuant to Article VIII.

Done at Washington, DC, in triplicate, this 14th day of May, 1987.

For the United States Nuclear Regulatory Commission.

Lando W. Zech, Jr.,

Chairman.

Done at Springfield, Illinois, in triplicate, this 18th day of May, 1987.

For the State of Illinois.

James R. Thompson,

Governor.

Order To Protect the Common Defense and Security

I

Allied-Chemical Corporation, Metropolis, Illinois, (the "licensee") is the holder of License No. SUB-526 (the "licensee") issued by the Nuclear Regulatory Commission (the "Commission" or "NRC") which authorizes the licensee to use source material in a UF_6 conversion plant in Metropolis, Illinois. The license was last issued on May 28, 1985 and will expire on June 1, 1990 (Docket No. 0400-3392).

II

In a letter dated October 2, 1986, Governor James P. Thompson of the State of Illinois requested that the Commission enter into an Agreement with the State of Illinois requested that the Commission enter into an Agreement with the State pursuant to section 274 of the Atomic Energy Act, as amended. The specific authority requested includes the category, source material. An NRC staff assessment and the proposed agreement were published in the Federal Register for public comment (52 FR 2309, 2898, 3503 and 4436; correction notice at 52 FR 4569). The staff assessment noted that with respect to the Allied Chemical plant, the Commission was considering whether continued NRC regulation was necessary in the interest of the common defense and security of the United States.

III

In a letter dated November 17, 1986, the Department of Energy, ("DOE") commenting to NRC on the matter of the proposed inclusion of the NRC license to Allied Chemical among the category of source material licenses to be transferred to Illinois under a section 274b Agreement, stated that the combination of the commercially operated uranium conversion facilities in the U.S. and the DOE operated enrichment facilities represent a complex that is an important national asset essential to maintaining the common defense and security of the United States. DOE further expressed the view that, "it would be prudent for NRC to retain its existing regulatory authority over uranium conversion facilities consistent with its charter to regulate facilities whose operation is in the national interest."

IV

Upon consideration of these facts, the Commission has determined that regulation of the Allied-Chemical conversion plant in Metropolis should be continued under NRC jurisdiction to protect the common defense and security.

V

In view of the foregoing and pursuant to sections 161b and 274m of the Atomic Energy Act, as amended, 42 U.S.C. 2201(b), 2021(m), it is hereby ordered, effective immediately, that:

a. Notwithstanding the provisions of a section 274b Agreement with the State of Illinois as approved by the Commission the NRC jurisdiction over the possession and use of source material by Allied Chemical (license SUB-526) shall be retained by the NRC, and

b. NRC jurisdiction over the license shall remain in effect during the term of such section 274b Agreement unless the Commission shall determine that continued regulation by NRC is no longer needed to

assure the protection of the common defense and security of the United States.

VI

Any person whose interest may be adversely affected by this order may within 30 days of the date of this order file written comments with supporting analysis with the Secretary of the Commission explaining why this order should not have been issued. The Commission will consider any comments that are filed with a view to possible modification or rescission of the oder. The filing of any comments does not stay the effectiveness of this order.

Commissioner Asselstine disapproved this Order.

Dated at Washington, DC this 14th day of May, 1987.

For the United States Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary, Office of the Secretary of the Commission.

Dated at Washington, DC this 9th day of June, 1987.

For the United States Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Governmental and Public Affairs.

[FR Doc. 87-13729 Filed 6-15-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-456-OL and 50-457-OL; (ASLBP No. 79-410-03 OL)]

Commonwealth Edison Co. (Braidwood Nuclear Power Station, Units 1 and 2) Reconstitution of Board

Pursuant to the authority contained in 10 CFR 2.721 and 2.721(b), the Atomic Safety and Licensing Board for *Commonwealth Edison Company* (Braidwood Nuclear Power Station, Units 1 and 2), Docket Nos. 50-456-OL and 50-457-OL, is hereby reconstituted by appointing Administative Law Judge Ivan W. Smith in place of Administrative Judge Herbert Grossman, who has resigned from the Panel. Administrative Law Judge Ivan W. Smith is appointed Chairman of the Board.

As reconstituted, the Board is comprised of the following Administrative Judges: Ivan W. Smith, Chairman, Dr. Richard F. Cole, and Dr. A. Dixon Callihan.

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR 2.701 (1980). The address of the new Board member is: Administrative Law Judge Ivan W. Smith, Chairman, Atomic Safety and Licensing Board, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Bethesda, Maryland, this 9th day of June, 1987.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 87-13730 Filed 6-15-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-322-OL-3 (Emergency Planning); (ASLBP No. 86-529-02-OL)]

Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1); Order Setting Date for Commencement of Hearing

Before Administrative Judges: Morton B. Margulies, Chairman, Dr. Jerry R. Kline, Mr. Frederick J. Shon.

June 10, 1987.

On April 23, 1987, the Board issued an order setting June 15, 1987 as an interim date for starting the OL-3 hearing on the reception center issues. The start of the OL-3 hearing is strongly influenced by the ongoing OL-5 hearings, which has a Board member common to both proceedings. The interim starting date of June 15, 1987 is fast approaching and from the status reports filed by the parties it remains unclear precisely when the OL-5 hearing will be completed. It appears from the information at hand the commencement of the OL-3 hearing on June 30, 1987 will reasonably meet the requirements of all concerned.

The interim starting date of the hearing on June 15, 1987 is therefore vacated. The OL-3 hearing will commence at 9:00 a.m. on June 30, 1987, in the Court of Claims, State of New York, State Office Building, 3rd Floor Courtroom (3B43), Veterans Memorial Highway, Hauppauge, New York 11788.

The parties shall confer and present the Board with a proposed hearing schedule no later than June 24, 1987.

It is so ordered.

Dated at Bethesda, Maryland this 10th day of June, 1987.

For the Atomic Safety and Licensing Board.

Morton B. Margulies,

Chairman, Administrative Law Judge.

[FR Doc. 87-13731 Filed 6-15-87; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the full Committee, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or canceled since the last list of proposed meetings published May 18, 1987 (52 FR 18623). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that the sessions of the full Committee meeting designated by an asterisk(*) will be open in whole or in part to the public. ACRS full Committee meetings begin at 8:30 A.M. and Subcommittee meetings usually begin at 8:30 A.M. The time when items listed on the agenda will be discussed during full Committee meetings and when Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, canceled, or rescheduled, or whether changes have been made in the agenda for the July 1987 ACRS full Committee meeting can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone: 202/634-3265, ATTN: Barbara Jo White) between 8:15 A.M. and 5:00 P.M., Eastern Time.

ACRS Subcommittee Meetings

Advanced Reactor Designs, June 17, 1987, Washington, DC. The Subcommittee will discuss and review the three DOE-sponsored advanced reactor designs (one HTGR two LMRs).

Thermal Hydraulic Phenomena, June 18, 1987, Washington, DC. The Subcommittee will review: MIST Program Status including results of MIST Phase III tests, IST Scaling Coordination, and plans for a follow-on test Program.

Occupational and Environmental Protection Systems, June 22 and 23, 1987, Washington, DC. The Subcommittee will discuss issues concerning emergency plans, control room habitability update, INPO's briefing on nuclear power plant occupational exposure, and other matters.

Human Factors, June 24, 1987, Washington, DC. The Subcommittee will review SECY 87-101, "Issues and Proposed Options Concerning Degree Requirement for Senior Operators."

Integrated Safety Assessment Program (ISAP), July 7, 1987, Washington, DC. The Subcommittee will review the Integrated Safety Assessment Program (ISAP) for Millstone Nuclear Power Station Unit 1 and will review the ISAP process.

Joint Severe Accidents/Probabilistic Risk Assessment, July 8, 1987, Washington, DC. The Subcommittees

will conclude their review of the Office of Nuclear Regulatory Research's report NUREG–1150, "Reactor Risk Reference Document," which was issued in February 1987 for public comment.

Auxiliary Systems, July 23, 1987, Washington, DC. The Subcommittee will discuss, with the NRC research staff and the personnel from the Sandia National Laboratories, the progress of the "Scoping Study" being performed by the Sandia National Laboratories for NRC on the need for future research in the fire protection area.

Metal Components, July 24, 1987, Washington, DC. The Subcommittee will review broad scope rule (GDC–4), SRP Section 3.6.2 (subcompartment pressurization), and other related matters.

Thermal Hydraulic Phenomena, August 4, 1987, Washington, DC. The Subcommittee will review: (1) Development of Uncertainty Methodology for BE ECCS Codes, (2) Status of the Generic Issue addressing Steam Generator/Steam, Line Overfill Issues, and (3) Status of the Water Hammer Issue.

Decay Heat Removal Systems, August 5, Washington, DC. The Subcommittee will review the resolution status for: (1) GI 23: "RCP Seal Failure", (2) GI 93: "Steam Binding of AFW Pumps, and (3) GI 124: "AFW System Reliability".

Waste Management, August 17 through 19, 1987, Washington, DC. The Subcommittee will review several pertinent HLW, LLW, and related research topics yet to be determined.

Regional and I&E Programs, August 28, 1987, Walnut Creek, CA. The Subcommittee will review the activities under the control of the Region V Office.

Generic Items, Date to be determined (July/August), Washington, DC. The Subcommittee will continue the discussion on the effectiveness of the programs that address generic issues and USIs. Also, it will discuss with selected licensees the contribution of plant safety resulting from the implementation of the resolved generic issues and USIs.

Auxiliary Systems, Date to be determined (August), Washington, DC. The Subcommittee will discuss the heating, ventilation, and air conditioning (HVAC) system malfunctions and their impact on safety systems. In addition, it will discuss problems associated with instrument air systems, AEOD findings concerning the instrument air system malfunctions and its recommendations to alleviate this problem.

Decay Heat Removal Systems, Date to be determined (August), Washington, DC. The Subcommittee will continue its review of the NRC Resolution Position for USI A–45.

Babcock & Wilcox Reactor Plants, Date to be Determined (late summer/early fall), Washington, DC. The Subcommittee will continue its review of the long-term safety review of B&W reactors. This effort was begun during the summer of 1986; initial Committee comments offered on July 16, 1986 in a letter to V. Stello, EDO.

Auxiliary Systems, Date to be determined (September), Washington, DC. The Subcommittee will discuss the criteria used by the utilities to design Chilled Water Systems, associated regulatory requirements, and the criteria being used by the NRC Staff to review the Chilled Water System design.

Thermal Hydraulic Phenomena, Date to be determined (September/October), Washington, DC. The Subcommittee will review: (1) Final version of revised ECCS Rule, and (2) status of RES-proposed new integral test facility.

Standardization of Nuclear Facilities, Date to be determined (September/October), Washington, DC. The Subcommittee will review the Staff SER and Chapter I of the EPRI Requirements Document. Chapter II May also be discussed.

GE Reactors (ABWR), Date to be determined (September/October), Washington, DC. The Subcommittee will review the Licensing Basis Agreement (LBA) between GE and the NRC Staff.

Joint Seabrook/Occupational & Environmental Protection Systems/ Severe Accidents, Date to be determined, Washington, DC. The Subcommittees will review Brookhaven National Laboratory's report of the Seabrook Emergency Planning Sensitivity Study and other related matters.

Seabrook Unit 1, Date to be determined, Washington, DC. The Subcommittee will review the application for a full power operating license for Seabrook Unit 1.

ACRS Full Committee Meeting

July 9–11, 1987: Items are *tentatively* scheduled.

*A. *Improved Safety for Future Light-Water Reactor (Open)*—Discuss proposed ACRS action/comments regarding systems proposed for consideration to improve safety in future LWRs.

*B. *Control Room Habitability (Open)*—Discuss proposed ACRS report regarding control room habitability in nuclear power plants.

*C. *Safety Features in Foreign Nuclear Plants (Open/Closed)*—Discuss proposed ACRS report to the NRC regarding the applicability of safety features in foreign nuclear plants to reactors in the United States.

*D. *TVA Nuclear Performance Plan (Open)*—Discuss proposed revision of TVA Nuclear Performance Plan.

*E. *NRC Severe Accident Policy (Open)*—Discuss proposed NRC Reactor Risk Reference Document (NUREG–1150).

*F. *Millstone Nuclear Power Station Unit 1 (Open)*—Discuss the integrated safety assessment program report for this station.

*G. *Three Mile Island Nuclear Station Unit 2 (Open)*—Report and discussion of core removal and examination activities by representatives of INEL.

*H. *Meeting with the Director, NRC Office of Nuclear Material Safeguards and Safety (Open/Closed)*—Discuss topics of mutual interest.

*I. *Activities of NRC Office for Analysis and Evaluation of Operational Data (Open/Closed)*—Review of 1987 case studies and startup-plant studies.

*J. *ACRS Subcommittee Activities (Open/Closed)*—Reports and discussion of ACRS subcommittee activities regarding the status of activities in designated areas of responsibility, including Fluid Dynamics, Thermal-Hydraulic Phenomena, and Nuclear Power Plant Auxiliary Systems.

*K. *Assessment of Operating Experience (tentative) (Open/Closed)*—Briefing and discussion of the assessments of selected nuclear power operating incidents and events.

*L. *ACRS Future Activities (Open)*—Discuss anticipated ACRS Subcommittee activities and matters proposed for full Committee consideration.

*M. *Appointment of New ACRS Member (Closed)*—Discuss qualification of candidates for appointment to the Committee.

August 6–8, 1987—Agenda to be announced.

September 10–12, 1987—Agenda to be announced.

Dated: June 10, 1987.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 87–13732 Filed 6–15–87; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-24563; File No. SR-BSE-86-3]

Self-Regulatory Organizations; Proposed Rule Changes by Boston Stock Exchange, Inc., Relating to Amendments to the Boston Stock Exchange Rules

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 September 22, 1986, the Boston Stock Exchange, Incorporated ("BSE") filed with the Securities and Exchange Commission the proposed changes 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 changes from interested persons.

I. Self-Regulatory Organization's Statement on the Terms of Substance of the Proposed Rule Changes

The proposed rule change updates BSE's Rules and where appropriate eliminates outdated material. (*See* discussion in section II(A), *infra*).[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, the self-regulatory organization included statements governing the purpose of and basis for the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) *Self-Regulatory Organization's Statement of the Purpose and Statutory Basis for the Proposed Rule Changes*

(a) The purpose of the proposed rule changes is to update the Rules and, where necessary, to eliminate outdated material. In some instances, additional material has been added and sections have been rearranged to provide clarity.

Set forth below is a summary of the substantive changes:

Chapter I—Definitions

Section 1—Supplementary Material

The description of a Floor Official has been added as well as a description of his powers.

Section 2—"Member," "Membership," "Member-Firm"

Sections 2 and 3 have been consolidated into Section 2. This provision pertains to both member classifications and voting rights.

Section 3—Orders

Definitions of all "orders" have been incorporated.

Chapter I–A—Access to Records

Restriction of Access—Copies

This Chapter was modified to provide clarity.

Chapter I–B—Business Hours

Section 1—Business Hours

A new provision was added which allows the Board to determine business hours as appropriate. This provision would provide an efficient means by which to expedite changes in trading hours as mandated by the securities industry. In addition, this Section establishes a procedure to suspend and resume trading in all securities as appropriate.

Section 2—Dealings on Floor—Hours

A new provision was added which provides access to ITS outside of normal hours for administrative and/or corrective purposes.

Section 3—Dealings on Floor—Persons

Clerical functions have been incorporated consistent with current practices.

Chapter II—Dealings on the Exchange

Section 1—What May be Dealt In

The description of what may be dealt in has been expanded to include all categories of stock.

Section 2—Recording of Sales

The responsibility for reporting trades has been amended to reflect current practices.

Section 2—Recording of Sales—Interpretations and Policies

This material provides a means for identifying the initiating member.

Section 7—Disseminations of Quotations

SEC Rule 11Ac1–1, which governs the dissemination of quotations for reported securities, has been added for ease of reference.

.02 This new language consolidates .02 and .03 relative to Alternate Specialists and Floor Brokers. This provision describes responsibilities without imposing narrow guidelines that may be misinterpreted.

.03 Material has been added to describe a member's responsibilities as they pertain to written orders.

.04 Additional material also describes the methods for cancelling orders.

.06 and .07 The proposed language addresses customer protection against block transactions.

Section 9—Trading for Joint Account

The text of this Section was rearranged in order to provide sequential treatment of responsibilities. The reporting requirement was eliminated because the Exchange receives daily reports of activity.

Section 10—Discretionary Transactions

The provision that requires filings on a quarterly basis has been eliminated because the records are available for inspection and will be reviewed by the appropriate self-regulatory organization pursuant to agreements under Rule 17d–2 of the Securities Exchange Act of 1934.

(b) The statutory basis for the proposed Rule change is section 6(b)(5) of the Act as amended, in that they promote just and equitable principles of trade and remove impediments to and perfect the mechanisms of a free and open market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will improve any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received from Members, Participants, or Others

Comments have neither been solicited nor received.

III Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer periods to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

[1] A copy of the proposed amendments to the Rules of the Board of Governors of the Boston Stock Exchange was attached to the filing as Exhibit 2. Exhibit 2 is available from the BSE or the Commission at the address noted in Section IV, *infra*.

(A) By order approve such proposed changes, or

(B) Insitute proceedings to detemine whether the proposed rule change should be disapproved.

IV Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washingtion, 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 amendment between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC. Copies of File No. BSE–86–3 will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 7, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 5, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87–13655 Filed 6–15–87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–24562; File No. SR–BSE–87–2]

Self-Regulatory Organizations; Proposed Rule Change by Boston Stock Exchange, Inc. relating to Amendments to the Boston Stock Exchange Rules

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 February 6, 1987, the Boston Stock Exchange, Incorporated ("BSE") filed with the Securities and Exchange Commission the proposed changes 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 on the Terms of Substance of the Proposed Rule Change

The proposed rules increase the Margin, Collateral, Net Capital, and Equity requirements of specialists. Failure to comply with these provisions may result in the imposition of sanctions that are based on the number of violations occurring within a certain time period. For example, on the third margin call within a 30 day period, the member must meet with the Market Surveillance and Compliance Department personnel to discuss the problem, review the rules and consider any remedial actions that need to be taken. On the fourth call during the 30 day period, a written warning will be issued, while the fifth and sixth calls will result in fines of $250 and $500 respectively. The Market Performance Committee may also impose any additional sanctions for continuous calls including suspending the account. The rule also establishes sanctions for net capital violations that also increase in severity in relation to the number of violations that occur. Finally, under the proposal the increased Equity requirements will be incrementally phased in by December 31, 1987. The proposal provided for a first increase of $80,000 to $100,000, with a second increase as of December 31, 1987, from $100,000 to $125,000.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements governing the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) *Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change*

(a) The purpose of the proposed rules are to increase the minimum financial responsibilities of specialists and to establish guidelines and procedures for imposing sanction for violations.

(b) The basis under the Act for the proposed rule change is section 6(b)(5) in that the increased requirements and schedule of sanctions are designed to promote the facilitation of transactions in securities and to reduce risk to public investors, member organizations and the Exchange.

(B) *Self-Regulatory Organization's Statement on Burden on Competition*

No burden on competition is perceived by the adoption of the proposed rules.

(C) *Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

Comments have neither been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed changes, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–BSE–87–2 and should be submitted by July 7, 1987.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.

Dated: June 5, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-13656 Filed 6-15-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24561; File No. SR-CBOE-87-22]

Self-Regulatory Organizations; Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to RAES Eligibility for Individuals and Groups in the Standard & Poor's 100 Index ("OEX") Option

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 8, 1987, the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Text of the Proposed Rule Change

The proposed rule change sets forth eligibility standards for market-makers to participate as contra-brokers on the Retail Automatic Execution System ("RAES") in options on the Standard & Poor's 100 Index ("OEX") for a six-month pilot program. The proposed rule change recognizes three ways in which market-makers may participate as contra-brokers in RAES in OEX: as an individual, as a member of a joint account, and as one or more nominees of a member organization. The latter two formats are generally referred to herein as group participants.

The eligibility of all market-makers to participate as contra-brokers in RAES in OEX will be limited to OEX/SPX market-makers. SPX refers to the options on the Standard & Poor's 500 Index and includes the new Standard & Poor's 500 Index options (NSX). To qualify, a market-maker must be approved as a market-maker under Exchange rules, maintain his principal place of business on the CBOE as a market-maker, execute 50% of his market-maker contracts for the proceeding quarter in OEX or SPX, and execute 25% of his market-maker trades for the proceeding quarter in OEX or SPX *in person*. RAES trades will not be considered in these calculations.

Individual RAES market-makers who participate in the system will also be required to log onto RAES on the next Friday prior to expiration, to the extent that he is in the OEX pit on that day. Group account participants will be obligated to remain on RAES until the next expiration once the group has been signed on at anytime during the expiration cycle.

Individual or group participants may be relieved of their RAES obligations, and in the case of group accounts, may also reduce the number of participants in the group account, only upon approval of the Index Option Floor Procedure Committee ("IFPC"). The IFPC may condition the granting of relief from obligations with the imposition of time periods during which applicants for relief (including all members of a group account) will be precluded from participating in the RAES system. The IFPC may also bar, restrict or condition a group account's participation in RAES if any member thereof fails to meet the OXE/SPX market-maker requirements.

In addition, RAES group participants must be bona fide group participants. Thus, purchasing of RAES rights from a member of a group is prohibited, and group participants must be afforded a reasonable participation in profits and losses. As a guideline, no RAES group participant may receive a flat fee, and a minimum participation level of any group member is one quarter of equal distribution of all group members, with responsibility for losses equivalent to share of profits. No member may participate directly or indirectly in more than one group. A group may only be managed by a person who is a member of the group, and manager of a group is limited to managing only that group. The IFPC has the authority to limit group size.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) *Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

The proposed rule change provides eligibility standards for participating as contra-broker or RAES in OEX. The proposed rule change comtemplates both individual market-makers and groups participating in RAES as contra-brokers. This proposed rule change modifies the existing eligibility standards in RAES, taking into account the Exchange's experience over the past year since the initiation of group participation in RAES.

The proposal modifies the existing eligibility standards and clarifies the authority of the Index Option Floor Procedure Committee ("IFPC"). The principal modifications to the process are: (1) Individual market-makers who log onto RAES only become obligated to sign onto RAES on the next Friday prior to expiration, to the extent that the market-maker is in the OEX pit on that date; (2) RAES participation in OEX is limited to OEX/SPX market-makers, as defined in paragraph A(6) of the proposed rule change; (3) once a joint account or the account of a member organization with multiple nominees (group accounts), has been logged onto RAES, all members of the account will automatically remain on the RAES system until the next monthly expiration. Classifications of the RAES administration include the following: (1) IFPC has the authority, in deciding whether market-makers or group accounts may be relieved of their RAES obligations, to impose time periods during which the applicant is not eligible to participate in RAES; (2) RAES rights may not be purchased from members of the group; (3) a group participant must have a reasonable participation in profits and losses (as a guideline, no RAES participant may receive a flat fee and a minimum participation level of any group member is one quarter of a pro rata distribution of profits and losses); (4) direct or indirect participation is limited to one group and each group is limited to the lesser of fifty members or twenty-five percent of the total number of participant in RAES.

The Exchange believes that the foregoing modifications will enhance RAES and allow the fairest participation in RAES for market-makers. The limitation to OES/SPX market-makers assures that the market-makers in index options are eligible to participate proportionately in taking the opposite side of customer order flow which is directed through RAES. This is consistent with the current in-person eligibility standards for the participation in RAES in equity options. Restricting the total number of participants in RAES, a power allowed in the discretion of the IFPC Committee under the existing eligibility standards, is consistent with that grant of authority. The newly written provision in addition, however, assures that the authority can be exercised to reduce the size of RAES groups as well as to increase their size.

The limitation on the size of a RAES group assures that no person or entity will dominate the RAES system, which would have potentially severe ramifications.

The CBOE believes that the proposed rule change is consistent with the Securities Exchange Act of 1934 and, in particular, Section 6(b)(5) thereof, in that the standards are designed to enhance the quality of markets and encourage the successful implementation and continuation of RAES.

(B) *Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that this proposed rule change will impose any burden on competition.

(C) *Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Stteet, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 7, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 5, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-13657 Filed 6-15-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15792; 812-6405]

DBL Tax Free Fund Inc.; Application

June 10, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("the 1940 Act").

Applicant: DBL Tax-Free Fund Inc. ("Applicant").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from the provisions of section 17(f).

Summary of Application: Applicant seeks an order to permit it to maintain excess variation margin with its futures commission merchants ("FCMs") when it engages in transactions in futures contracts and options on futures contracts.

Filing Date: The application was filed on June 11, 1986 and amended on December 16, 1986 and May 21, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application 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 July 1, 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, for lawyers, 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. Applicants, 25 Broadway, New York, New York 10004.

FOR FURTHER INFORMATION CONTACT: Fran Pollack, Staff Attorney, (202) 272-3024 or Karen L. Skidmore, Special Counsel, (202) 272-3023, Office of Investment Company Regulations.

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 which may be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant was incorporated under the laws of Maryland on December 20, 1982 and is registered under the 1940 Act as an open-end, diversified management investment company. The Fund's investment adviser is Drexel Management Corporation and its distributor is Drexel Burnham Lambert Incorporated.

2. Applicant currently offers shares in three investment portfolios: the Money Market Portfolio, the Limited Term Portfolio, and the Long Term Portfolio. The Long Term Portfolio (the "Portfolio") seeks to provide the highest level of income exempt from Federal income taxes consistent with the preservation of capital by investing principally in long-term tax-exempt securities (anticipated to have maturities of fifteen years or longer) issued by state or municipal governments and by public authorities.

3. Applicant, on behalf of the Portfolio, intends to purchase and sell financial futures contracts and municipal bond index futures contracts (collectively, "interest rate futures contracts") and purchase and write options on such futures contracts, as a means of hedging against changes in interest rates and market conditions. In no event will the Portfolio purchase or sell interest rate futures contracts or related options for the purpose of speculation.

4. The Portfolio may sell interest rate futures contracts in anticipation of an increase in the level of interest rates in order to offset all or a portion of the depreciation in the market value of the long-term state and municipal securities which it owns. If the Portfolio anticipates a decline in long-term interest rates, it may purchase interest rate future contracts when it is not fully invested in state and municipal securities in order to offset, in part or entirely, increases in the cost of such securities. The Portfolio will write call options and purchase put options on interest rate futures contracts to protect against a decline in value of the securities it holds. The Portfolio will also purchase call options and write put options on interest rate futures contracts to protect against an increase in value of securities it intends to purchase.

5. The Portfolio will only sell futures contracts to offset expected declines in the value of its portfolio securities provided that the value of such futures contracts does not exceed the total market value of those securities. The Portfolio will only purchase futures contracts, provided it creates a segregated account with its custodian consisting of cash, U.S. Government securities or other appropriate high grade debt obligations in an amount equal to the total market value of any futures contract, less the initial margin for the contract. In order to close long positions in interest rate futures contracts prior to their settlement date, the Portfolio will enter into offsetting sales of interest rate futures contracts.

6. The Portfolio will also only write "covered" put and call options. The Portfolio can cover a put option on a futures contract by owning a short futures position, it may cover a call option, by owning a long futures position. The Portfolio may also cover a put or call option by creating a segregated account with its custodian ("Custodian") consisting of cash, U.S. Government securities or other appropriate high grade debt equal to the market value of the underlying futures position, less the amount of the initial margin for the option.

7. The Applicant has filed a Notice of Eligibility on behalf of the Portfolio claiming exclusion from the definition of the term "commodity pool operator" in accordance with rule 4.5 of the Commodity Futures Trading Commission (the "CFTC"), and has undertaken in the Notice of Eligibility to comply with the rules, requirements and interpretations of the CFTC.

8. Initial margin payments required in connection with the Applicant's transactions in rate futures contracts and related options will be made into special segregated accounts with the Applicant's Custodian, in the name and for the benefit of the Applicant's FCMs. A separate custodial account will be established for each FCM with which the Applicant enters into transactions in futures contracts or options thereon, and each such account will be maintained apart from the general custodial account of the Applicant. The amounts held in the custodial accounts will constitute performance bonds, to be returned to the Applicant upon termination of the futures or options positions, assuming that all of the Applicant's contractual obligations have been satisfied. An FCM will have access to such amounts only upon a representation to the Custodian that the Applicant is in default on its obligations to the FCM and that all conditions precedent to the FCM's right of access to the custodial account have been satisfied. Subsequent "variation margin" payments due to an FCM, if any, will be made directly to the FCM by the Applicant.

9. Upon enterng into an interest rate futures contract or writing a option thereon, Applicant must post an "initial margin" deposit, in an amount equal to a certain percentage of the face value of the contract, with the FCM effecting the transaction to be held by the Fund's Custodian. If on any day the net equity of Applicant's account with the FCM falls below the required margin, Applicant must make a "variation margin" payment to increae the equity in the account. Similarly, if Applicant's open future contract positions (or open positions with respect to options thereon written by the Applicant) with an FCM reflect a net gain on any day, the FCM is obligated to pay Applicant variation margin in the amount of the excess (unless part of that variation margin is retained by the FMC in order that the account may continue to meet the minimum margin requirements).

10. Were variation margin owed to Applicant by an FCM in connection with interest rate futures contracts and related options held by the FCM rather than by Applicant's Custodian, Applicant might not be in compliance with section 16(f) of the 1940 Act. While Applicant has a right to demand various margin owed to it from an FCM in any amount on any day that there is an excess above the required initial margin, Applicant submits that it would be unnecessarily costly and unduly burdesome for both the Applicant and its FCMs if Applicant were required to demand payment of *de minimis* amounts of variation margin. To demand an insubstantial portion of its assets, the Applicant would have to incur transaction fees charged by its Custodian and additional operating expenses. The Applicant believes that the ability to leave variation margin with its FCMs in the amount and on the conditions described below would save the Portfolio, its shareholders and FCMs the expense of processing payments for small amounts of variation margin without increasing in any meaningful degree any risk to the security of its assets.

11. Applicant will enter into a separate agreement among itself, its Custodian and each FCM, pursuant to which the Applicant's margin deposits will be held by the Custodian, subject to disposition by the FCM in accordance with CFTC rules and the rules of the applicable contract market. Each agreement will provide that (1) the Custodian will take instructions with respect to disposition of assets in that account only from the FCM; (2) in directing any disposition of assets, the FCM must state that the Applicant is in default (if the directed disposition is to the FCM), that all conditions precedent to its right to direct disposition have been satisfied, and that the disposition is for a proper purpose under, and in all other respects complies with, the terms of the agreement; (3) assets of Applicant that would otherwise be held by the FCM will be in the possession of the Custodian until released or sold or otherwise disposed of in accordance with or under the terms of the agreement; (4) those assets will not otherwise be pledged or encumbered by the FCM; (5) when requested by the Applicant, the FCM will cause the Custodian to release to the Applicant's general custodial account any assets to which the Applicant is entitled under the terms of such agreement; and (6) assets in the segregated account will otherwise be used only to satisfy the Applicant's obligations to the FCM under the terms of the agreement.

12. The Applicant will promptly cause any amounts no longer required as initial margin to be transferred to is general custodial account and will, prior to engaging in any transactions in futures contracts or optons thereon, disclose in a prospectus supplement the risk of loss of margin deposits due to the bankruptcy of an FCM, although the foregoing arrangements are designed to reduce that risk.

13. Applicant undertakes, with respect to its interest rate future contracts and related options, that any variation margin payable by an FCM to Applicant will be reflected as net gains, will be immediately shown as increased equity in Applicant's account with the FCM and will be immediately credited to Applicant's net asset value, Conversely, variation margin payments made to an FCM will be reflected as net losses.

14. Applicant further undertakes that it will monitor variation margin each day in order to promptly demand, on a daily basis, payment and transfer of amounts from an FCM to Applicant's Custodian (for the general or a segregated custodial account maintained for the purpose of holding margin deposits, as appropriate) that are not required to maintain Applicant's position with respect to interest rate future contracts and related options ("excess variation margin") whenever and to the extent the excess variation margin owed to Applicant by a given FCM exceeds $50,000 and to the extent

necessary to maintain the aggregate amount of exceeds $50,000 and to the extent necessary to maintain the aggregate amount of excess variation margin held by all of its FCMs at a level which will not exceed ⅛ of one percent of the net assets of the Portfolio. Applicant anticipates that excess variation margin will be returned to it one business day or less after the levels described above are reached.

15. Initial margin held by the Applicant's Custodian and variation margin payments held by the Applicant's FCM will continue to be regarded as assets of the Applicant, unless and until such amounts are owed to the FCM. No FCM will be permitted to pledge or encumber amounts held by it or the Custodian for the benefit of the Applicant. In the event of the insolvency of an FCM, amounts held by the FCM for the benefit of the Applicant will be subject to federal bankruptcy laws and the bankruptcy regulations of the CFTC, which provide for *pro rata* distribution to customers of the FMC of all customer property.

Applicant's Legal Conclusion

1. Applicant believes that the order requested is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act in view of the CFTC requirements that initial margin deposits and premiums on commodity futures and related options may not exceed five percent of the fair market value of the Portfolio's assets, and of the extensive regulations of the CFTC governing segregation and accounting FCMs.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-13658 Filed 6-15-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-15789; 812-6645]

Meritor Mortgage Securities Corp.; Application

June 10, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: Meritor Mortgage Securities Corporation, on behalf of itself and certain affiliates (as hereinafter defined).

Relevant 1940 Act Section: Order requested under section 6(c).

Summary of Application; Applicant seeks a conditional order of exemption from all provisions of the 1940 Act in connection with the issuance and sale of mortgage-backed securities and Equity Interests (as hereinafter defined).

Filing Date; The application was filed on March 12, 1987, and amended on May 20, and June 5, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application 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 no later than 5:30 p.m. Request a hearing in writing giving the nature of your interest, the reason for the request, and the issues contested. Serve Applicant with the request, either personally, or by mail, and also send it to the Secretary, SEC, along with proof of service by affidavit, or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary, SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicant, Society Office Complex, 1106 Society Drive, Claymont, Delaware 19703.

FOR FURTHER INFORMATION CONTACT: Sherry A. Hutchins, Staff Attorney (202) 272-2799 or Brion Thompson, Special Counsel (202) 272-3016, Office of Investment Company Regulation, 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).

Applicants' Statements and Representations:

1. Applicant, a Delaware corporation, was formed on February 5, 1987. Applicant is a wholly-owned subsidiary of Meritor Savings Bank ("Parent"), a stock savings bank under Pennsylvania State law, organized principally to facilitate the funding activities of its Parent, including the disposition of mortgages and mortgage-backed securities, and the organization and centralization of the Parent's finance subsidiaries. Applicant has been advised by its Parent that the Parent intends for Applicant to remain a wholly-owned subsidiary. Applicant seeks relief on behalf of itself and certain trusts and corporations that it may form time to time, (each, an "Affiliate"). All Affiliates will engage in activities substantially similar to those engaged in by Applicant as described below.

2. Applicant and the Affiliates (together, "Issuers") will issue and sell bonds ("Bonds") in series ("Series") secured primarily by Mortgage Certificates.[1] Each Series of Bonds will be issued pursuant to an indenture ("Indenture") between an Issuer and an independent trustee ("Bond Trustee"), as supplemented by one or more supplemental indentures. Each Series of Bonds is expected to be sold to institutional or retail investors through one or more investment banking firms. Indentures for public offerings will be qualified under the provisions of the Trust Indenture Act of 1939. Each Series will consist of one or more classes ("Classes") which will have non-compound interest Bonds, compound interest Bonds or adjustable interest rate Bonds.

3. The Mortgage Certificates securing each Series of Bonds will be owned by an Issuer. Each Series of Bonds may also be secured by (1) distributions on the Mortgage Certificates; (2) cash, a letter of credit, a demand note issued by an affiliate of the Applicant or a combination thereof, to be deposited by the Issuer in a related reserve fund; (3) cash, to be initially deposited by the Issuer in a related collection account and (4) certain other funds and accounts and reinvestment thereon (any or all of the foregoing together with Mortgage Certificates, "Bond Collateral"). Each Issuer will assign to the Bond Trustee as security for the relevant Series of Bonds its entire right, title and interest in the Bond Collateral.

4. The Bond Collateral securing each Series of Bonds will have scheduled cash flow sufficient, when taken together with reinvestment income thereon at assumed reinvestment rates acceptable to each rating agency rating the Bonds, to make timely payments of principal of and interest on the Bonds in accordance with their terms. The outstanding bond value of the Bond Collateral securing a Series will be at least equal to or greater than the initial principal amount of such Series on the issue date.

5. Applicant may sell some or all of the equity interest in an Affiliate

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[1] The "Mortgage Certificates" collateralizing the Bonds will be limited to mortgage-backed certificates guaranteed by the Government National Mortgage Association ("GNMA Certificates"), guaranteed mortgage pass-through securities issued by the Federal National Mortgage Association ("FNMA Certificates"), and mortgage participation certificates issued by the Federal Home Loan Mortgage Corporation ("FHLMC Certificates").

("Equity Interest") to one or more banks, savings and loan associations, pension funds, insurance companies or certain other institutional or non-institutional investors which customarily engage in the purchase of mortgages or mortgage collateral ("Owners") in transactions not constituting a public offering under section 4(2) of the Securities Act of 1933 (the "1933 Act").

6. There will not be a conflict of interest between the holders of the Bonds ("Bondholders") and Owners as: (a) The Bond Collateral will not be speculative in nature; (b) the Bonds will be issued only if an independent nationally recognized statistical rating agency has rated such Bonds in one of the two highest categories; and (c) the relevant Indenture will subject the Bond Collateral, all income distributions thereon and all proceeds from a conversion, voluntary or involuntary, of any such collateral to a first priority perfected security interest in the name of the Bond Trustee on behalf of the Bondholders. Further, neither the Owners, Applicant, Affiliates, nor the Bond Trustee will be able to impair the security afforded by the Mortgage Certificates because, without the consent of each affected Bondholder, neither the Owners, Applicant, Issuer nor the Bond Trustee will be able to: (a) Change the stated maturity on any Bond; (b) reduce the principal or rate of interest on any Bond; (c) change the priority of repayment on any Class of any Series; (d) impair or adversely affect the Mortgage Certificates; or (e) permit the creation of a lien ranking prior to or on parity with the lien of the related Indenture with respect to the Mortage Certificates or otherwise deprive the Bondholders of the security afforded by the lien of the related Indenture.

7. The sale of Equity Interest will not alter the payment of cash flow under any Indenture, including the amounts to be deposited in the collection account or any reserve fund. Pricing efficiencies mandate that the Bond Collateral does not substantially exceed the amount of collateral required to be pledged in order to satisfy the standards of the rating agency. Thus, the excess cash flow from the Bond Collateral which is available to Owners always will be far less than the cash flow from the Bond Collateral that is used to make principal and interest payments to Bondholders. Further, except for the limited right to substitute Mortgage Certificates, it will not be possible for Owners to alter the Bond Collateral, and, in no event will such right of substitution result in a diminution in the value or quality of the Bond Collateral. Although substitution may result in a different prepayment experience, the Bondholders' interests will not be impaired because: (a) The prepayment experience of any collateral will be determined by market conditions beyond the Owners' control which are likely to affect similar mortgage certificates in similar fashion; (b) the Owners' interests are likely to be different from those of Bondholders with respect to prepayment experience; and (c) to the extent that the Owners may cause substitution which has a different prepayment experience than the original collateral, this situation is no different for the Bondholders than the traditional collateralized mortgage obligation structure where bonds are issued by an entity that is a wholly-owned subsidiary.

B. An Issuer may elect to be treated as a real estate mortgage conduit ("REMIC") for federal income tax purposes. An election by an Issuer to be treated as REMIC or not be a REMIC will not have any material effect on the level of expenses that would be incurred by such Issuer. Administrative fees and expenses will be provided for in a manner outlined in the application.

Applicant's Legal Conclusion

1. The relief requested is necessary and appropriate in the public interest because: The Issuers will promote the public interest by expanding the market for mortgage securities, thereby increasing the capacity of mortgage lenders to meet housing needs; neither Applicant nor any Affiliate is the type of entity to which the provisions of the 1940 Act were intended to be applied, the safeguards afforded to Bondholders fully protect investors; and prospective purchasers of Equity Interests will be sophisticated in the area of mortgages and mortgage-backed assets and limited in number.

Conditions to Order

Applicant agrees that the requested order may be expressly conditioned upon the following:

A. Conditions Relating to the Bond Collateral

(1) Each Series will be registered under the 1933 Act, unless offered in a transaction exempt from registration pursuant to section 4(2) of the 1933 Act.

(2) The Bonds will be "mortgage related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934. The Mortgage Certificates will be limited to GNMA, FNMA, and FHLMC Certificates.

(3) If new Mortgage Certificates are substituted as security for existing collateral pledged to secure a Series, the substitute certificates must: (1) Be of equal or better quality than the collateral replaced; (ii) have similar payment terms and cash flow as the collaterial replaced; (iii) be insured or guaranteed at least to the same extent as the collateral replaced; and (iv) not affect the Bonds' satisfaction of the conditions set forth in Conditions A(2) and (4). New Mortgage Certificates may not be substituted for more than 40% of the aggregate face amount of the Mortgage Certificates initially pledged as mortgage collateral. In no event may any new Mortgage Certificates be substituted for any substitute Mortgage Certificates.

(4) All Bond Collateral will be held by the Bond Trustee or on behalf of the Bond Trustee by an independent custodian. Neither the Bond Trustee nor custodian may be an affiliate (as the term "affiliate" is defined in Rule 405 under the 1933 Act, 17 CFR 230.405 of Applicant or the Issuer. The Collateral pledged to secure the Bonds is to be subject to a first priority perfected security interest in the name of the Trustee on behalf of the Bondholders.

(5) Each Series will be rated in one of the two highest published bond rating categories by at least one nationally recognized statistical rating agency that is not affiliated with Applicant or the Issuer. The Bonds will not be "redeemable securities" within the meaning of section 2(a) (32) of the 1940 Act.

(6) At least annually, an independent public accountant will audit the books and records of the Issuer and will report on whether the anticipated payments of principal and interest on the Bond Collateral continue to be adequate to pay the principal and interest on the Bonds in accordance with their terms. Upon completion, copies of the auditor's report(s) will be provided to the Bond Trustee.

B. Conditions Relating to Variable-rate Bonds

(1) Each Series of adjustable or floating interest rate Bonds will have a set maximum interest rate.

(2) At the time of deposit of the Bond Collateral and during the life of the Bonds, the scheduled payments of principal and interest to be received by the Bond Trustee on all Mortgage Certificates plus reinvestment income thereon, and funds, if any, pledged to secure the Bonds will be sufficient to make all payments of principal and interest on the Bonds then outstanding, assuming the maximum interest rate on each Series of adjustable or floating

interest rate Bonds. The Mortgage Certificates will be paid down as the mortgages underlying the Mortgage Certificates are repaid, but, except as stated herein will not be released from the lien of the Indenture prior to the payment of the Bonds.

C. Conditions Relating to the Sale of Equity Interests

(1) An Equity Interest in an Affiliate will be sold only to (i) institutions or (ii) non-institutional investors which are "accredited investors" as defined in Rule 501(a) of the 1933 Act. Institutional investors will have such knowledge and experience in financial and business matters as to be capable to evaluate the risks of purchasing Equity Interests and understand the volatility of interest rate fluctuations as they affect the value of mortgages, mortgage-related securities and residual interests therein. Non-institutional accredited investors will be limited to not more than 15, will purchase at least $200,000 of such Equity Interest and will have a net worth at the time of purchase that exceeds $1,000,000 (exclusive of their primary residence). Further, non-institutional accredited investors will have such knowledge and experience in financial and business matters, specifically in the field of mortgage-related securities, as to be able to evaluate the risk of purchasing an Equity Interest in such Affiliate and will have direct, personal and significant experience in making investments in mortgage-related securities and because of such knowledge and experience, to understand the volatility of interest rate fluctuations as they affect the value of mortgage-related securities and residual interests therein. Institutional investors will be limited to mortgage lenders, thrift institutions, commercial and investment banks, savings and loan associations, pension funds, employee benefit plans, insurance companies, mutual funds, real estate investment trusts.

(2) Each sale of an Equity Interest will qualify as a transaction not involving any public offering within the meaning of section 4(2) of the 1933 Act.

(3) Each sale of an Equity Interest will prohibit the transfer of such Equity Interest if there would be more than 100 beneficial Owners of Equity Interests in an Issuer at any time.

(4) Each sale of an Equity Interest will require each purchaser thereof to represent that it is purchasing such Equity Interest for its own account and without a view to the distribution thereof.

(5) Each sale of an Equity Interest will provide that (i) no Owner of such Equity Interest may affilated with the Bond Trustee for the relevant Issuer and (ii) no holders of a controlling (as that term is defined in Rule 405 of the 1933 Act) Equity Interest in any Issuer may be affiliated with either the custodian of the Bond Collateral or any nationally recognized statistical rating agency rating the Bonds of the relevant Series.

D. Condition Relating to REMICs

Each Issuer, regardless of whether it elects to be treated as a REMIC, will provide for the payments of administrative fees and expenses as set forth in the application. Each Issuer will ensure that the anticipated level of fees and expenses will be adequately provided for regardless of the method selected.

E. Special Condition

Applicant undertakes to secure each Affiliate's consent to comply with all of the applicable representations and conditions set forth above.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-13659 Filed 6-15-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-15775; 812-6626]

Monte dei Paschi di Siena et al.; Application

June 8, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: Monte dei Paschi di Siena ("Monte dei Paschi") and MPS U.S. Commercial Paper Corporation ("MPS").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from all provisions of the 1940 Act.

Summary of Application: The Applicants seeks an order to permit the issuance and sale in the United States of debt securities, including commercial paper notes by Monte dei Paschi, or debt securities or commerical paper by MPS which will be unconditionally guaranteed by Monte dei Paschi.

Filing Date: The application was filed on February 13, 1987, and amended on May 21 and June 4, 1987.

Hearing or Notification of Hearing: If no hearing is orderd, the application 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 30, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants 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, for lawyers, 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. Applicants, c/o Paul R. Aaronson, Esq., Sullivan & Cromwell, 125 Broad Street, New York, New York 10004.

FOR FURTHER INFORMATION CONTACT: Fran Pollack, Staff Attorney (202) 272-3024 or Karen L. Skidmore, Special Counsel (202) 272-3023 (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 who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. Monte dei Paschi was established in 1472 as a foundation. Although it was subsequently chartered as a Public Law Bank under the laws of Italy, it has retained the structure of a foundation. As of December 31, 1985 (the most recent date as of which audited financial statements of Monte dei Paschi are available), Monte dei Paschi was the seventh largest bank in Italy in terms of deposits and fifth largest in terms of capital funds. It was the fifty-second largest commecial bank in the world. On December 31, 1985, the consolidated assets of Monte dei Paschi and its special credit section subsidiaries amounted to approximately $25.7 billion and total deposits amounted to approximately $19.9 billion (77% of total liabilities and capital accounts). Loans totaled $11.7 billion and represented approximately 45% of total assets.

2. Regulation of Italian banks, including Monte dei Paschi, is conducted by the Interministerial Committee for Credit and Savings ("CICR") and the Central Bank (Bank of Italy). The principal objectives of this regulation are the protection of depositors and the orderly distribution of credit. In its capacity as a supervisory and regulatory authority, the Central Bank's main functions include review of bank financial statements and other statistical data bank examinations, implementations of reserve

requirements, imposition of certain compulsory ratios, approval of bank expansion through additional offices, administration of territorial restrictions, establishment of lending limits for individual banks, control of foreign borrowings, issuance of "moral suasion" directives and provision of liquidity to Italian banks.

3. MPS was organized soley for the purposes described below under the laws of the State of Delaware on February 10, 1987, and has an initial capitalization of $1,000. All the outstanding capital stock of MPS is owned by Monte dei Paschi, and Monte dei Paschi will continue to own all of the outstanding capital stock of MPS. MPS's sole business will be the issuance of debt obligations guaranteed by Monte dei Paschi and the provision of the proceeds thereof to Monte dei Paschi or subsidiaries controlled by Monte dei Paschi. Substantially all of MPS' assets will consist of amounts receivable from Monte dei Paschi or subsidiaries controlled by Monte dei Paschi.

4. Monte dei Paschi proposes to issue and sell, or to cause MPS to issue and sell, only in the United States, unsecured prime quality commercial paper notes (the "Notes") in bearer form and denominated in United States dollars. No Note will be in a denomination smaller than $100,000. Applicants state that the Notes will be sold by a dealer to institutional investors and other entities and individuals who normally purchase commercial paper notes.

5. Monte dei Paschi's obligations in respect of the Notes, whether as direct issuer or as guarantor, will rank *pari passu* among themselves and in each case prior to equity securities of Monte dei Paschi and MPS, and equally with all other unsecured indebtedness (including liabilities to depositors) of Monte dei Paschi and MPS.

6. The terms of the Notes, including their negotiabiity, maturity and minimum denomination, the amount outstanding at any given time and the manner of offering them to investors will be such as to qualify them for the exemption from the registration requirements under the Securities Act of 1933, as amended (the "1933 Act"), provided by section 3(a)(3) of the 1933 Act. Neither Monte dei Paschi nor MPS will issue and sell Notes until they have received an opinion of their United States legal counsel that the Notes would be entitled to such section 3(a)(3) exemption. Applicants do not request Commission review or approval of United States counsel's opinion letter regarding the availability of an exemption under section 3(a)(3) of the 1933 Act. Applicants represent that neither Monte dei Paschi nor MPS is subject to the reporting requirements of the Securities Exchange Act of 1934, as amended, and will not become subject to such requirements in connection with issuance and sale of the Notes. Moreover, Applicants may appoint a bank or the other financial institution in the United States as their authorized agent to issue the Notes from time to time. Applicants will provide offerees of the Notes and future offerings of their debt securities with specified disclosure documents as described in the application.

7. Monte dei Paschi may, from time to time, offer other debt securities for sale in the United States. MPS may also, from time to time , offer other debt securities for sale in the United States which will be unconditionally guaranteed by Monte dei Paschi. The proceeds of the issuance of such debt securities of MPS will be loaned to Monte dei Paschi or subsidiaries controlled by Monte dei Paschi. Any future offering of such debt securities will be made with due regard to the provisions of Regulation D under the 1933 Act and the doctrine of "intergration" referred to in Securities Act Release Nos. 4434, 4552, 4708 and 6389 and various "no action" letters made public by the Commission.

8. Payment of the principal, interest, and premium, if any, on the Notes and any future debt securities issued and sold by MPS will be unconditionally guaranteed by Monte dei Paschi.

9. Applicants' proposed issuance of the Notes and all future issues of debt securities (not including deposits) in the United States shall receive prior to issuance one of the three highest investment grades from at least one nationally recognized statistical rating organization and Applicants' United States counsel shall certify that such rating has been received, provided, however, that no such rating need be obtained with respect to any such issue if, in the opinion of United States counsel, such counsel having taken into account for the purpose thereof the doctrine of "integration" referred to in Rule 502 under the 1933 Act and various releases and relevant no-action letters made public by the Commission, an exemption from registration is available under section 4(2) of the 1933 Act. Monte dei Paschi and MPS are not affiliated with any nationally recognized statistical rating agency.

10. Applicants will appoint either a financial institution, MPS, or some other United States person which normally acts in such capacity to accept any process which may be served in any action based on the Notes and instituted by the holder of such Note in any State or Federal court. In connection with any future debt securities offered in the United States, Monte dei Paschi and MPS will appoint a United States person as agent to accept any process which may be served in any action based on any such securities and instituted in any State or Federal court by the holder of such security. Applicants will expressly accept the jurisdiction of any State of Federal court in the City and State of New York in respect to any such action. Such appointment of an authorized agent to accept service of process and such consent to jurisdiction will be irrevocable until all amounts due and to become due in respect of the Notes and debt securities have been paid by Monte dei Paschi or MPS. Monte dei Paschi and MPS will also be subject to suit in any other court in the United States which would have jurisdiction because of the manner of the offering of such Notes or debt securities or otherwise in connection with the Notes or debt securities.

11. The net prooceeds of the sale of MPS' Notes and any future issue of debt securities of MPS, to the extent not applied to the repayment of maturing Notes or debt securities of MPS, will be loaned to Monte dei Paschi (or companies controlled by Monte dei Paschi). Such loans by MPS will be on terms that are substantially similar to the related Notes or debt securities of MPS and repayments of the loans will be scheduled to match repayments due on the related Notes or debt securities.

Applicants' Legal Conclusions

1. Granting a conditional order of exemption from all provisions of the 1940 Act pursuant to section 6(c) of the 1940 Act would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. The rationale for exemption under section 6(c) of the 1940 Act for Monte dei Paschi extends to MPS as well because of the strictly limited nature of its business and because the unconditional guarantee by Monte dei Paschi of MPS's Notes means that the obligations of MPS are effectively obligations of Monte dei Paschi. The sole business of MPS is and will continue to be to operate as a financing vehicle for Monte dei Paschi. The net proceeds of any borrowings made by MPS (except for amounts needed to repay maturing securities issued by MPS) will be loaned to Monte dei Paschi or its subsidiaries.

Applicants' Conditions

If the requested over is granted, the Applicants expressly consent to the following conditions being attached to the order:

(1) The Notes will not be advertised or otherwise offered for sale to the general public, but instead will be sold by a dealer to institutional investors and other entities and individuals who normally purchase commercial paper notes. Applicants will ensure that the dealer will provide each offeree of the Notes, prior to purchase, with a memorandum which briefly describes the business of Monte dei Paschi and which includes the most recent publicly available fiscal year-end balance sheet and profit and loss statement which have been audited in such manner as is customarily done for Monte dei Paschi by its statutory auditors for financial statements in its Annual Report. Such memorandum will (1) be at least as comprehensive as those customarily used by United States bank holding companies in offering commercial paper in the United States; (2) describe differences which are material to investors, if any, between the accounting principles applied in the preparation of such financial statements and "generally accepted accounting principles" as employed by banks in the United States; and (3) be updated promptly to reflect material changes in the financial condition of Monte dei Paschi.

(2) Any future offering of Monte dei Paschi's or MPS' debt securities in the United States will be done on the basis of disclosure documents at least as comprehensive in their description of Monte dei Paschi, its business and its financial condition as those customarily used by United States bank holding companies in offering similar securities under similar circumstances. Such disclosure documents will be provided to each offeree prior to the sale of such debt securities. However, in any future offering of Monte dei Paschi's or MPS' debt securities made pursuant to a registration statement under the 1933 Act, Monte dei Paschi and MPS will furnish a disclosure document ot such persons and in such manner as may be required by the 1933 Act and the rules and regulations thereunder.

(3) Substantially all (in no event less than 85%) of the proceeds of the sale of Notes issued by MPS will be provided as soon as practicable (but in no event more than six months after receipt) to Monte dei Paschi (or companies controlled by Monte dei Paschi) on terms that will allow MPS to make timely payment on such Notes. In any period prior to providing such proceeds or with respect to any portion not so provided, MPS will not invest in, reinvest in, own, hold, or trade in securities other than obligations of the U.S. Government or any agency or subdivision thereof, securities of Monte dei Paschi or any company controlled by Monte dei Paschi, or debt securities exempted from the 1933 Act by section 3(a)(3) thereof.

(4) Monte dei Paschi's guarantee with respect to the Notes and all future issues of debt securities issued by MPS will provide that, in the event of a default in payment of principal, interest, premium, or payments made under a sinking fund on any debt securities issued by MPS, the holders of those securities may institute legal proceedings directly against Monte dei Paschi to enforce the guarantee without first proceeding against MPS.

(5) With regard to future debt securities, if Monte dei Paschi or MPS shall offer for sale debt securities that are not issued in the United States or sold to U.S. persons, but there exists a reasonable likelihood of offers or sales of such debt securities being made in the United States or to U.S. persons, and such debt securities are either: (i) Not registered under the 1933 Act or (ii) exempt from registration by virtue of section 3(a)(3) or section 4(2) of the 1933 Act, Monte dei Paschi and MPS will adopt agreements and procedures reasonably designed to prevent such debt securities from being offered or sold in the United States or to U.S. persons, except as U.S. counsel may then advise is permissible.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-13660 Filed 6-15-87; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Region VI Advisory Council; Public Meeting; Texas

The Small Business Administration, Region VI Advisory Council, located in the geographical area of Houston, Texas, will hold a public meeting from 9:00 a.m. until 1:30 p.m., Wednesday, June 24, 1987, at the Marriott Hotel, at the Astrodome, in Salon B and C, located at 2100 South Braeswood at Greenbriar, Houston, Texas 77030. This meeting will be conducted to discuss such business as may be presented by members of the District Council, the staff of the U.S. Small Business Administration, and others attending.

For further information, write or call H.A. McMullen, Acting District Director, U.S. Small Business Administration, 2525, Murworth, Suite 112, Houston, Texas 77054 (713) 660-4409.

Jean M. Nowak,

Director, Office of Advisory Councils.

June 11, 1987.

[FR Doc. 87-13743 Filed 6-15-87; 8:45 am]

BILLING CODE 8025-01-M

Region I Advisory Council; Public Meeting; Vermont

The Small Business Administration, Region I Advisory Council, located in the geographical area of Montpelier, Vermont, will hold a public meeting at 10:00 a.m., Monday, June 29, 1987, at the Montpelier Tavern Hotel, Montpelier, Vermont, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration, and others attending.

For further information, write or call Ralph D. Brown, Acting District Director, U.S. Small Business Administration, Federal Building, 87 State Street, P.O. Box 605, Montpelier, Vermont 05602, (202) 828-4422.

Jean M. Nowak,

Director, Office of Advisory Councils.

June 11, 1987.

[FR Doc. 87-13744 Filed 6-15-87; 8:45 am]

BILLING CODE 8025-01-M

Small Business Computer Security and Education Advisory Council; Public Meeting

The Small Business Computer Security and Education Advisory Council of the U.S. Small Business Administration will hold a public meeting on Friday, July 17, 1987 from 8:30 a.m. to 5:00 p.m. The meeting will be held in the Administrator's Conference Room, 10th floor, at the U.S. Small Business Administration, 1441 L Street, NW., Washington, DC 20416. The purpose of the meeting is to discuss and begin finalization of reports, publication materials and recommendations as may be presented by Advisory Council Members, or others present.

For further information, write or call Ferguise Mayronne, U.S. Small Business

Administration, 1441 L Street, NW., Washington, DC 20416 (202) 653–6654.

Jean M. Nowak,

Director, Office of Advisory Councils.

June 11, 1987.

[FR Doc. 87–13742 Filed 6–15–87; 8:45 am]

BILLING CODE 8025–01–M

Presidential Advisory Committee on Small and Minority Business Ownership; Public Meeting

The Presidential Advisory Committee on Small and Minority Business Ownership, located in Washington, DC, will meet on Monday, June 22, 1987, at 9:00 a.m. until 5:00 p.m., Ceremonial Court Room, 2nd Floor, No. 1 Federal Plaza, New York, New York 10278. At the hearing, private sector executives, local officials, trade associations, small and minority business entrepreneurs, will present testimony regarding the challenges they face in the development of their businesses, along with proposed solutions to these problems for possible implementation by the Federal Government.

Persons wishing to obtain further information should contact Milton Wilson, Jr., Office of Private Industry Programs, U.S. Small Business Administration, 1441 L Street, NW., Room 602, Washington, DC 20416, telephone (202) 653–6526.

Jean M. Nowak,

Director, Office of Advisory Councils.

June 5, 1987.

[FR Doc. 87–13741 Filed 6–15–87; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 1014]

Foreign Missions Act Determinations; Belarus Machinery, Inc.

ACTION: Designation and Determination.

SUMMARY: Pursuant to the authority vested in me by the Foreign Missions Act, 22 U.S.C. 4301 et. seq. (hereinafter referred to as "the Act"), including section 202(b) of the Act, including section 202(b) of the Act (22 U.S.C. 4302(b)), and the Department of State Delegation of Authority No. 147 of September 13, 1982, I hereby determine:

1. That Belarus Machinery, Inc., with offices in New York and Wisconsin, (hereinafter referred to as "Belarus") is a "foreign mission" within the meaning of section 202(a)(4) of the Act (22 U.S.C. 4302(a)(4), as amended by Pub. L. 99–569;

2. That section 205 of the Act (22 U.S.C. 4302(a)(1)(A) and 4304(b) is applicable and shall require Belarus and its employees and agents to acquire real property for or on behalf of Belarus (by purchase, lease, exchange, construction or otherwise) from or through the Office of Foreign Missions under such terms and conditions as may be established by the Director of the Office of Foreign Missions. Unless the Office of Foreign Missions determines otherwise, any acquisition of real property by any of Belarus' foreign national employees (who are not permanent resident aliens) shall also be subject to such terms and conditions as may be established by the Director of the Office of Foreign Missions.

Dated: June 5, 1987.

Ronald I. Spiers,

Under Secretary for Management.

[FR Doc. 87–13739 Filed 6–15–87; 8:45 am]

BILLING CODE 4710–35–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending June 5, 1987

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 408, 409, 412, and 414. Answers may be filed within 21 days of date of filing.

Docket No. 44909

Parties: Members of International Air Transport Association
Date Filed: June 3, 1987
Subject: Composite Cargo Resolutions
Proposed Effective Date: July 1, 1987 and August 1, 1987

Docket No. 44915 R–1—R–8

Parties: Members of International Air Transport Association
Date Filed: June 4, 1987
Subject: Composite Cargo Resolutions
Proposed Effective Date: July 1, 1987

Docket No. 44916

Parties: Members of International Air Transport Association
Date Filed: June 4, 1987
Subject: Composite Cargo Resolutions
Proposed Effective Date: August 1, 1987

Docket No. 44917

Parties: Members of International Air Transport Association
Date Filed: June 4, 1987
Subject: Composite Cargo Resolutions
Proposed Effective Date: July 1, 1987

Docket No. 44921

Parties: Members of International Air Transport Association
Date Filed: June 5, 1987
Subject: Adjustment Factors-Japan
Proposed Effective Date: July 1, 1987

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 87–13681 Filed 6–15–87; 8:45 am]

BILLING CODE 4910–62–M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending June 5, 1987

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 44906

Date Filed: June 1, 1987.
Due Date for Answers, Conforming Applications, or Motion of Modify Scope: June 29, 1987.
Description: Application of Transportes Aereos Nacionales, S.A. pursuant to section 402 of the Act and Subpart Q of the Regulations, requests renewal of its foreign air carrier permit to engage in foreign air transportation with respect to persons, property and mail over a period of five years between a point or points in Honduras, the intermediate point Belize, British Honduras, and the terminal point Miami, Florida.

Docket No. 44920

Date Filed: June 5, 1987.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: July 2, 1987.
Description: Application of Piedmont Aviation, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations applies for a certificate of public convenience and necessity to provide round-trip air transportation between Baltimore, Maryland and Nassau, Bahamas.

Docket No. 44500

Date Filed: June 2, 1987.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: June 30, 1987.

Description: Amendment to the Application of Soundair Corporation pursuant to section 402 of the Act and Subpart Q of the Regulations, requests that its foreign air carrier permit be amended to allow Soundair to serve Saginaw, Michigan as a co-terminal point with Grand Rapids/Lansing, Michigan.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 87-13682 Filed 6-15-87; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA); Meeting

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 142 on Air Traffic Control Radar Beacon System/Mode S (ATCRBS/MODE S) Airborne Equipment to be held on July 14-16, 1987, in the RTCA Conference Room, One McPherson Square, 1425 K Street NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Remarks; (2) Approval of Minutes of the Nineteenth Meeting; (3) Review of MOPS Working Group Activities; (4) Review of EUROCAE WG-20 Activities; (5) Review First Draft of MOPS for Mode S Data Link Airborne Equipment; (6) Assessment of Committee Progress and Establishment of Future Work Plans; (7) Assignment of Tasks; (8) Other Business; (9) Date and Place of Next Meeting; and (10) Working Groups in Separate Sessions.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street NW., Suite 500, Washington, DC 2005 (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 10, 1987.

Wendie F. Chapman,

Designated Officer.

[FR Doc. 87-13624 Filed 6-15-87; 8:45 am]

BILLING CODE 4910-01-M

Radio Technical Commission for Aeronautics (RTCA); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 162 on Aviation System Design Guidelines for Open Systems Interconnection (OSI) to be held on July 8-10, 1987, in the RTCA Conference Room, One McPherson Square, 1425 K Street NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the Second Meeting; (3) Reports on Working Group Activities; (4) Working Groups Meet in Separate Sessions; (5) Identification of Items to be Included in OSI Guidelines; (6) Review of Material Submitted for Inclusion in Committee Report; (7) Assignment of Tasks; (8) Other Business; and (9) Time and Place of Next Meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 10, 1987.

Wendie F. Chapman,

Designated Officer.

[FR Doc. 87-13625 Filed 6-15-87; 8:45 am]

BILLING CODE 4910-01-M

Federal Highway Administration

Environmental Impact Statement; Duval and Nassua Counties, FL

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 (EIS) will be prepared for a proposed highway project in Duval and Nassau Counties, Florida.

FOR FURTHER INFORMATION CONTACT: David Van Leuven, District Engineer, Federal Highway Administration, 227 N. Bronough Street, Room 2015, Tallahassee, Florida 32301, Telephone: (904) 681-7231.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Florida Department of Transportation, will prepare an EIS for a proposal to improve S.R. 105 (Heckscher Drive) in Duval and Nassau Counties, Florida. The proposed improvement would involve the reconstruction of S.R. 105 (Heckscher Drive) from the end of the existing four-lane/Duval County to County Road 105A/Nassau County, a distance of 28.0 miles. Improvements to the corridor are considered necessary to provide for the existing and projected traffic demands.

Alternatives under consideration include: (1) Taking no action; (2) widening to a multi-lane divided roadway with additional right-of-way; (3) widen existing facility and add four-foot paved shoulders within the existing right-of-way; and (4) a combination of alternatives 2 and 3.

Letters describing the proposed action will be sent to appropriate Federal, State, and local agencies, and to private citizens who have expressed interest in this proposal. A series of public meetings will be held in Duval and Nassau Counties. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be made available for public agency review and comment. A formal scoping meeting is planned at the project site in mid-1987.

To assure 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 or questions concerning this proposed action and the EIS should be directed to the 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 of Federal programs and activities apply to this program)

Issued On: June 5, 1987.

David P. Van Leuven,

District Engineer.

[FR Doc. 87-13632 Filed 6-15-87; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; Grand Forks County, ND

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 Grand Forks, North Dakota.

FOR FURTHER INFORMATION CONTACT: John C. Kliethermes, Division Administrator, Federal Highway Administration, P.O. Box 1755, Bismarck, ND 58502. Telephone Number is (701) 255–4011. (FTS 783–4204).

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the North Dakota State Highway Department and the city of Grand Forks, will prepare an Environmental Impact Statement (EIS) on a proposal for improvements to the Columbia Road Corridor in Grand Forks, North Dakota

The proposed improvement will widen the structure over the Burlington Northern Railway to provide four lanes of traffic. The improvement is intended to provide for improved traffic flow and safety

Alternates under consideration consist of combinations of wider structures to provide an additional pedestrian walkway and a barrier median. The "No Action" alternate is also being considered.

Letters soliciting views and comments on the proposed project were sent to various federal, state and local agencies. The project has been discussed at local meetings in Grand Forks. the Draft EIS will be available for public and agency review and comment. A publc hearing will be held to discuss alternates and impacts of the proposed action. Public notice will be given for the time and place of the public hearing. No formal scoping meeting will be held.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on April 10, 1987.

John C. Kliethermes,

Division Administrator, Federal Highway Administration.

[FR Doc. 87–13740 Filed 6–15–87; 8:45 am]

BILLING CODE 4910–22–M

Research and Special Programs Administration; Applications for Exemptions

AGENCY: Research and Special Programs Administration, DCT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATES: Comment period closes July 16, 1987.

Address comments to: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9773–N	SST Industries, Inc., Cincinnati, CH	49 CFR 173.154, 173.217, 173.239a, 173.245, 173.365, 178.19.	To manufacture, mark and sell a non-DOT specification fully removable head polyethylene drum of up to 30 gallons capacity for the shipment of certain flammable, corrosive oxidizing and poison B solids. (Modes 1, 2, 3, 4).
9777–N	Schwerman Trucking Co., Milwaukee, WI	49 CFR 173.154(a)(4)	To authorize shipment of a 15 percent solution of potassium permanganate in water, classed as an oxidizer, in a DOT Specification MC–312 tank. (Mode 1).
9778–N	Western Atlas International, Inc., Houston, TX	49 CFR 173.304, 173.306	To authorize shipment of sulfur hexafluoride, classed as non-flammable gas, in non-DOT specification tanks and tubes, used in oil well logging service. (Modes 1, 3, 4, 5).
9779–N	Unichem International, Inc., Hobbs, NM	49 CFR 173.119, 173.245	To manufacture, mark and sell oil well treating tank consisting of six separate compartments to be permanently mounted to a truck chassis for shipment of certain flammable or corrosive liquids. (Mode 1).
9780–N	Majestic Lulbricating Co., Tulsa, OK	49 CFR 173.119(a)(27)	To authorize shipment of flammable liquids, n.o.s., classed as flammable liquid, in three (3) DOT Specification 2U containers of two (2) gallon capacity, each, overpacked in a DOT Specification 12P fiberboard box. (Mode 1).
9781–N	The Chlorine Institute, Inc., Washington, DC	49 CFR 173.34, 173.302, 173.304	To authorize shipment of leaking cylinders containing chlorine gas, classed as a nonflammable gas, in a non-DOT specification cylinder, specially designed for recovery of DOT Specification 3A480 or 3AA480 cylinders of 100 lb or 150 lb chlorine capacity. (Mode 1).
9782–N	Grumman Aircraft Systems, Bethpage, NY	49 CFR 173.206(a)(10), 173.302, Subparts E, F.	To authorize shipment of potassium metal, classed as a flammable solid, in a non-DOT specification package, used as a secondary condensor in th e production of magnesium. (Modes 1, 2, 4).
9783–N	Helios Container Systems, Addison, IL	49 CFR Part 173, 173.366	To manufacture, mark and sell flexible intermediate bulk containers of approximately 2,200 capacity, for shipment of materials classed as corrosive, flammable, or oxidizer solids or arsenic trioxide, solid, Class B poison. (Modes 1, 2).
9784–N	Worthington Cylinder Corp., Columbus, OH	49 CFR 178.51–11(a), 178.61–11(a)	To authorize welding of rubber footrings, after heat treatment, to DOT Specification 4BA and 4BW cylinders which transport propane (or liquefied petroleum) gas, classed as flammable gas. (Modes 1, 2, 3, 4).
9785–N	Hapag-Lloyd AG, Hamburg, West Germany	49 CFR 176.11(f), 176.83	To authorize shipment of hazardous materials that are stored and segregated in a manner other than is required when shipped by cargo vessel. (Mode 3).
9786–N	S.L. Cowley & Son's Mfg. Co., Hugo, OK	49 CFR 177.841(e)	To authorize shipment of a package bearing a poison label in DOT specification packing in the same lading with materials marked as or known to be foodstuff without the required overpack. (Mode 1).
9787–N	Rheem Mfg. Co., Linden, NJ	49 CFR 173.60(a), 173.60(b)	To manufacture, mark and sell DOT Specification 35 removable head polyethylene drums, 3-½ and 5 gallon capacity, for shipment of specific explosives, classed as Class A explosives. (Modes 1, 2, 3).
9788–N	Certified Cylinder, Inc., Crossville, TN	49 CFR 173.34	To authorize replacement of bottoms, rebuilding, retesting and certification of 4B, 4BA and 4BW240 propane cylinders. (Mode 1).
9789–N	E. I. du Pont de Nemours Co., Inc., Wilmington, DE.	49 CFR 173.119(m)	To authorize shipment of materials, classed as flammable liquid and also as corrosive, in DOT specification 57 metal portable tanks. (Mode 1).
9790–N	Taylor-Wharton Div. of Harsco Corp., Indianapolis, IN.	49 CFR 178.57–21(a), 173.316	To manufacture, mark and sell non-DOT specification cylinders, built to DOT–4L cylinder specifications except that the inner containment vessel is Type 316L stainless steel, for shipping liquid nitrogen, classed as nonflammable gas. (Mode 1).

NEW EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9791-N	Pressed Steel Tank Co., Inc., Milwaukee, WI	49 CFR 178.37, 173.302	To manufacture, mark and sell non-DOT specification cylinders, built to DOT 3AA specification with certain exceptions, for shipping air, oxygen, helium, argon and nitrogen, classed as non-flammable, non-liquefied compressed gases. (Mode 1).
9792-N	Foam Fabricators, Bloomsburg, PA	49 CFR Part 173, Subpart F, 177.839(a), (b), 178.150	To manufacture, mark and sell a non-reuseble expanded polystyrene case similar to DOT Specification 33A, except it will have six cavities to contain not more than six five-pint or six 20 ounce bottles to contain those commodities authorized in a DOT Specification 33A case. (Modes 1, 2, 3, 4).
9793-N	Pressure Vessels of Puerto Rico Inc., San Juan, PR.	49 CFR 177.839	To authorize replacement of bottoms, rebuilding, retesting and certification of 4BW240 propane cylinders. (Modes 1, 2, 3, 4, 5).
9797-N	LTV Missiles and Electronics Group, Dallas, TX.	49 CFR 173.304(c)(1), 173.304(e)(1), 178.33, 178.33a	To authorize one-time shipment of anhydrous ammonia, classed as nonflammable gas, in non-DOT specification containers, identified as aluminum alloy heat pipes. (Mode 1).

This notice of receipt of applications for new exemptions is published in accordance with section 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on June 10, 1987.

J. Suzanne **Hedgepeth,**

Chief, Exemptions Branch, Office of Hazardous Materials Transportion.

[FR Doc. 87-13733 Filed 6-15-87; 8:45 am]

BILLING CODE 4910-60-M

Applications for Renewal or Modification of Exemptions or Applications to Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for renewal or modification of exemptions or application to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Except as otherwise noted, renewal application are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comment period closes July 2, 1987.

Address Comments to: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

Application	Applicant	Renenwal of exemption
2582-X	Union Carbide Corp., Danbury, CT	2852
4453-X	Atlas Powder Co., Dallas, TX	4453
4453-X	IRECO, Inc., Salt Lake City, Uath	4453
4453-X	Austin Powder Co., Cleveland, OH	4453
4884-X	Union Carbide Corp., Danbury, CT	4884
5243-X	Austin Powder Co., Cleveland, OH	5243
5923-X	Union Carbide Corp., Danbury, CT	5923
6016-X	Guttman Welding Supply Co., Belle Vernon, PA	6016
6614-X	All Pure Chemical Co., Tracy, CA	6614
6658-X	U.S. Department of Energy, Washington, DC	6658
6672-X	Chandler Evans, Inc., West Hartford, CT	6672
6816-X	General Dynamics/Convair Division, San Diego, CA	6816
6974-X	Tavco, Inc., Chastworth, CA	6974
7274-X	Union Carbide Corp., Danbury, CT	7274
7835-X	Big Three Industries, Inc., Houston, TX	7835
7991-X	Union Pacific Railroad Co., Salt Lake City, UT	7991
8239-X	Westinghouse Electric Corp., Horsehheads, NY	8239
8526-X	The ServiceMaster Company, L.P., Downers Grove, IL	8526
8556-X	Air Products and Chemicals, Inc., Allentown, PA [1]	8556
8582-X	Consolidated Rail Corp., Philadelphia, PA	8582
8689-X	Schlumberger Offshore Services, Houston, TX	8689
8689-X	Schlumberger Well Services, Houston, TX	8689
8886-X	Amerex Corp., Trussville, AL	8886
8937-X	Spectrulite Consortium, Inc., Madison, IL	8937
8962-X	HTL Division of Pacific Scientific, Duarte, CA	8962
8978-X	GN Lithium Batteries as, Koege, Denmark	8978

Application	Appliicant	Renenwal of exemption
8988-X	Schlumberger Well Services, Houston, TX	8988
8988-X	Schlumberger Offshore Services, Houston, TX	8988
8988-X	Welex, Houston, TX	8988
8988-X	Dresser Industries, Inc., Houston, TX	8988
9017-X	EVA Eisenbahn-Verkehrsmittel-Gesellschaft GmbH, Dusseldorf, West Germany	9017
9059-X	Air Products and Chemicals, Inc., Allentown, PA	9059
9062-X	UOP Inc., Des Plaines, IL	9062
9064-X	Amalgamet Canada—Division of Premetalco, Inc., Tornoto, Ontario, Canada	9064
9064-X	Corning Class Works, Corning, NY	9064
9064-X	Preussag AG Metall, Goslar, West Germany	9064
9066-X	Prosche Cars North America, Inc., Reno, NV [2]	9066
9074-X	Reuter-Stokes, Inc., Twinsburg, OH	9074
9108-X	E. I. du Pont de Nemours & Co., Wilmington, DE	9108
9108-X	Ensign-Bickford Co., Simsbury, CT	9108
9141-X	Bristol Flare Corp., Bristol, PA	9141
9275-X	International Flavors & Fragrances (IFF—US), Hazlet, NJ	9275
9350-X	Square D Co., Smyrna, TN	9350
9401-X	Parlefer S. A. R. L., Parish, France	9401
9415-X	Plasti-Drum Corp., Lockport, IL	9415
9418-X	West Texas Fabrication, Odessa, TX	9418
9425-X	American Chemical & Refining Co., Waterbury, CT	9425
9446-X	Matson Navigation Co., San Francisco, CA	9446
9456-X	General Electric Co., Waterford, NY	9456
9481-X	Atlas Powder Co., Dallas, TX	9481

[1] To authorize a smaller capacity portable tank and to authorize certain design modification to exisitng portable tanks for shipment of certain refrigerated liquids.
[2] To authorize two alternative packaging configurations, DOT Specification 12B30 fiberboard boxes, for shipment of airbag gas generators, classed as flammable solds.

Application No.	Applicant	Parties to exemption
6971-P	Alltech Associates, Inc., Deerfield, IL	6971
7052-P	Wilson Greatbatch Ltd., Clarence, NY	7052
7052-P	Interstate Electronic Corp., Anaheim, CA	7052
7052-P	GSE Inc., Farmington Hills, MI	7052
7607-P	Northern Engineering and Testing, Inc., Helena, MT	7607
7891-P	King's Laboratory, Inc., Blythewood, SC	7891
8363-P	IMR Powder Co., Plattsburgh, NY	8363
8426-P	Southwest Pumping Services, Whittier, CA	8426
8426-P[1]	Crosby & Overton, Inc., Long Beach, CA	8426
8426-P[1]	C.K.C., Inc., Paso Robles, CA	8426
8445-P[1]	Bishop & Associates, Inc., Brooklandville, MD	8445
8518-P[1]	Crosby & Overton Environmental Management, Inc., Long Beach, CA	8518
8518-P[1]	Buck Does It, Inc., Pomona, CA	8518
8518-P[1]	Petrolane Lomita Gasoline Co., Long Beach, CA	8518
8518-P[1]	Ecology Control Industries, Ventura, CA	8518
8518-P[1]	Universal Engineering Inc., Benicia, CA	8518
8518-P	J. J. Magana, Corp, Richmond, CA	8518
8569-P	Garrett Fluid Systems Co, Tempe, AZ	8569
8579-P	Nitram, Inc., Tampa, FL	8579
8582-P	Chicago South Shore & South Bend R. R. Co., Michigan City, IN	8582
8582-P	Chicago Missouri & Western Railway Co., Chicago IL	8582
8582-P	Springfield Terminal Railway Co., Sterling, MA	8582
8723-P	High West, Inc., Billings, MT	8723
8723-P	Strawn Explosives, Inc., Dallas, TX	8723
8723-P	Harrison Explosives, Inc., Allentown, PA	8723
8908-P	M & T Chemicals Inc., Rahway, NJ	8908
9364-P	Platte, Chemical Co., Fremont, NE	9364
9402-P	Atochem S.A., Paris, France	9402
9549-P	GOEX, Inc., Cleburne, TX	9549
9732-P	Shell Oil Co., Houston, TX,[2]	9732
9776-P	Houston, TX	9776
9777-P	Carus Chemical Co., La Salle, IL	9777
9797-P	National Aeronautics and Space Administration, Houston, TX	9797

[1] DOT-E 8518 and E-8426 originally issued as manufacture, mark and sell exemptions, which authorizes the use of a non-DOT specification cargo tank for various liquid and semi-solid waste materials, has been reissued for use to offer or transport the waste materials.
[2] Request party status and to authorize additional materials to be shipped as combustible liquid, n.o.s.

This notice or receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on June 10, 1987.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 87-13734 Filed 6-15-87; 8:45 am]

BILLING CODE 4910-60-M

Urban Mass Transportation Administration

UMTA Section 3 and 9 Grant Obligations; Southeastern Pennsylvania Transportation Authority et al.

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice.

SUMMARY: Public Law 99-500 signed into law by President Reagan on October 18, 1986, contained a provision requiring the Urban Mass Transportation Administration to publish an announcement in the **Federal Register** each time a grant is obligated pursuant to sections 3 and 9 of the Urban Transportation Act of 1964, as amended The statute requires that the announcement include the grant number, the grant amount, and the transit property receiving each grant. This notice provides the information as required by statute.

FOR FURTHER INFORMATION CONTACT: Edward R. Fleischman, Chief, Resource Management Division. (202) 366-2053, 400 Seventh Street SW., Washington, DC. 20590.

SUPPLEMENTARY INFORMATION: The section 3 program was established by the Urban Mass Transportation Act of 1964 to provide capital assistance to eligible recipients in urban areas. Funding for this program is distributed on a discretionary basis. The section 9 formula program was established by the Surface Transportation assistance Act of 1982. Funds appropriated to this program are allocated on a formula basis to provide capital and operating assistance in urbanized areas. Pursuant to Pub. L. 99-550, UMTA reports the following grant information:

SECTION 3 GRANTS

Transit property	Grant number	Grant amount	Date obligated
Southeastern Pennsylvania Transportation Authority (Philadelphia, Pennsylvania).	PA-03-0190	$45,000,000	5-27-87
City of Chicago (Chicago, Illinois)	IL-03-0125	499,950	5-29-87
Regional Transportation District (Denver, Colorado)	CO-03-0032-02	9,397,116	5-15-87
Snohomish County Public Transportation Benefit Area Corporation (Seattle -Everett, Washington.	WA-03-0062	9,447,775	5-10-87

SECTION 9 GRANTS

Transit property	Grant number	Grant amount	Date obligated
Lane Transit District (Eugene, Oregon)	OR-90-X021	$1,968,900	5-29-87
Tri-County Metropolitan Transportation District (Portland, Oregon).	OR-90-X019-01	1,456,000	5-29-87

Issued on: June 10, 1987.

Alfred A. DelliBovi,

Deputy Administrator.

[FR Doc. 87-13623 Filed 6-15-87; 8:45 am]

BILLING CODE 4910-57-M

VETERANS ADMINISTRATION

Availability of Chaplain Service Report and Program Evaluation

Notice is hereby given that the program evaluation of the Veterans Administration's Chaplain Service has been completed.

Single copies of the Chaplain Service Report are available free. Reproduction of multiple copies can be arranged at the user's expense.

Direct inquiries, specifying the name of the program evaluation desired, to Mr. H. Raymond Wilburn, Director, Studies and Evaluation Service, Veterans Administration (072), 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: June 8, 1987.

By direction of the Administrator.

Raymond S. Blunt,

Director, Office of Program Analysis and Evaluation.

[FR Doc. 87-13628 Filed 6-15-87; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 115
Tuesday, June 16, 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).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The meeting is scheduled to be held at the offices of the Farm Credit Administration in McLean, Virginia, on June 10, 1987, from 2:30 p.m. until such time as the Board may conclude its business.

FOR FURTHER INFORMATION CONTACT: William A. Sanders, Jr., Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102-5090 (703-883-4010).

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be closed to the public. The matter to be considered at the meeting is:

[1] 1. Farm Credit System Collateral Issues

Dated: June 11, 1987.

William A. Sanders, Jr.,

Secretary, Farm Credit Administration Board.

[FR Doc. 87-13746 Filed 6-12-87; 9:06 am]

BILLING CODE 6705-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Tuesday, June 9, 1987, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the withdrawal for the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Memorandum regarding realignment of the Division of Bank Supervision's regional offices.

Memorandum re: Proposed Statement of Policy for Disclosure of Financial and Other Information by Insured State Nonmember Banks, which policy statement would recommend that insured State nonmember banks make available to the public upon request financial data and management discussion and analysis of significant events covering the previous two calendar years as well as future plans.

The Board further determined, by the same majority vote, that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Application of Barnett Bank of Pinellas County, a proposed new bank to be located at 1901 Central Avenue, St. Petersburg, Florida, for Federal deposit insurance, for consent to merge, under its charter and title, with Barnett Bank of Pinellas County, National Association, Clearwater, Florida, and for consent to establish twenty-one existing and one approved, but unopened, offices of Barnett Bank of Pinellas County, National Association as branches of Barnett Bank of Pinellas County.

The Board further detemined by the same majority vote, that no earlier notice of the changes in the subject matter of the meeting was practicable.

Dated: June 10, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87-13774 Filed 6-12-87; 11:02 am]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Tuesday, June 9, 1987, the Corporation's board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Memorandum regarding the Corporation's corporate activities.

Matters relating to the possible failure of certain insured banks: Names and locations of the banks authorized to be exempt from disclosure pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

A personnel matter.

The Board further determined, by the same majority vote, that no earlier notice of the changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: June 10, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87-13775 Filed 6-12-87; 11:02 am]

BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, June 22, 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.

[1] Session closed to the public-exempt pursuant to 5 U.S.C. 552(c)(4), (8) and (9).

Dated: June 12, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-13801 Filed 6-12-87; 3:36 pm]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

TIME AND DATE: 2:00 p.m., Thursday, June 18, 1987.

PLACE: Room 532, (open); Room 540 (closed), Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portions Open to Public:

(1) Oral Argument in New England Motor Rate Bureau, Inc., Docket No. 9170.

Portions Closed to the Public:

(2) Executive Session to follow Oral Argument in New England Motor Rate Bureau, Inc., Docket No. 9170.

CONTACT PERSON FOR MORE INFORMATION: Susan B. Ticknor, Office of Public Affairs: (202) 326-2179; Recorded Message: (202) 326-2711.

Emily H. Rock,

Secretary.

[FR Doc. 87-13754 Filed 6-12-87; 10:07 am]

BILLING CODE 6750-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of June 15, 22, 29, and July 6, 1987.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of June 15

Tuesday, June 16

2:00 p.m.
Meeting with States and Affected Indian Tribes on the Status of National High Level Waste Program (Public Meeting)

Wednesday, June 17

2:00 p.m.
Discussion/Possible Vote on Fort St. Vrain Authorization to Exceed 35 Percent Power Level (Public Meeting)

Thursday, June 18

2:00 p.m.
Briefing by Executive Branch (Closed—Ex. 1)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of June 22—Tentative

Monday, June 22

3:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

Thursday, June 25

10:00 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of June 29—Tentative

Tuesday, June 30

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

2:00 p.m.
Discussion/Possible Vote on Full Power Operating License for Braidwood-1 (Public Meeting) (Tentative)

Wednesday, July 1

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of July 6—Tentative

Wednesday, July 8

2:00 p.m.
Discussion/Possible Vote on Full Power Operating License for Beaver Valley-2 (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION: Affirmation of "PSNH's Emergency Plan Submittal and Request for Low Power License," "Shoreham—Evaluation of Replies to LILCO Request for Authorization to Increase Power to 25%," and "Shoreham Intervenors' Motion to Reopen the Record" (Public Meeting) were held on June 11.

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 11, 1987.

[FR Doc. 87-13811 Filed 6-12-87; 3:37 pm]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [52 FR 21409 June 5, 1987].

STATUS: Open meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Tuesday, June 2, 1987.

CHANGE IN THE MEETING: Deletion.

The following item will not be considered at an open meeting for Thursday, June 11, 1987, at 10:00 a.m.

Discussion of whether and how to amend Rule 10b-4 (17 CFR 240.10b-4), the short tendering rule, in light of the Second recent decision of the Court of Appeals for the Second Circuit in *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Jack Bobker.* For further information, please contact M. Blair Corkran at (202) 272-2853.

Commissioner Grundfest, as duty officer determined that Commission business required the above changes.

At times changes in Commission priorities requre alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact; Kevin S. Fogarty at (202) 272-3195.

Jonathan G. Katz,

Secretary.

June 10, 1987.

[FR Doc. 87-13727 Filed 6-11-87; 4:14 pm]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of June 15, 1987:

A closed meeting will be held on Tuesday, June 16, 1987, at 2:30 p.m. An open meeting will be held on Thursday, June 18, 1987, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendered matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Grundfest, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, June 16, 1987, at 2:30 p.m., will be:

Settlement of administrative proceedings of an enforcement nature.

Institution of injunctive actions.

Formal orders of investigation.

Institution of administrative proceedings of an enforcement nature.

Regulatory matter regarding financial institution.

Opinions.

The subject matter of the open meeting scheduled for Thursday, June 18, 1987, at 10:00 a.m., will be:

1. Consideration of whether to publish for comment proposed amendments to Regulation S–K, Forms 8–K and N–SAR and Schedule 14A concrning disclosures related to a change in a registrant's certifying accountant. These proposals would clarify the term "disagreements" as used in these disclosure requirements, provide for more complete disclosure of potential opinion shopping situations, update such disclosures for investment companies, move the substance of the disclosure requirements for changes in accountants to Regulation S–K, extend the time frame for disclosure in proxy statements of a change in accountants to that found in Item 304 of Regulations S–K, and require the filing of a Form 8–K, when the disclosure requirements under Item 4 of that form are satisfied by filing the information in a different report, to identify the report containing that disclosure. For further information, please contact Robert Burns or John Riley at (202) 272–2130.

2. Consideration of whether to: (1) Adopt a policy permitting the multiple market trading of standardized options on exchange-listed stocks; and (2) institute proceedings under section 19(c) of the Securities Exchange Act of 1934 to amend the rules of national securities exchanges that provide a market in standardized options to prohibit any such exchange from preventing by rule or otherwise the listing of a standardized option on an exchange-listed stock by virtue of the listing of that option on another exchange. For further information, please contact Alice Rome at (202) 272–7379.

3. Consideration of whether to propose revisions to 17 CFR 200.80 and certain appendices thereto which will (1) conform the rules to changes to the Freedom of Information Act made by Congress in amendments passed on October 27, 1986; (2) ensure that as much as possible of the "direct cost" incurred in operating the Commission's Freedom of Information Act program is recouped; (3) clarify the statutory basis for dissemination of information filed with the Commission pursuant to various securities statutes; and (4) correct outdated information in the present rules. Consideration will also be given to adoption of interim rules that would be immediately effective and remain in effect pending adoption of final rules. For further information, please contact John Heine at (202) 272–7422.

4. Consideration of whether to defer application of the bank proxy processing rules with respect to employee benefit plan participants and adopt: (1) Amendments to Rule 14b–2 changing from three to five business days the time period for executing an omnibus proxy; (2) amendments to Rules 14a–1 and 14c–1 defining employee benefit plan; and (3) other clarifying and technical amendments to the shareholder communications rules. For further information, please contact Sarah A. Miller at (202) 272–2589.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Andrew Feldman at (202) 272–2091.

Jonathan G. Katz,

Secretary.

June 10, 1987.

[FR Doc. 87–13728 Filed 6–11–87; 4:14 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 52, No. 115
Tuesday, June 16, 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.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 273

[Amdt. No. 293]

Food Stamp Program; Higher Education Amendments of 1986

Correction

In rule document 87-12383 beginning on page 20376 in the issue of Monday, June 1, 1987, make the following correction:

On page 20377, in the second column, in the first complete paragraph, in the 12th line, "471(2)" should read "472(2)".

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 273

[Amdt. 292]

Food Stamp Program; Eligible Alien Status

Correction

In rule document 87-12307 beginning on page 20055 in the issue of Friday, May 29, 1987, make the following correction:

§ 273.4 [Corrected]

On page 20058, in the second column, in § 273.4, the second line of paragraph (a)(9) should read "temporary resident status pursuant to section".

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 928

[Docket No. AO-371-A1]

Papayas Grown in Hawaii; Secretary's Decision on Proposed Amendment of the Marketing Agreement and Order 928

Correction

In proposed rule document 87-12766 beginning on page 21065 in the issue of Thursday, June 4, 1987, make the following corrections:

1. On page 21065, in the first column, in the **SUMMARY**, in the seventh line, "amendment" was misspelled.

2. On the same page, in the same column, under **DATE**, in the second line, "referendum" was misspelled.

3. On the same page, in the second column, in the second line from the bottom of the column, "defied" should read "defined"; and in the last line of the column, "Flexibility" was misspelled.

4. On the same page, in the third column, in the second line, "Interested" should read "interested".

5. On the same page, in the same column, in the first complete paragraph, in the 14th line, "defied" should read "defined".

6. On the same page, in the same column, in the fourth line from the bottom of the page, "provision" was misspelled.

7. On page 21066, in the first column, in the fourth line from the bottom of the column, "characteristics" was misspelled.

8. On page 21067, in the first column, in paragraph (5), in the fourth line, "burden" should read "burdens".

§ 928.26 [Corrected]

9. On the same page, in the third column, in § 928.26, in the first line, "my" should read "any".

10. In § 928.26, on page 21068, in the first column, in the fourth line, "alternate" was misspelled.

§ 928.31 [Corrected]

11. On the same page, in the same column, in § 928.31(o), in the 16th line, "among" was misspelled.

§ 928.32 [Corrected]

12. On the same page, in the same column, in § 928.32(a), in the second line, "alternates" was misspelled.

§ 928.64 [Corrected]

13. On the same page, in the second column, in § 928.64(c), in the second line, after "end" add "of any".

14. On the same page, in the third column, in § 928.64(e), in the second line, "with" should read "within"; and in the eighth line, after "found" add "that".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3158-6]

Standards of Performance for New Stationary Sources Addition of Alternative Procedure (Critical Orifice as Calibration Standards) to Method 5, Appendix A

Correction

In rule document 87-6551 beginning on page 9657 in the issue of Thursday, March 26, 1987, make the following corrections:

1. On page 9657, in the second column, in the **SUMMARY**, in the 14th line, remove "of" after "Method 5".

Appendix A—[Corrected]

2. On page 9662, in the first column, the 23rd line should read "Average the K' values. The individual K' ".

3. In the second column, below the seventeenth line, insert "where:".

4. In the same column, in the first formula, the divisor should read "$P_{bar}T_m\Theta$".

5. In the same column, in the 19th line from the bottom of the column, "=17.64" should appear at the beginning of the 18th line from the bottom of the column.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Center for Disease Control

Recommendations for Protecting the Health of the Public During the Disposal of Agent VX; Request for Public Comment

Correction

In notice document 87-12133 beginning on page 19226 in the issue of Thursday, May 28, 1987, make the following corrections:

1. On page 19926, in the second column, in the **SUMMARY**, in the third line "1421" should read "1521".

2. On the same page, in the third column, in the third line, "glands" was misspelled.

3. On page 19927, in the first column, in the table, under "Level", in the seventh line, remove the ")" before "mg" and add a ")" at the end of the eighth line in place of the period.

4. On the same page, in the same column, the first sentence after the table should begin, "Certain monitoring criteria are essential to this recommendation, because any recommended ..."

BILLING CODE 1505-01-D

federal register

Tuesday
June 16, 1987

Part II

Department of Agriculture

Animal and Plant Health Inspection Service

7 CFR Parts 330 and 340

Plant Pests; Introduction of Genetically Engineered Organisms or Products; Final Rule

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 330 and 340

[Docket No. 87-021]

Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There is Reason To Believe Are Plant Pests

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document establishes regulations for the introduction (Importation, interstate movement, or release into the environment) of genetically engineered organisms and products which are plant pests or for which there is reason to believe are plant pests (regulated articles). The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article and for obtaining a limited permit for the importation or interstate movement of a regulated article. Such permits are required before a regulated article can be introduced in the United States. These regulations are necessary to prevent the entry into and dissemination and establishment of plant pests in the United States.

DATE: Effective date of final rule is July 16, 1987.

FOR FURTHER INFORMATION CONTACT: Terry L. Medley, Director, Biotechnology and Environmental Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 406, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7602.

SUPPLEMENTARY INFORMATION:

Background

On June 26, 1986, the Animal and Plant Health Inspection Service (APHIS) published a proposed rule entitled, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or for Which There Is Reason to Believe Are Plant Pests" (51 FR 23352-23366 hereinafter referred to as the proposed regulations). The proposed regulations set forth procedures for obtaining a permit prior to the introduction (importation, interstate movement, or release into the environment) of genetically engineered organisms or products which are plant pests or for which there is reason to believe are plant pests (regulated articles).

The provisions that appeared in the proposed regulations and adpopted in this final rule concerning the ned to obtain a permit prior to introducing a regulated article are consistent with existing permit requirements in 7CFR Parts 300-399. Such requirements are imposed by APHIS in regulating the movement of non-genetically engineered organisims, products, and certain articles which are plant pests or could harbor plant pests. The final rule extends the regulation of certain organisms not genetically engineered to certain organisms that are genetically engineered.

Comments Received on Proposed Regulations

APHIS attempted to solicit as many comments as possible on its proposed regulations through public hearing held in Sacramento, California, on July 29, 1986, and in Washington, DC, on August 5, 1986, and through an extension of the comment period from August 25 to September 26, 1986 (51 FR 29401, August 15, 1986). Including the comments presented at the public hearings, APHIS received 184 comments on the proposed regulations. Commenters included academicians, businesses engaged in genetic engineering, trade associations, professional organizations, private individuals/consultants, State departments of agriculture, members of the U.S. House of Representatives, and a representative from a State legislature. APHIS has carefully considered all the comments on the proposed rule.

Based on the rationale set forth in the proposed regulations and in this document, APHIS is promulgating a final rule which will become effective on July 16, 1987.

Under the final rule, a person has to obtain a permit to import, move interstate or release into the enviroment a genetically engineered organism or product only if:

(1) The organism has been altered or produced through genetic engineering from an organism (donor, vector, or recipient);

a. That is included in the list of genera and taxa in § 340.2 and such organism meets the definition of a plant pest; or

b. That is an unclassified organism and/or an organism whose classification is unknown; or

(2) The product contains such an organism (described in (1); or

(3) Any other organism or product (not included in (1) or (2) altered or produced through genetic engineering, which the Deputy Administrator determines is a plant pest or has reason to believe is a plant pest. Thus, this final rule regulates certain genetically engineered organisms and products that present plant pest risks, and, as explained in more detail below, does not regulate an article merely because of the process by which it was produced.

Many provisions, as noted below, have been changed in response to comments, which were generally constructive and often complex. Because numerous changes have been made to the regulations as originally proposed, a summary of those changes is presented at the outset of the preamble. The summary includes the number of the paragraph in which the rationale for the APHIS action is discussed. Following the summary is a detailed discussion of the relevant comments received, and APHIS' response to those comments. The preamble is organized to correspond with sections of the final rule.

SUMMARY OF CHANGES MADE IN THE FINAL RULE

Section	APHIS action	Paragraph No. of response
§ 340.1 Definitions:		
Certificate of exemption	Changed to courtesy permit	5
Classical genetics	Not adopted	6
Genetic engineering	Adopted new definition	7
Genetic manipulation	Not adopted	8
Mutagen	Not adopted	10
Organism	Amended by excluding prions and non-living components and parts	11, 21, 22
Pathogen	Not adopted	12
Plant	Amended by excluding bacteria, fungi, and prokaryotic algae	14
Regulated article	Adopted with revisions	16
§ 340.2 Groups of Organisms:		
Removed the following taxa		20, 21

SUMMARY OF CHANGES MADE IN THE FINAL RULE—Continued

Section	APHIS action	Paragraph No. of response
Prions		
Rickettsial-like organisms associated with plant disease		
Added the following taxa or groups of organisms:		
Gram-negative xylem-limited bacteria associated with plant diseases		
Gram-negative phloem-limited bacteria associated with plant diseases		
Added petition procedure in § 340.4 to amend list of organisms.		42
§ 340.3 Permits:		
§ 340.3(a)	Added provisions for designation of confidential business information (CBI) material	24, 25
§ 340.3(b)	Added permit for environmental release with provisions for State notification and review; APHIS review to be completed in 120 days.	29, 31
§ 340.3(c)	Added limited permit for interstate movement or importation with provisions for State notification and review; APHIS review to be completed in 60 days.	30, 31, 32, 34
§ 340.3(d)	Added provisions for premises inspection prior to permit issuance	36
§ 340.3(f)	Did not adopt requirement to report death of a regulated article; substituted reporting of unanticipated characteristics or unusual occurrence (excessive mortality or morbidity or unanticipated effects).	38
§ 340.4 Certification of exemption	Did not adopt; (substituted provision for courtesy permit in § 340.3(h); Section redesignated as "petition to amend the list of organisms").	34, 42
§ 340.5 Marking and identity	None	
§ 340.6 Container requirements:		
§ 340.6(c)	Added new section to allow variance from container requirements	43
§ 340.7 Costs and charges	None	

Comments on APHIS'Authority to Restrict the Introduction of a Regulated Article

1. Approximately thirty-one commenters prefaced their remarks with general statements supporting APHIS' approach in Part 340. The comments included backing for APHIS as "lead agency" and support of APHIS' authority pursuant to the Federal Plant Pest Act (FPPA) and Plant Quarantine Act (PQA) to regulate genetically engineered organisms as set forth in its proposed regulations. Seven commenters, however, alleged that APHIS lacks the authority under the provisions of the FPPA and PQA for the proposed rule. Specifically, the commenters indicated that the FPPA does not authorize APHIS to regulate "release into the environment," but only importation and interstate movement; and that the FPPA and Federal Noxious Weed Act (FNWA) and the Act of 1903 have no "beforehand testing" or pre-release review requirements to determine if new organisms might be pests, noxious weeds or contagious agents.

APHIS disagrees with the commenters who challenged APHIS' authority for the proposed rule. Is should be noted that APHIS never cited the Federal Noxious Weed Act (7 U.S.C. 2801 *et seq.*) or the Act of 1903 (21 U.S.C. 111 *et seq.*) as authority for promulgating a final rule under Part 340. Rather, APHIS cites as authority the Plant Quarantine Act (7 U.S.C. 151 *et seq.*) and the Federal Plant Pest Act (7 U.S.C. 150aa *et seq.*).

It is the Department's position that the provisions of the rule requiring a permit prior to the release into the environment of certain genetically engineered organisms or products containing such organisms is consistent with the legislative intent of the FPPA and is a reasonable construction of the Department's statutory responsibilities under the FPPA.

The FPPA was enacted to fill gaps in the Department's authority to protect American agriculture against invasion by foreign plant pests and diseases. It confers very broad authority on the Secretary of Agriculture to prevent the dissemination into the United States or interstate of plant pests.

The legislative history of the FPPA indicates that in addition to providing authority to regulate organisms that "can injure" plants or plants products, the FPPA provides authority to regulate organisms that might later be found to be injurious to cultivated crops. (See the Department's legal opinion concerning this issue, attached as Appendix G of "Issues in the Federal Regulation of Biotechnology: From Research to Release", a report prepared by the Subcommittee on Investigations and Oversight of the Committee on Science and Technology of the House of Representatives, 99th Cong., 2nd Session, December 1986).

2. One commenter who expressed the view that separate regulation of genetically engineered organisms is not authorized by the FPPA suggested that APHIS should amend its existing regulations rather than promulgate new regulations.

APHIS disagrees with this commenter and has determined that separate regulations for certain genetically engineered organisms are needed. Under the FPPA, APHIS can regulate plant pests whether they are naturally occurring or genetically engineered. APHIS' regulations in 7 CFR 330.200 are applicable to persons seeking to import, or move interstate plant pests which are naturally occurring and have not resulted from genetic engineering. APHIS believes that the regulations in 7 CFR 330.200 are not adequate to regulate the introduction (importation, interstate movement, or release into the environment) of genetically engineered organisms and products for two reasons. The regulations as presently written provide no way for the public to determine whether or not a genetically engineered organism or product would be deemed a "regulated article." Secondly, the data that is called for in a permit application under 7 CFR 330.200 would not provide APHIS with sufficient information to make a determination on the plant pest status of certain genetically engineered organisms or products. In short, APHIS determined that its existing regulations could not be readily amended to include the data elements that are needed to adequately regulate the introduction of genetically engineered organisms, and that separate regulations for genetically engineered organisms are required.

APHIS is not treating genetically engineered organisms and products which are plant pests or for which there is reason to believe are plant pests differently than so-called "established" plant pests or naturally occurring organisms which there is reason to believe are plant pests. In both cases, a permit must be obtained from APHIS prior to importation and interstate movement. In the case of certain genetically engineered organisms, APHIS has determined that the release

into the environment of certain genetically engineered organisms is tantamount to the introduction of a new organism. Further, living organisms do not acknowledge State lines. Therefore, a permit must be obtained from APHIS prior to release into the environment.

Comments on the Scope of the Proposed Regulations

3. Some commenters expressing support for APHIS' approach also expressed concern that the proposed rule was too broad and inclusive and needed modification to be practicable. Some commenters indicated that the proposed regulations would cause APHIS to be overwhelmed with applications for permits. Many commenters expressed the view that APHIS should have the ability to exclude certain products or classes of products from the regulations as experience indicates certain exemptions are justified.

APHIS agrees with commenters expressing the view that the proposed regulations were too broad and inclusive and has made several revisions to narrow the scope of the regulations.

As a means of eliminating the need for a "responsible person" to submit a new application for a limited permit for the interstate movement of a regulated article between contained facilities each time the person seeks to move the article interstate, APHIS has added provisions in § 340.3(c)(1) that would allow such movement to be made under the provisions of a single limited permit, which would be valid for one year. Such a permit could be renewed thereafter, if appropriate. This change should significantly eliminate the number of applications APHIS will have to process, and significantly reduce the number of applications that would have to be submitted. (See paragraph 32.) Further, as discussed in more detail in paragraphs 11, 16, and 19, APHIS has amended the definitions of "organism", and "regulated article", as well as the list of organisms in § 340.2. These changes narrow the scope of the final rule.

In addition, in order to facilitate the addition or removal of certain genera, species, or subspecies of organisms on the list in § 340.2, APHIS has included provisions in §340.4 of the final rule for a person to submit a petition to amend the list of organisms. (See paragraph 42.)

Comments Requesting that APHIS Not Regulate Research

4. Sixty-eight comments were received from academic researchers and/or institutions expressing opposition to APHIS' regulation of the introduction (importation, interstate movement, or release into the environment) of regulated articles. The majority of the commenters argued that this amounts to the regulation of research and that biotechnology research can be regulated by the research community itself using institutional biosafety committees and the USDA Guidelines that were set forth in the Advanced Notice of Proposed USDA Guidelines for Biotechnology Research. (See 51 FR 23367–23393) These commenters argued that a clear distinction exists between research and product development, and that APHIS should regulate only when a product is involved.

APHIS disagrees with those commenters that believe that the agency is regulating research. APHIS believes that the regulation of the introduction of certain genetically engineered organisms does not amount to regulation of research, but rather regulation of movement and release into the environment of a regulated article. The final rule does not attempt to prescribe what a person can or cannot do in a laboratory or contained greenhouse, but rather, under what conditions a regulated article can be moved or released. It should be noted that a person does not become subject to these regulations until the person seeks to *introduce* genetically engineered organisms. Thus, APHIS does not believe that the final rule is an attempt to regulate research.

APHIS also disagrees with the comments that argued that APHIS should only become involved when a "product" is involved; there is no statutory limitation in the FPPA or PQA for APHIS to regulate in such a manner. APHIS' statutory responsibility is to take those measures necessary to prevent the introduction into the United States of "plant pests."

Comments on Definitions (§ 340.1)

The definitions of key words in proposed Part 340 collectively generated the largest number of comments on a single section. Comments on the individual definitions and APHIS' response are presented in alphabetical order.

Certificate of Exemption

5. No change has been made in this definition, but the name has been changed to "courtesy permit." For a discussion of the comments and explanation of the rationale for the change see paragraph 34.

Classical Genetics

6. The six comments on this definition generally indicated that it should have included such processes as protoplast, cell, and embryo fusion, and mutagenesis, because such processes have traditionally been associated with classical genetics techniques. APHIS agrees with this assessment, and has revised the definition of "genetic engineering" to exclude reference to classical genetics as well as protoplast, cell, and embryo fusion, and mutagenesis. An examination of the literature describing the techniques used in genetics prior to the introduction of recombinant DNA technology finds that many techniques other than interspecific crosses have been in common use. The transfer of genetic traits by methods such as protoplast, cell, and embryo fusion, and mutagenesis has been an accepted part of genetics for some years prior to the development of various recombinant DNA technologies for the movement of genes. It would thus seem that the techniques in question should properly be included as a part of classical genetics, and excluded from the definition of "genetic engineering."

As a result of the change in the definition of "genetic engineering" to exclude reference to classical genetics, the definition of "classical genetics" has been deleted.

Genetic Engineering

7. The twenty-three comments on this definition generally expressed the view that such techniques as protoplast, cell, and embryo fusion, and mutagenesis encompass classical genetic processes.

For the reasons stated in paragraph 6 above on classical genetics, APHIS agrees with the comments that specific techniques such as protoplast, cell and embryo fusion, and mutagenesis should not be included in "genetic engineering." A new definition has been provided, as follows: "The genetic modification of organisms by recombinant DNA techniques." It should be noted that if a new organism or product was produced using classical genetic techniques, and the new organism was a plant pest, it would be regulated pursuant to a similar permit system found in 7 CFR 330.200.

Genetic Manipulation

8. Because the definition of genetic engineering has been modified and the term genetic manipulation is not used in the current definition of that term, APHIS has deleted the definition of genetic manipulation.

Introduce

9. Two comments were received on the definition of introduce. One commenter suggested that the definition be expanded to include "creation of a new organism or genotype" in addition to importation, interstate movement, and release into the environment. The commenter argued that the regulation of genetic engineering should begin with the development of the organism in the laboratory.

As previously stated, the final rule does not regulate laboratory research conducted at contained facilities. The responsibility at USDA for the oversight of biotechnology research is delegated to the Assistant Secretary for Science and Education. APHIS believes that if the laboratory is a contained facility, such regulation by APHIS would be unnecessary from the standpoint of preventing the introduction of genetically engineered organisms which are plant pests or which there is reason to believe are plant pests, and would, therefore, be beyond APHIS' statutory authority.

Another commenter expressed the view that the term introduce or introduction is somewhat redundant in that it overlaps with the definition of release into the environment, and that the term "release into the environment" should be dropped from the definition of introduce.

APHIS disagrees with the commenter that inclusion of the phrase "release into the environment" is redundant. Inclusion of the phrase "release into the environment" in the definition of introduce is meant to advise persons that APHIS is regulating the release into the environment of a regulated article, in addition to regulating interstate movement and importation. According to § 340.0(a) of the final rule, no person shall *introduce* (release into the environment) a regulated article unless the introduction is authorized by a permit and the introduction is in conformance with all of the applicable restrictions in this part.

Mutagen

10. Because the definition of genetic engineering has been modified and the term mutagen (mutagenesis) is not used in the current definition, APHIS is deleting the definition of mutagen.

Organism

11. The twelve comments on the definition as proposed expressed the view that it was too broad and should not include portions of organisms. APHIS agrees with these comments, and has deleted the language "and any part, copy, or analog thereof, including DNA, RNA, which is infectious."

The original definition of organism included these constituent parts, which are not included in any currently accepted concept of the nature of an organism. APHIS has reviewed this question, and determined that the separate constituent parts of an organism can not be regarded as "living", and do not present the same plant pest risk that the complete or intact organism may pose. This is not to deny that some components, such as DNA sequences, or organisms, which are plant peasts may not present some risk if they are incorporated into other organisms. However, it has been determined that it is possible to regulate the risk associated with these cell components without restoring to the inclusion of these non-living constituents as organisms. This is because a genetically engineered organism which contains these components from an organism listed in § 340.2 would be deemed a regulated article.

Prions have also been deleted from this definition, and from the list of organisms in § 340.2. The reasons for the deletion are explained in the discussion of the comments on § 340.2.

An amended definition has been adopted, as follows: "Any active, infective, or dormant stage of life form of an entity characterized as living, including vertebrate and invertebrate are animals, plants, bacteria, fungi, mycoplasmas, mycoplasma-like organisms, as well as entities such as viroids and viruses, or any entity characterized as living, related to the foregoing."

Pathogen

12. Because the definition of regulated article has been modified and the term pathogen (pathogenic) is not used in the current definition, APHIS is deleting the definition of pathogen.

Person/Responsible Person

13. One commenter noted that the proposed regulations contained definitions of the terms "person" and "responsible person." The commenter asked, "who is responsible, the individual or the individual and his corporation?

The final rule aplies to either a single person when acting alone when there is no corporation or other legal entity, or the person designated by the corporation or other legal entity to be the responsible person and the corporation or other legal entity, when the responsible person is acting within the scope of his or her employment of the corporation.

Plant

14. The majority of the seventeen commenters on this definition pointed out that it was not consistent with the classification of organisms in § 340.2 of the proposed regulations. These comments noted that the definition of plant included bacteria, but that bacteria was not listed under the Kingdom Plantae; bacteria had been listed under the Kingdom Monera. The commenters argued that bacteria should not be included in the definition of plant.

Other commenters objected to the inclusion of fungi and prokaryotic algae in the plant kingdom. One commenter noted that the inclusion of such organisms in the plant kingdom fails to consider the results of twenty-five years and more of comparative biochemistry concerned with the structure and function of cells.

APHIS agrees with these comments, and has accordingly deleted bacteria, fungi, and prokaryotic algae from the definition.

An amended definition has been adopted, as follows: Any living stage or form of any member of the plant kingdom including, but not limited to eukaryotic algae, mosses, club mosses, ferns, horsetails, liverworts, angiosperms, gymnosperms, and lichens (which contain algae) including any parts (e.g., pollen, seeds, cells, tubers, stems) thereof, and any cellular components (e.g., plasmids, ribosomes, etc.) thereof.

Plant Pest

15. Nine comments were received on the definition of plant pest. The commenters indicated that the definition was very broad and overly inclusive, that it included numerous examples of nonpathogenic organisms, and that it failed to adequately notify applicants of the characteristics or criteria to enable a determination of non-pest status.

APHIS acknowledges that the definition of plant pest is very broad. However, APHIS disagrees that the definition is overly inclusive, and the definition has been adopted as proposed. The definition of plant pest comes from the definition of plant pest found in the FPPA (7 U.S.C. 150aa *et seq.*). As discussed in response to paragraph 1, the definition of plant pest was deliberately made broad by Congress to include those organisms that might *later* be found to be injurious to plants. APHIS has determined that all of the types of organisms included in the definition of plant pest have been

known to directly or indirectly injure or cause either disease or damage in plants, or in plant parts, or in processed, manufactured, or other products of plants. APHIS believes that the definition of plant pest indicates to a person that an organism that does not have plant pest status would be one that does not directly or indirectly injure or cause disease or damage in any plants, or plant parts, or any processed, manufactured, or other products of plants.

Regulated Article

16. Thirty-four comments were received on the definition of regulated article. Fifteen of these comments expressed the opinion that the proposed definition of regulated article was too broad. Some commenters stated that as defined "regulated article" could be interpreted in a way that would include many organisms that the commenters did not consider to be plant pests. In many cases commenters identified specific organisms that they stated were not plant pests, and thus should not be subject to regulation. Other commenters stated that the inclusion of non-living components of plant pest organisms should not be included as a regulated article.

APHIS agrees with these comments, and has modified the final rule in several respects to narrow the scope of regulated article.

First, the list of organisms in § 304.2, which would cause a genetically engineered organism or product to be deemed a "regulated article," has been modified, by deleting certain organisms and by clearly stating how the list is to be utilized. Secondly, the definition of organism has been modified to exclude non-living components or parts of organisms listed in § 340.2. Lastly, APHIS has modified the definition of regulated article to indicate that an organism which belongs to any genera or taxa designated in § 340.2 must meet the definition of "plant pest" or be an unclassified organism and/or an organism whose classification is unknown, or contain such an organism, or any other organism which the Deputy Administrator determines is a plant pest or has reason to believe is a plant pest. The change is significant since it would affect whether the genetically modified organism is deemed a regulated article.

The following new definition has been adopted: "Any organism which has been altered or produced through genetic engineering if the donor organism(s), recipient organism(s), or vector or vector agent(s) belongs to a genera or taxa designated in § 340.2 of this part and meets the definition of plant pest, or is an unclassified organism and/or an organism whose classification is unknown, or any product which contains such an organism, or any other organism or product altered or produced through genetic engineering which the Deputy Administrator determines is a plant pest or has reason to believe is a plant pest. Excluded are recipient microorganisms which are not plant pests and which have resulted from the addition of genetic material from a donor organism where the material is well characterized and contains only non-coding regulatory regions." (The rationale for the exclusion for certain microorganisms is discussed in paragraph 18).

Several commenters suggested that APHIS add procedures which would provide for the exclusion of organisms altered by recombinant methods, which are not plant pests.

APHIS agrees with the commenters and believes that the petition procedure discussed in paragraph 42 is responsive to the commenters' concerns.

Several commenters suggested that the delegation of authority to the Deputy Administrator to designate an organism as a "regulated article" based upon "reason to believe" was a standardless delegation of authority.

APHIS disagrees with these comments. The provision for the Deputy Administrator to designate an organism as a regulated article based upon "reason to believe" has been retained.

Section 105 of the FPPA grants the emergency authority to regulate an organism, where there is reason to believe it is a plant pest or in order to prevent the dissemination into the United States of a plant pest. With regard to conventional plant pests, the Deputy Administrator of APHIS has used this authority when it was necessary to regulate an organism that was likely to be a plant pest and was not otherwise specified because of plant pest risk as a regulated article. "Reason to believe" is based on scientific information, such as taxonomic association and biological data. This standard is an objective, not subjective one.

An example of the use of "reason to believe" occurred in 1982 when a previously undescribed disease was observed on lime trees in Southwestern Mexico. APHIS regulations prohibit entry of citrus fruit from countries where citrus canker is present. Initially it proved difficult to make a specific identification of the pathogen associated with this disease. Because the pathogen belonged to the bacterial genus *Xanthomonas*, and because the disease caused lesions on citrus leaves, it was determined that there was reason to believe that the disease in Mexico was citrus canker, and that the organism associated with the disease was a plant pest. This resulted in various actions being taken to prevent the introduction of the disease into the United States. Subsequent research conducted in the United States and Mexico confirmed that the organism causing the disease in Mexico was *Xanthomonas campestris* pv. *citri*, a regulated plant pest.

The decision by APHIS to designate an organism as a regulated article based upon the "reason to believe" provision will be an objective, informed decision made after review of substantive information regarding demonstrated plant pest risks. It will not be an arbitrary one.

Release into the Environment

17. Of the eighteen comments on this definition, the largest number concerned the fact that the proposed definition relied only on physical containment, and ignored biological containment. Other commenters requested a definition of contained greenhouse, expressed approval of the definition, or suggested various approaches to the evaluation of containment.

One commenter indicated that a general understanding of this term has been that release occurs if an experiment does not take place within the confines of a laboratory where the organism can be physically contained and remedial measures taken in the event of an accident. APHIS agrees with the commenter and believes that the concept of release should be based on the concept of a release from the confines of physical containment. One commenter suggested regulating release only if there is a deleterious alteration of the environment. APHIS believes that what is "deleterious" to the environment is too subjective a standard. USDA believes that a release from physical confinement is more understandable and a practical standard.

APHIS has adopted the definition of "release into the environment" as originally proposed. APHIS believes biological and greenhouse containment are key issues in discussions concerning this definition. While the definition of release into the environment does not formally include the concept of biological containment (i.e. the inability of the regulated article to survive outside specific environmental or host conditions) APHIS believes that biological containment is one important factor in determining the prescribed level of physical containment. Since greater scrutiny is needed to judge the

efficacy of biological containment than physical containment, APHIS does not believe a claim of biological containment is sufficient to exempt a party from the requirement of having to obtain a permit for the release of a regulated article into the environment. In APHIS' review of permit applications, determinations of the adequacy of biological containment will vary according to the subject organism and quality of scientific evidence, and will be made on a case-by-case basis. In its review process, APHIS will allow biological containment in lieu of physical containment if it determines this will prevent the dissemination and establishment of plant pests in the United States.

APHIS does not believe it is practical to try to define what is a "contained greenhouse", since what is considered adequate physical containment will vary according to the subject organism, and that such determination must be made on a case-by-case basis. For example, physical containment will depend upon combinations of laboratory practices, containment equipment, and special laboratory design. APHIS will review the data submitted in a permit application concerning the description of a "contained facility" in determining whether the contained facility is adequate to prevent the release into the environment of the genetically engineered organism. A person should consult the NIH Guidelines at 51 FR 16958, "Appendix G—Physical Containment", for guidance on what are appropriate methods of physical containment.

APHIS acknowledges that the Biotechnology Science Coordinating Committee, the National Institutes of Health, and the Environmental Protection Agency are all attempting to define what constitutes release into the environment. If a uniform definition is adopted by these groups APHIS shall consider proposing to amend the final rule to incorporate such a definition.

Well-Characterized and Contains Only Non-Coding Regulatory Regions; Exclusion for Certain Microorganisms

18. A total of nineteen comments were received on this exclusion from the definition of regulated article. It was proposed to exclude microorganisms that are "non-pathogenic, non-infectious, and otherwise not plant pests that have resulted from the addition of genetic material that is well characterized and contains only non-coding regulatory regions."

The comments on this provision ranged from doubt about the scientific soundness of such an exclusion to requests that the exclusion be retained and expanded to include other non-coding regions.

Based upon a review of these comments and the scientific literature, it was determined that there is no evidence that the addition of well-characterized non-coding regulatory genes from a prokaryote or eukaryote to a prokaryote has resulted in the *de novo* appearance of a gene product which did not exist prior to the acquisition of the new genetic material. The scientific literature indicates that regulatory, transcriptional or translational ambiguities are not found in the transfer of well characterized genetic material between prokaryotes, or from eurkaryote to prokaryote, but do occur in prokaryote to eukaryote transfers.

One commenter indicated that some pathogens have the capacity to increase in virulence or change in host range in response to a single gene mutation and that some avirulent derivatives of pathogens have the potential to regain pathogenicity by mutation. The commenter stated that such microorganisms need to be examined before release to the environment. However, the commenter noted that a distinction must be made between a derivative of a pathogen, potentially harmful, and a nonpathogenic organism bearing an introduced gene from a pathogen.

APHIS agrees with the commenter that if the recipient microorganism is not a pathogen or a plant pest the microorganism after the addition of genetic material which is well characterized and contains only non-coding regulatory regions, will also not be a pathogen or a plant pest. Therefore, as adopted in the final rule, recipient microorganisms which are not plant pests and which have resulted from the addition of genetic material from a donor organism which is "well characterized and contains only non-coding regulatory regions" are not regulated articles. However, if the recipient microorganism was a plant pest, the addition of such genetic material would not lessen the fact that the recipient microorganisms presents a plant pest risk, and as such, would be a regulated article.

One commenter suggested that other non-coding regions such as ribosomal RNAs, tRNAs, and RNAs as required for replication also be exempted from review because these do not encode proteins.

APHIS disagrees with the commenter. The reason that the exclusion cannot be currently extended to other specific non-coding, non-regulatory regions such as ribosomal RNAs, tRNAs, and RNAs required for replication is that most of these aforementioned genes are part of a complex interdependent system of operons. These operons generally contain a very wide array of disconnected functions which interact with other related and unrelated operons to poroduce critical non-structural proteins which are needed in equimolar amounts. Therefore, the consequences of the genetic transfer of this level of genetic complexity, even between bacteria, are not well understood, and could have unforeseen results. APHIS believes there may be significant potential plant pest problems present in this type of gene transfer if the exclusion were more extensive.

Commenters argued that "knowing the exact nucleotide base sequence of a regulatory element or the transfer of non-coding regulatory sequences" does not allow one to predict the biological role of this element when placed in another organism.

APHIS disagrees with the commenters. In the case of (the transfer between prokaryotes or eukaryotes to prokaryotes) "well-characterized non-coding regulatory genes," there is absolute predictability of the biological role of these genetic elements, and it can only execute its original predetermined regulatory function.

One commenter argued that it did not make sense to exempt only non-coding sequences. The commenter indicated that almost all "coding" sequences should be given exempt status such as cloned sequences. Another commenter noted that there are many well-characterized *coding* regions, which have no known or expected hazard to health or the environment, which should also be excluded.

APHIS disagrees with the commenters who believe that microorganisms which have resulted from the addition of genetic material which contains coding regions should also be exempt.

With the exclusion for microorganisms as modified in the final rule, it is impossible for the benign recipient to acquire new structural genes or gene products. The exclusion of well-characterized *coding* genes could result in the acquisition of deleterious new or novel gene products in a benign recipient. Therefore, the commenter's suggestion has not been accepted.

One commenter suggested modifying the definition of well-characterized and contains only non-coding regulatory regions. The commenter suggested modifying the definition by eliminating section (c) of the definition because it is redundant to sections (a) and (b) and by revising section (c) to indicate that the

transferred genetic material must be non-coding in the new host microorganism.

The modification of the definition as suggested by the commenter is unnecessary. There is no evidence to support the commenter's suggestions that a non-coding gene from a donor microorganism could be a coding gene in a recipient microorganism.

One commenter noted that the precision in molecular biological experiments must not be confused with precision in predicting their ecological consequences. The commenter indicated that this alteration of the organism as a whole or its relationship to other organisms in the environment would be unknown, and that such regulatory changes in the organism can create "novel" organisms which are eminently suited to disrupt ecological niches.

APHIS disagrees with the commenter's assertion that a novel or new organism would be created as a result of the addition of genetic material that contains only well-characterized non-coding regulatory regions. APHIS believes that in this specific case, the absolute understanding of the underlying molecular genetic mechanism is the sole determinant in being able to predict the plant pest characteristics of the modified microorganism. It is APHIS' position that when donor genetic material from an organism which is well characterized and contains only non-coding regulatory regions is placed into a benign receipient microorganism, the recipient will not acquire plant pest traits or become a plant pest.

Furthermore, APHIS believes that the genetic manipulations which create such a microorganism would be similar to the same type of genetic manipulations which occur in nature through mutation and natural selection (the higher or lower production of a pre-existing structural gene) or through classical breeding techniques which man has been using for the past 10,000 years. In short, such a modified microorganism would be so close to ones produced by natural mutational events or selective breeding programs (classical techniques) that there is no reason to believe that such a microorganism would be a plant pest. Furthermore, APHIS believes that the possibililty of harmful ecological consequences would not be considered significant.

Comments Concerning the List of Organisms in (§ 340.2)

19. Fifty-two comments were received on the list of organisms in § 340.2, which are or may contain known plant pests or for which the Department has reason to believe are plant pests. The commenters generally expressed the view that the list was overly broad and inclusive, and that only organisms known to be plant pests should be included. Other comments were received which objected to the inclusion of various taxa or groups of organisms which commenters argued were not plant pests.

APHIS agrees with those commenters that believe that the list was overly broad and inclusive, and agrees that only organisms from any genera or taxa listed in § 340.2 and that meet the definition of "plant pest" should be regulated. APHIS has made several revisions in the final rule to implement this change.

APHIS has revised the prefatory language in § 340.2 of the rule, which explains how to determine if an organism classified in an unlisted taxa which comes under a higher listed taxa would be deemed to be a plant pest. Further, APHIS has amended the definition of "regulated article" to indicate that an organism which belongs to any genera or taxa designated in § 340.2 must meet the definition of plant pest before it is deemed a regulated article. In addition, APHIS has added the following new footnote 4 to § 340.2 which explains the conditions that must be met before an organism is deemed a plant pest.

> An organism belonging to any taxa contained within any listed genera or taxa is only considered a plant pest if the organism "can directly or indirectly injure, cause disease, or damage in any plants or parts thereof, or any processed, manufactured, or other products of plants." Thus, a particular unlisted species within a listed genus would be deemed a plant pest for purposes of § 340.2 if the scienfitic literature refers to the organism as a cause of direct or indirect injury, disease, or damage to any plants, plant parts, or products of plants. (If there is any question concerning the plant pest status of an organism belonging to any listed genera or taxa, the person proposing to introduce the organism in question should consult with APHIS to determine if the organism is subject to regulation.)

As the language in the footnote indicates, an organism is not necessarily considered to be a plant pest, and thus subject to regulation, simply because the organism is a member of any listed genera or taxa. The list of genera or taxa in § 340.2 is presented as a list of all taxa which may contain plant pests. Within any listed genus or taxon, the organisms subject to regulation as plant pests are only those organisms that meet the statutory definition of plant pest (i.e., causes injury, disease, or damage in plants, plant parts, or products of plants). In most cases, organisms that are known to be plant pests will be referred to or discussed in the scientific literature. APHIS' reveiew of the scientific literature involves a search of the relevant agricultural data bases which include, but are not limited to Agricola, Biosis Previews, Cab Astracts, Agris International, Life Sciences Collection, and Supertech.

In addition to all those species for which the plant pest status can be determined by reference to the scientific literature, there will be certain other species or organisms for which the plant pest status will be unclear, due to such things as problems with taxonomic designation. If there is any question concerning the plant pest status of any species or organism belonging to any listed genera or taxa, the person proposing to introduce the organism in question should consult with APHIS to determine if the organism is subject to regulation.

This procedure for determining if an organism is subject to regulation under Part 340 is the same type of determination that must be made when a person proposes to import or move interstate non-genetically engineered organisms that may be subject to regulations promulgated under the FPPA and PQA and found in 7 CFR 330.200.

Lastly, for the reasons discussed in the proposed regulations of June 26, 1986, published in the **Federal Register** at 51 FR 23355, unclassified organisms and/or organisms whose classification is unknown are also included in § 340.2.

20. Many comments contained statements that various groups of organisms listed in § 340.2 should be removed from the list because these organisms are not plant pests. The groups of organisms most frequently mentioned in these comments were the bacterial genera *Rhizobium* and *Bradyrhizobium*, and various groups of mycorrhizal fungi.

However, those commenters did not present sufficient data to justify excluding *Rhizobium*, *Bradyrhizobium*, and various groups of mycorrhizal fungi from the list of organisms in § 340.2.

These taxa or groups of organisms contain organisms that are able to infect plants and survive at the expense of the host plant. The interaction between the infecting organism and the host plant is usually regarded as a symbiotic one, with the plant benefiting from the increased availability of essential nutrients. However, because the groups of organisms in question contain species that are well adapted to infecting and surviving in their plant hosts, it was determined necessary to retain these groups on the list in § 340.2. It should be noted that new § 340.4 provides the

procedures for amending the list of organisms in § 340.2.

The list in § 340.2 is composed of all those genera or taxa which may contain organisms that are plant pests. Within any taxonomic series, the lowest unit of classification actually listed is the group which is composed of, or includes, organisms that are regulated. Organisms belonging to all lower taxa contained within the group that is listed are included as organisms which are or may contain plant pests, if they otherwise meet the definition of plant pest as explained above. For example, when the lowest unit listed of a particular series is an order, then members of all families, genera, and species belonging to that order are meant to be included as organisms which are or may contain plant pests, if such organisms meet the statutory criteria for being a plant pest.

In a second example, if an order is included on the list, but is followed by a listing of one or more of the families belonging to that order, then only the members (all genera and species) of those families listed that meet the definition of plant pest are intended to be regulated. Members of any other families within that order that are not listed are not regulated.

It is crucial to note that an organism of any genera or taxa listed in § 340.2 is significant only when the organism meets the definition of a plant pest and two additional conditions are met. The organism must have been modified in some way through the process of genetic engineering (as defined in § 340.1), and there must be the intention to import the organism, to move the organism interstate, or to release the organism in the environment. If an organism is listed in § 340.2 but does not meet both the condition of movement or release to the environment, and of being modified by a process of genetic engineering, it is not regulated under Part 340.

Finally, it should be noted that all other regulations which affect the importation or movement of an organism which is a plant pest or could harbor a plant pest remain in effect regardless of the status of the organism under Part 340. To remind persons of this fact the following language has been added to footnote 1.

Under regulations promulgated in 7 CFR "Subpart-Nursery Stock" a permit is required for the importation of certain classes of nursery stock whether genetically engineered or not. Thus, a person should consult those regulations prior to the importation of any nursery stock.

21. Several comments were received which contained statements that the list of organisms in § 340.2 includes groups which have an incorrect taxonomic designation or that the list is incomplete with regard to the Kingdom Monera. In response to these comments, APHIS scientists reviewed the list of organisms and determined that certain changes were appropriate.

Taxonomy is a dynamic branch of the biological sciences, and is particularly so when the organisms being classified are in taxa or genera that have only recently been identified. After consulting the current literature, the following changes are made in the list of organisms in § 340.2.

Prions have been removed from the list of organisms which are or contain plant pests in § 340.2. There is no evidence at the present time that any prion is associated with a plant pest. All of the prions identified to date have been associated with diseases in animals. If in the future a prion should be found to be associated with a plant pest or suspected of causing a plant disease that organism could be added to the list.

The group of organisms previously referred to as Rickettsial-like organisms associated with plant disease are correctly described as gram-negative xylem-limited bacteria associated with plant diseases. Examples of diseases associated with these pathogens are Pierce's disease of grape and phony disease of peach.

Some organisms previously thought to be mycoplasma-like organisms (MLO) are in fact true bacteria and should be correctly listed as gram-negative phloem-limited bacteria associated with plant diseases. Examples of organisms in this group are the bacteria which are associated with citrus greening disease and clover club leaf disease.

Concerning those comments that the list is incomplete, APHIS is conducting a further examination of the plant pest status of members of various taxa in the Kingdom Monera to determine if additional taxa should be added to the list or if a more specific and exact listing can be proposed for members of some of the genera listed. If APHIS' research indicates additional taxa should be included in § 340.2 or if the list should be made more specific, a document shall be published in the **Federal Register** proposing to add such taxa or otherwise to revise the list.

Items Exempt From Regulation and Procedures for Removing Organisms From the List

22. Thirty-nine comments contained statements objecting to the inclusion of various organisms or portions or constituents of organisms as plant pests. Many comments contained statements that various portions (plasmids, DNA fragments, etc.) of plant pests be exempted from regulation if these components are "non-pathogenic." Some comments contained the suggestion that "disabled" pathogens not be regulated as plant pests.

In response to these comments, APHIS has modified the definition of organism so that this definition as amended now excludes parts or components of organisms listed in § 340.2. As previously stated, the definition proposed by APHIS for organism has been revised, and now excludes non-living components of living organisms. The reasons for this change have been previously explained in paragraph 11. Any organism containing these parts or components would be regulated if the parts or components were incorporated into the organism through the process of genetic engineering (as defined in § 340.1).

The movement of killed organisms that are included in the list of organisms in § 340.2 is not regulated. The movement of non-living components (including, but not limited to, DNA, RNA, and plasmids) of organisms included on the list of organisms in 340.2 is not regulated. However, if certain components of regulated plant pest organisms, including DNA and RNA sequences, organelles, and plasmids retain their identity and are incorporated as part of an organism, then the introduction of this organism would be regulated under Part 340. It was not APHIS' intent to imply that all species, biotypes, lines, or races of the taxa listed in proposed § 340.2 were plant pests. For example, *Erwinia caritovora* is a bacterial plant pathogen causing soft rot diseases. All members of the genus *Erwinia* are included in the list of organisms in § 340.2. If this organism is modified by the process of genetic engineering, the modified bacteria are subject to regulation under Part 340. If genetically engineered bacteria of this species are killed, then the killed cells and/or any parts or components (including DNA and RNA sequences) that might be extracted from them are not subject to regulation. Should any genetic material from these killed bacteria, including DNA and RNA or other component as noted at the beginning of § 340.2, be introduced into any living organism by the process of genetic engineering, then that organism would be subject to regulation under Part 340.

23. Many comments expressed concern about the inclusion of certain organisms as plant pests. In many cases these organisms are members of a group containing many plant pests, such as the

bacterial genera *Pseudomonas, Xanthomonas,* and *Erwinia.* Commenters frequently requested that specific organisms belonging to these groups which were believed not to be plant pests be removed from the list. These requests were based on conclusions and opinions, rather than any complete submission of factual material.

Organisms or groups of organisms are considered to be on the list of organisms in § 340.2 if they meet the statutory definition of plant pest. To determine if a particular species is a plant pest, a person should consult the scientific literature or APHIS to determine if the species has plant pest characteristics, as discussed in footnote 4 above.

APHIS recognizes that there may be instances when it may be appropriate to remove specific organisms from the list because they do not appear to be plant pests. Provisions for submitting a petition to remove a specific organism or group of organisms from the list are discussed in § 340.4. Any person may submit a petition to remove an organism or group of organisms from the list in § 340.2. The petition should include full and factual information supporting the request for removal.

Comments on Permits for the Introduction of a Regulated Article (§ 340.3)

Numerous comments were received on § 340.3 of the regulations pertaining to the issuance of a permit for the introduction of a regulated article. The comments pertained to: The need for additional provisions to protect confidential business information; the 180 day review period for processing permit applications; data required in applications; the need for state involvement in the review process; certificate of exemption/courtesy permits; the need for additional safeguards to be added to the final rule; and the standard permit conditions.

Confidential Business Information

24. One commenter suggested that it would be beneficial if the regulations contained specific instructions to an applicant in order to identify and protect confidential business information (CBI).

APHIS agrees with the commenter, and has revised § 340.3(a) of the final rule to include provisions advising applicants how CBI should be designated and submitted. Under § 340.3(a) the responsible person should submit two copies of a permit application. If there is CBI information contained in the application, then each page of the application containing such information should be marked "CBI Copy." In addition, those portions of the application deemed CBI should be so designated. The second copy of the application should have all such CBI deleted and should be marked on each page of the application where CBI was deleted "CBI Deleted." If an application does not contain CBI, then the first page of both copies of the application should be marked "No CBI."

APHIS believes that such procedures will readily identify those applications which contain CBI and will specifically designate those portions which the applicant feels must be protected. In addition, by requiring that an applicant submit a second copy of an application with CBI deleted, this will provide APHIS with a copy of the application which can be routinely sent to the State departments of agriculture for their notification, and review of the application and to requesting public interest groups without concern that CBI data might not be properly safeguarded.

25. Other comments acknowledged that the APHIS policy statement on CBI (See 50 FR 38561–38563, September 23, 1985) was an important element in USDA's regulatory program, but that it is important that these same procedures apply equally to any individual outside of APHIS, at other USDA agencies, that handle CBI in connection with an APHIS action.

APHIS agrees with these commenters. It should be noted that if CBI is made available to other government employees at other USDA agencies, such employees are prohibited under the Trade Secrets Act (18 U.S.C. 1905 *et seq.*) from disclosing such information. The Trade Secrets Act imposes serious criminal penalties for violating its provisions, and those government employees handling CBI are aware of the need to safeguard CBI. In addition, the USDA is drafting CBI materials specifically for the Office of Agricultural Biotechnology (OAB) which is the office which coordinates biotechnology research for the Science and Education Administration. These CBI materials will include a "Guide for the Control of Confidential Business Information Relating to Proposals for Approval of Biotechnology Research," and a "Commitment to Protect Confidential Business Information Form," to be signed by any person who receives CBI in an official capacity through the OAB.

180 Day Review Period for Processing Permit Applications

26. Fifty-three comments were received on the proposed provisions of the regulations which provided for a 180 day period for the review of permit applications.

The comments ranged from the observation that 180 days was "too long" to more strongly worded statements that such a delay was "unreasonable, unacceptable, and untenable." Approximately half the commenters (25) on the 180 day review period suggested a shorter review period and/or structured review procedures.

One commenter suggested that the review period should be no longer than 60 days. Other commenters expressed the view that applications should be reviewed for their completeness within 45 days, with a final decision being made in 90 days. The commenters suggested that for complicated applications, there could be a provision for an extended review of up to 120 days if the applicant and APHIS so agreed.

Most commenters suggested that a 90 day review period would be reasonable and in accord with the processing time for a pre-manufacturing notification (PMN) submitted to EPA under the Toxic Substances Control Act.

Nearly a quarter of the comments on this issue objected to the fact that in the proposed review period, APHIS did not distinguish between the different types of permits people would be requesting. These comments expressed the view that release into the environment and interstate movement or importation were separate activities and should be treated as such. One commenter suggested that 14 days would be a more appropriate period for the issuance of a movement permit.

APHIS agrees with the commenters that believe the proposed 180-day review period should be reduced and that the review period should vary according to the type of permit being issued.

APHIS has adopted a 120-day period, rather than a 60-day or 90-day time period time to review an application for release into the environment for two reasons. First, before APHIS issues a permit for release, a thorough and comprehensive environmental assessment must be prepared. Because of the doctrine of "Functional Equivalency," the EPA, which by statute must review a PMN within 90 days from receipt of a complete PMN, does not have to prepare an environmental assessment during the review period. APHIS has determined it necessary to prepare environmental assessments pursuant to the National Environmental Policy Act (NEPA) prior to issuance of a permit for release into the environment. Therefore, APHIS believes that it needs 120 days to review a permit application for environmental release. In the event an environmental impact statement

(EIS) has to be prepared, the review period would be extended. Secondly, the final rule, as revised, provides that before APHIS issues a permit for environmental release it shall submit a copy of the application for State notification and review. Because of the necessity to coordinate and consult with the State where release shall occur, APHIS believes it's advisable to allow for more than a 60-day review period.

It should be noted that 120 days would be the *maximum* time APHIS would need to review a complete application for environmental release that does not involve the preparation of an EIS, and is the period an applicant should use for planning purposes. APHIS shall make every attempt to complete its final review in less than 120 days. One hundred and twenty days will also allow APHIS to schedule an inspection of the site where the release is to occur prior to the issuance of a permit, as provided for in new § 340.3(d). It should be further noted that § 340.3(b) of the final rule is being revised to indicate that APHIS will complete its initial review within 30 days of receipt and shall advise the responsible individual if any additional information is needed within 30 days of receipt of the application.

APHIS disagrees with the commenter who suggested that a 14-day review period would be a sufficient period to process an application for a permit for interstate movement. As explained in more detail below, because of the need to consult with State officials and possibly to conduct an inspection of the contained facility where the regulated article is to be stored, APHIS has amended the final rule in § 340.3(b) to provide for a 60-day review period. For the review of applications for interstate movement or importation into a contained facility, APHIS will, however, complete its initial review within 15 days of receipt and advise the responsible individual if additional information is required. It should also be noted that 60 days is the *maximum* time USDA will take to review a complete permit application for interstate movement or importation to a contained facility and is the period an applicant should use for planning purposes. In all possible cases, APHIS will try to complete its final review in less than 60 days.

Data Required in an Application

27. One commenter noted that a significant amount of genetic information is required in advance of approval of experimentation. The commenter noted that the level of documentation required by these regulations is usually generated as a result of the research.

As revised, the final rule calls for less data in an application for a limited permit for interstate movement or importation than must be submitted in an application for environmental release. APHIS believes that the data that is required for an application for environmental release should have been obtained before release is requested, and can be obtained from the scientific literature and/or by doing research within a contained facility.

28. One commenter indicated that there is no need for APHIS to require extensive documentation on proposed experiments after the work has been approved elsewhere. The commenter suggested that documentation of other approvals, a brief description of the materials, and a statement of the level of containment should be enough to quickly be granted a permit to receive cultures that are to be used in a contained facility.

APHIS believes that the provisions of the final rule which provide for the issuance of a limited permit for interstate movement of a regulated article into a contained facility address many of the concerns raised by the commenter. As revised, APHIS will issue limited permits for interstate movement in less time by requiring less data than a permit for release into the environment.

Other commenters argued that the proposed regulations were too restrictive as they pertained to the interstate movement of low risk genetically engineered organisms. One commenter indicated that prior approval should not have to be obtained for the interstate movement of organisms shipped between laboratories which comply with NIH containment guidelines. The commenter argued that in such situations a simple notification to USDA pertaining to the movement of such organisms would suffice. These commenters did not present specific examples of the types of organisms and under what conditions certain organisms would not pose a risk of plant pest dissemination.

It appears that there are circumstances under which certain genetically engineered organisms such as those employed as "libraries" or biological containers can be moved interstate between contained facilities under conditions which would not present a risk of plant pest dissemination, and for which no permit would be required. It appears that such organisms are *E. coli* K–12 or other bacterial strains with similar characteristics, containing genetic material from any plant pest, except when such genetic material contains genes which code for: substances toxic to plants and organisms in the agro-ecosystem; or substances influencing plant growth; or genes for disease susceptability; or substances or characteristics associated with resistance to pesticides.

Likewise, a unique synthetic nucleotide sequence added as a "marker" for identification of a specific microorganism, when constructed to not constitute an open reading frame in any register, also poses no risk and is completely benign.

In accordance with notice provisions of the Administrative Procedure Act, APHIS intends to publish a proposed rule in the **Federal Register** within the next 30 days which would amend Part 340 to include these exclusions.

The fact that APHIS intends to publish a document which would propose to make certain changes to the final rule, shortly after its publication, reflects APHIS' belief that the regulations should be malleable and keep pace with the scientific "state of the art." It is anticipated that the APHIS regulations will parallel the NIH Guidelines in the sense that these regulations will continue to evolve and be updated as experience is gained and more information becomes available on the plant pest risk presented by the introduction of genetically engineered organisms. In short, APHIS believes that when it can be shown that the interstate movement between contained facilities of certain organisms does not present a risk of plant pest introduction or dissemination, then the regulations should be amended to exclude such movement from the permit requirements.

Lastly, to facilitate receipt of current data relative to the plant pest status of certain organisms from outside sources, APHIS has included the petition process in § 340.4 of the final rule.

Permit Processing Procedures

29. Section 340.3(b) of the final rule is a new section and is entitled, "Permit for release into the environment." If an application for environmental release is complete when received, APHIS shall notify the responsible individual of the date of receipt of the application for purposes of advising the applicant when the 120 day review period commenced. If an application is not complete, APHIS will advise the responsible individual what additional information must be submitted and shall commence the 120 day review period upon the receipt of the additional information, assuming the

additional data requested is adequate. When it is determined that an application is complete, APHIS shall submit to the State department of agriculture where the release is planned, a copy of its initial review and a copy of the application marked "CBI Deleted" or "No CBI" for State notification and review. Pursuant to APHIS' CBI Policy Statement of September 23, 1985 (50 FR 38561–38563), the requirements of Section VIII(b) must be complied with by a State prior to disclosure by APHIS to the State of CBI material. This section requires that the request be for an official purpose; that the requester have security procedures equivalent to those of APHIS; and that the person submitting the material determined by APHIS to be CBI be notified of the request prior to any disclosure.

An application for release into the environment must include the information required by § 340.3(b)(1)–(14). These are the same 14 data elements that appeared in the proposed regulations under § 340.3(a).

30. Section 340.3(c) of the final rule is a new section and is entitled, "Limited permits for the interstate movement or importation of a regulated article." This section provides for a 60 day review period with an initial review being performed by APHIS within 15 days of receipt of an application. Like an application for release into the environment, if an application is incomplete and additional information must be requested, APHIS will commence the 60 day review period upon receipt of the additional information. Section 340.3(c) of the final rule also provides that when APHIS determines that an application is complete, APHIS shall submit a copy of its initial review and the "CBI Deleted" or "No CBI" copy of the application to the State department of agriculture located in the State of destination of the regulated article, for State notification and review of the application.

State Involvement in the Review Process

31. Several comments were received from State departments of agriculture concerning the need for State involvement and participation when APHIS is deciding whether to issue a permit for release into the environment. A comment from the State of New Mexico indicated that notification of the State where release will be accomplished is necessary to minimize last minute complications. The State of California indicated that it has regulations that mandate certain review procedures prior to the release of certain genetically engineered organisms into the environment, and that APHIS' permit application for the introduction of genetically engineered organisms contains no provisions for State recommendations on the application. The State of North Carolina further indicated that the State where a person intends to release a regulated article should be given an opportunity to review the application, and that the State should be notified of any exemptions that may be granted, or if a permit is withdrawn.

APHIS agrees with these commenters that State notification and review of an application for the introduction of a regulated article is essential. To ensure that the affected State has been notified and has an opportunity to review a permit application for release or interstate movement or importation, APHIS has modified §§ 340.3(b) and (c) to include provisions that call for State notification and review of a permit application. These provisions which ensure State involvement and participation in the permitting process for genetically engineered organisms is totally consistent with existing procedures for the issuance of a permit for the movement of plant pests under 7 CFR 330.200. It is envisioned that State regulatory officials will play a significant role in providing site specific and other environmental and ecological data on the location where a genetically engineered organism is to be released, and otherwise assist in the enforcement of the Federal regulations, on a cooperative basis.

Provisions for the Issuance of a Single Permit for Multiple Interstate Movements

32. New § 340.3(c)(1) provides that the responsible person may apply for a single limited permit that would be valid for the interstate movement of multiple regulated articles moving between contained facilities in lieu of having to submit an application for each individual interstate movement. Such a limited permit for interstate movement would be valid for one year from the date of issuance. The purpose of this provision is to eliminate the need for a person to have to go to APHIS for approval each time the person proposes to ship a regulated article, when this information can be made available to APHIS in advance of the shipments, all at one time. APHIS has added provisions allowing for multiple shipments to multiple locations under a single limited permit in response to comments that it would be too burdensome to require a person to submit a new application for each new shipment. New § 340.3(c)(1) further provides that a limited permit for interstate movement of a regulated article shall only be valid for the movement of those regulated articles moving between those locations specified in the application. If a person seeks to move regulated articles other than those specified in the application or to locations other than those specified in the application, a supplemental application must be submitted to APHIS.

Section 340.3(c)(1) of the final rule further provides that the responsible person shipping a regulated article interstate shall keep records for one year demonstrating that the regulated article reached its intended destination. The purpose of this requirement is for the shipper of the regulated article and APHIS to be able to verify that the regulated article, in fact, reached its intended destination, and to provide the capacity to trace a regulated article in the event it is delivered to the wrong location. This provision can be satisfied when using the mail by sending a regulated article, "certified mail, return receipt requested," or by using a carrier that requires the consignee sign for the delivery. If a person does not use the mail or a carrier to deliver a regulated article, then the consignee should keep a log of when the regulated article is received, and a duplicate copy of the log should be maintained by the responsible individual. This section also requires that no person move a regulated article interstate unless the number of the limited permit appears on the outside of the shipping container.

A person must submit data required by §§340.3(b) (1), (2), (4), (6), (7), (9), and (11–14) in an application for a permit for multiple interstate movements. This is the same information that would have to be submitted in an application for a limited permit for a single interstate movement. This data would provide APHIS with necessary information about the nature of the regulated article(s), the method of movement, and how it shall be contained during movement and at the article's destination(s). Such information will enable APHIS to decide whether or not a permit can be issued. If a permit is issued, such data will be used in determining what conditions, if any, should be imposed as part of the permit to eliminate or reduce the possibility of dissemination of a plant pest.

Limited Permits for Importation

33. New § 340.3(c)(2) of the final rule provides that the responsible person seeking a permit for the importation of a regulated article to a contained facility must submit an application for a permit

at least 60 days prior to the importation of *each shipment* of regulated articles.

Unlike a limited permit for interstate movement, APHIS is requiring that a person submit a separate application for each importation of regulated articles rather than issuing a "single" permit for importation that would be valid for multiple importations for a specified period.

APHIS has traditionally allowed persons moving regulated articles interstate to do so repeatedly under the provisions of a single limited permit, for movement to specified destinations for utilization or processing. Such a system would not be practicable for the importation of regulated articles because the entry status of many imported articles frequently changes depending on the plant pest status of the article's country of origin. Because the entry status of a regulated article is subject to change, APHIS needs to review each permit application for importation prior to importation so that a decision whether to allow importation can be made on a case-by-case basis.

APHIS anticipates that in many cases, a request for the renewal of a limited permit for importation can be processed in less than 60 days. APHIS has added the following new footnote 7 to § 340.3 (c)(2) to reflect this fact.

Renewals may receive shorter review. In the case of a renewal for a limited permit for importation that was issued less than one year earlier, APHIS will notify the responsible person within 15 days that either: (1) The renewal permit is approved or (2) that a 60 day review period is necessary because the conditions of the original permit have changed.

APHIS is also requiring that the responsible person importing a regulated article keep records for one year that demonstrate that the regulated article arrived at its intended destination. The one year recordkeeping requirement is consistent with the recordkeeping requirement for limited permits for interstate movement. A person must submit data required by §§ 340.3(b)(1),(2),(4),(6),(7),(9), and (11)–(14) in an application for a limited permit for importation. This is the same data that must be submitted in an application for a limited permit to move a regulated article interstate. APHIS believes that such data will enable it to properly evaluate the risk of allowing the regulated article to be imported. This data will provide APHIS with necessary information about the country of origin of the regulated article, the nature of the regulated article, the method of movement, and how it shall be contained during movement and at its final destination. As with limited permits for interstate movement, because the regulated article is moving under containment into a contained facility, APHIS is requiring that the same data be submitted in an application to import the regulated article as is required in an application for interstate movement.

Certificate of Exemption/Courtesy Permits

34. Six comments were received on § 340.4 of the proposed regulation entitled, "Certificate of Exemption." Several commenters suggested that the term "exemption" is not appropriate because it implies that APHIS is exempting the introduction of a regulated organisms from the provisions of the regulation, rather than providing an indication that the organism was never subject to the regulation to begin with. These commenters suggested that the appropriate name for such a document should be a "courtesy permit," as found in 7 CFR 330.208. One commenter suggested that a certificate of exemption be issued in situations where a regulated article is biologically contained.

APHIS agrees with commenters that argued the name "certificate of exemption" is a misnomer, and has changed the name of the document that will be issued to "courtesy permit." APHIS will issue a courtesy permit under the same circumstances that were proposed for the issuance of a "certificate of exemption," i.e., the organism was never subject to regulation under Part 340, but is similar to other organisms regulated under Part 340.

APHIS also added new § 340.3(h)(3) which indicates that a courtesy permit will be issued within 60 days from the receipt of a complete application, or the applicant will be advised that a permit is required under § 340.3(b) or (c). APHIS will conduct its initial review of a courtesy permit application within 15 days of receipt of a complete application and advise the applicant within this period if any additional information is required. It should be noted that 60 days is the maximum time it will take for the issuance of a courtesy permit, and that every effort will be made to issue such permits in less than 60 days.

Since courtesy permits are issued for organisms which are not regulated articles, the issue of containment, whether biological or physical, is not material.

35. One commenter believed that a person would be required to obtain a "certificate of exemption" (now courtesy permit) when organisms are produced through classical genetics.

APHIS wishes to stress that a courtesy permit is an *option* that an applicant may seek if it believes that such a permit would facilitate the movement of an organism through a USDA port of entry, because the movement might otherwise be impeded because of its similarity to a regulated article.

Lastly, one commenter suggested that a certificate of exemption should be extended to those genetically engineered organisms otherwise subject to regulation under Part 340, that can be documented not to be plant pests.

In such cases, APHIS would issue a permit without conditions (restrictions) for the introduction of the regulated article.

The preceding discussion on APHIS permits can be summarized as follows:

APHIS PERMITS FOR THE INTRODUCTION OF A REGULATED ARTICLE[1]

Type of permit	Application elements	USDA review period	USDA action	State notification and review required
Environmental release	§ 340.3(b)(1)–(14)	120 days (maximum time from receipt of complete application;[1] initial review within 30 days).	Issue permit with conditions; request additional data; or deny permit with reasons.	Yes.
Limited Permit for Interstate Movement or Importation into a Contained Facility.	§ 340.3(b) (1), (2), (4), (6), (7), (9), (11)–(14).	60 days (maximum time from receipt of complete application; initial review within 15 days).	Same as above	Yes.

APHIS PERMITS FOR THE INTRODUCTION OF A REGULATED ARTICLE[1]—Continued

Type of permit	Application elements	USDA review period	USDA action	State notification and review required
Courtesy Permit[1] (not required; may be sought at the option of an applicant; organism not a regulated article).	§ 340.3(b) (1), (2), (5), (7) and statement why not a regulated article.	60 days with initial review within 15 days.	Issue courtesy permit; request additional data; or advise applicant that another permit is required.	No (if courtesy permit issued). Yes (if another permit issued).

[1] The 120 day review period would be extended if preparation of an environmental impact statement was required.

Need for Additional Safeguards

36. Three comments were received on the need for additional safeguards to be added to the rule. One commenter indicated that the proposed regulations did not contain the safeguards already present in 7 CFR 330.202(b) applicable to the movement of plant pests. The commenter noted such provisions allows USDA to inspect at its discretion, any site or premises prior to the issuance of a permit, to determine the adequacy of the site or premises for purposes of containment.

APHIS agrees with the commenter and believes that the final rule should contain provisions giving APHIS the option to conduct a site or premises inspection prior to the issuance of a permit. Accordingly, APHIS has added new § 340.3(d) entitled, "Premises inspection," which is consistent with 7 CFR 330.202(b) of its existing plant pest regulations. Section 340.3(d) provides that an inspector may inspect the site or facility where regulated articles are proposed to be released or contained under permit.

This section further provides that failure to allow the inspection of a premises prior to the issuance of an environmental release or limited permit shall be grounded for the denial of the permit.

37. Other commenters suggested that USDA publish guidelines for academic investigators that would be useful in determining what constitutes a pathogenic or environmental hazard, and recommendations for commensurate containment levels. One commenter further suggested that APHIS publish a laboratory safety monograph which addresses feasible greenhouse containment, and construction and utilization of growth chambers. Another commenter suggested that USDA include in its regulations minimal safety precautions for biotechnology research. The commenter further noted that not all personnel have the desirable training in anti-contamination and containment techniques.

APHIS believes that it would be beyond the scope of the regulations to include minimal safety precautions for biotechnology research. These comments pertain to worker safety and do not address the issue of plant pest dissemination and establishment. APHIS believes that such information should be made available by other Federal agencies whose responsibility is to regulate Federally funded research or worker safety, e.g., the National Institutes of Health, the Science and Education Administration of USDA, or the Occupational Safety and Health Administration (OSHA).

For reasons discussed in paragraph 17, APHIS does not believe the issuance of a monograph for greenhouse containment is appropriate because of the need to make such determinations on a case-by-case basis.

Standard Permit Conditions

38. Several commenters objected to the wording of some of the standard permit conditions. These commenters argued that the phrase "as determined necessary by the Deputy Administrator" is vague and open-ended.

In an attempt to provide more specificity to the standard permit conditions, APHIS has moved the phrase "as determined necessary by the Deputy Administrator" from the conditions in §§ 340.3(f) (1) and (2) and has inserted the phrase, "in a manner so as to prevent the establishment and dissemination of plant pests." APHIS believes this change makes these conditions more specific.

Sections 340.3(f) (7) and (8) still retain the phrase, "as determined necessary by the Deputy Administrator." The language in § 340.3(7) gives APHIS the authority to specify in a permit any special conditions that might be deemed necessary to ensure the regulated article will not be accidentally released or that there will not be an unauthorized release. APHIS believes that such determinations can only be made on a case-by-case basis, and that retention of this phrase gives APHIS the flexibility need to ensure against an accidental or unauthorized released of the regulated article.

Section 340.3(f)(8) provides that a regulated article shall be subject to the application of remedial measures (including disposal) determined by the Deputy Administrator to be necessary to prevent the spread of plant pests. Such authority would only be exercised in the event of an accidental release of the regulated article, and gives APHIS the necessary authority to prevent the dissemination of plant pests. Such emergency authority is found in 7 U.S.C. 150dd of the FPPA.

APHIS has revised § 340.3(f)(9) to now read, "a person who has been issued a permit shall submit to Plant Protection and Quarantine monitoring reports on the performance characteristics of the regulated article in accordance with any monitoring reporting requirements that may be specified in a permit. This condition previously specified that such reports would have to be submitted, "as deemed necessary by the Deputy Administrator." The decision to require the submission of monitoring reports will be made on a case-by-case basis, and will depend on the nature of the regulated article. Monitoring reports will not be required of all permittees.

39. Six commenters objected to the time periods for reporting specified events to APHIS (i.e., unauthorized release (24 hours)), characteristics substantially different from those in an application (5 working days), and death of the regulated article (5 working days). Several commenters also objected to having to report the death of the regulated article, believing that death is not an unusual occurrence. One commenter objected to the fact that oral notification was required immediately, and, in every case, followed by the submission of written notification. In response to these comments, APHIS has made the following changes to the reporting requirements in § 340.3(f)(10).

Oral reporting to APHIS is now only required in the event of any accidental or unauthorized release. Because of the potential consequences of such an event, APHIS believes that such

occurrence must be orally reported, immediately upon discovery, and in writing within 24 hours. If immediate oral notification is impossible, then reporting should occur on the first working day after discovery of the release. APHIS has eliminated the requirement of oral notification for all reportable events other than unauthorized or accidental release.

40. One commenter suggested that the rule should vary the time within which an accidental or unauthorized release must be reported, depending on the nature of the regulated article.

While not all regulated articles present the same risk of plant pest dissemination, APHIS believes that in the event of an unauthorized or accidental release, it needs to know about such events as quickly as possible and that reporting times should be uniform (24 hours) regardless of the nature of the regulated article.

41. In response to several comments, APHIS has eliminated the requirement of having to report the death of a regulated article in proposed § 340.3(c)(10)(iii). Under § 340.3(f)(10)(ii) of the final rule, a person need only report in writing, as soon as possible, but not later than 5 working days, if the regulated article or associated host organism is found to have characteristics substantially different from those listed in the permit application or suffers any unusual occurrence (excessive mortality or morbidity or an unanticipated effect on non-target organisms). APHIS believes that the death of a regulated article, as discussed above, should not be a reportable event.

APHIS believes that, as modified, having to report excessive mortality or morbidity or an unanticipated effect on a non-target organism as soon as possible but not later than 5 working days, is a reasonable requirement. APHIS believes that this requirement will advise the Agency of any disease or pest that may be of significance.

It should be noted that APHIS has added the phrase "as soon as possible" to clarify the agency's intent that the reporting should be prompt. However, APHIS has not changed the requirement which appeared in the proposed regulations that the reporting must not occur later than 5 working days from the observance of such events.

Denial of a Permit

APHIS, to fully inform permittees of their appeal rights, has included provisions in §§ 340.3(e) and (g) which provide appeal provisions in the event a permit is denied.

Petition To Amend the List of Organisms (§ 340.4)

42. Several commenters suggested that USDA should include a mechanism which would allow persons to petition for the "delisting" or removal of organisms from the list of organisms in § 340.2 of the final rule, if it could be demonstrated that such organisms are not plant pests. Other commenters indicated that USDA should include a mechanism that would allow a person to seek the addition of organisms to the list, if it could be shown that such organisms were plant pests.

USDA agrees with the commenters and has added a new § 340.4 to the final rule, entitled "Petition to Amend the List of Organisms." USDA believes that the petition mechanism will afford interested persons the opportunity to readily bring information to USDA's attention, as new information becomes available about existing or newly discovered organisms. The petition process in § 340.4 is in accord with section 4(e) of the Administrative Procedure Act (5 U.S.C. 553(e)) for the issuance, amendment, or repeal of a rule and with USDA's Departmental Proceedings in 7 CFR 1.28.

Under § 340.4(a) of the final rule, any person may submit a petition to the Deputy Administrator of Plant Protection and Quarantine to amend the list or organisms in § 340.2 by adding or removing any genus, species, or subspecies. Section 340.4(a) further provides that a petitioner may supplement, amend, or withdraw a petition, in writing, without prior approval of the Deputy Administrator and without prejudice to resubmission at any time, until the Deputy Administrator rules on the petition.

Section 340.4(b) specifies the submission procedures and format of a petition. This section requires that a petitioner provide two copies of a petition to the Deputy Administrator in care of the Director of the Biotechnology and Environmental Coordination Staff.

Section 340.4(b) also specifies what must be included in the "Statement of Grounds" of the petition. A person must include a full statement explaining the factual grounds why the genus, species, or subspecies to be added to § 340.2 is a plant pest or why there is reason to believe the genus, species, or subspecies is a plant pest. In the case of a petition to remove a genus, species, or subspecies from the list, a person must include a full statement explaining why the genus, species, or subspecies is not a plant pest or why there is no reason to believe the genus, species, or subspecies is not a plant pest. The petition should include copies of scientific literature which the petition is relying upon, copies of unpublished studies, or date from tests performed. Because the petition and any accompanying data will be made available for public inspection, the petition should not include trade secret or confidential business information.

A person must also include in the "Statement of Grounds" representative information known to the petitioner which would be unfavorable to a petition to add or remove organisms. Section 340.4(b) also requires that a petitioner sign a short certification that must be included as part of the petition.

Section 340.4(c) specifies the administrative action that will be taken on a petition. Under § 340.4(c), a petition which appears to be complete will be filed by the Director of the Biotechnology and Environmental Coordination Staff, stamped with the date of filing, and assigned a docket number. The Director of the Biotechnology and Environmental Coordination Staff will notify the petitioner in writing of the filing and the docket number of the petition. If a petition is incomplete, the petitioner shall be sent a notice indicating how the petition is deficient.

After a complete petition is filed, USDA shall publish a proposal in the **Federal Register** to amend § 340.2 and soliciting comments thereon from the public. Any written comments submitted shall become part of the docket file. The Deputy Administrator shall furnish a written response to each petitioner within 180 days of the receipt of the petition. The decision shall be placed in the public docket file in the offices of the Biotechnology and Environmental Coordination Staff.

The response will either: (1) Approve the petition in whole or in part, in which case the Deputy Administrator shall concurrently take appropriate action (publication of a document in the **Federal Register** amending § 340.2 of this part); or (2) deny the petition in whole or in part.

APHIS has chosen 180 days as the time period in which to respond to a petition for the following reasons: (1) A 180 day review period would provide APHIS reviewers sufficient time to perform thorough and comprehensive research on the material presented in a petition and to consult with other scientists at other institutions both domestically and internationally; (2) a 180 day review period provides APHIS with sufficient time to schedule public hearings during the petition process should that be necessary, and (3) a 180

day review period is consistent with the petition procedures utilized by other Federal agencies, namely, the Food and Drug Administration in their regulations in 21 CFR 10.30.

Container Requirements (§ 340.6)

43. Eight comments were received on the proposed container requirements in § 340.6 of the regulations. The commenters generally expressed the view that the container requirements were overly stringent and too restrictive, or in other cases inappropriate.

One commenter indicated that to assume that an organism is dangerous simply because it has been genetically modified is not justified. Another commenter indicated that in certain instances one may wish to carry plant seedlings a short distance across a State line in an open flat in a car. The commenter further indicated that in such an instance, there would be essentially no chance of dispersal of the plant since it would be devoid of any reproductive parts, and presumably all plant parts could be collected and accounted for in case of an accident.

USDA disagrees with the comment that a presumption exists that an organism is dangerous because it has been genetically modified. Consistent with stated USDA policy, the final rule does not regulate an organism because of the process by which it is modified. USDA believes that if a person is seeking to introduce an organism that is engineered from organisms which are known plant pests, then certain precautions are necessary. One precaution that must be taken is that until the plant pest status of the organism is established, special container requirements are required. The container requirements set forth in the final rule are no more stringent than what would be required for the movement of plant pests under permit in 7 CFR 330.200. However, USDA agrees with the commenter that argued that for certain organisms and in certain instances the container requirements may be inappropriate due to unique circumstances (the volume, nature, or life stage of the regulated article).

In order to remedy this situation on a case-by-case basis, APHIS has included a procedure whereby a person seeking to move a regulated article may seek a variance from the container requirements if the responsible individual believes the container requirements are inappropriate.

Section 340.6(b) of the final rule entitled, "Request for a variance from container requirements" provides that a person may submit a short statement describing why the applicable container requirements are inappropriate for the regulated article to be moved and what the individual would use in lieu thereof. USDA shall advise the responsible individual in writing at the time a permit is granted on the individual's request for a variance.

Cost of Preparing a Permit Application

Twenty comments were received on the APHIS analysis made pursuant to E.O. 12291 on the economic impact of the regulations. APHIS stated that it anticipated the cost of preparing a permit application to be not greater than $5,000 per application. Many of these commenters erroneously interpreted the statement to mean the APHIS would charge applicants not more than $5,000 as the fee for processing permit applications.

APHIS wishes to explain the $5,000 represented the maximum *in-house cost* to an applicant of submitting an application for a permit to APHIS. The $5,000 estimated cost was based on the salary of a Ph.D. researcher earning $60,000 per year. It was estimated that it would take approximately two weeks to prepare an application. The $5,000 figure also includes the cost of clerical support and reproduction costs. With the exception of reproduction and postage or handling costs, these costs are ordinary salary costs that must be paid regardless of whether a person is submitting a permit application to APHIS. Five thousand dollars for the most part represents the upper limit of the in-house costs. APHIS believes that in many cases, the cost will be significantly less than $5,000. It should be noted that one producer of genetically engineered organisms indicated that the $5,000 figure was accurate based on the cost of submitting an application for the field testing of a genetically engineered organism.

It should be further noted that under the final rule the $5,000 figure is only applicable to the cost of preparing an application for a permit for release into the environment. An application for a limited permit for the interstate movement or importation of a regulated article into a contained facility requires the submission of less data, and the time and cost required to prepare such an application should be less than $5,000.

Comments Concerning Joint Jurisdiction

Several comments were received on the issue of overlapping jurisdiction between USDA and EPA. Dual or redundant reviews of the same organism or product were mentioned as an unwelcome possibility.

During the months since the "Coordinated Framework" was first published as a proposed policy by the OSTP and Federal agencies in December 1984 (49 FR 50856–50907) the components of EPA and USDA that have jurisdiction in the same area have been in communication on a regular basis. USDA through its Biotechnology and Environmental Coordination Staff and EPA through its Office of Toxic Substances and Office of Pesticide Programs have identified principal liaisons who have the responsibility to share information, coordinate data requests, and keep one another informed of communications with submitters. These individuals will ensure that data requests are not duplicated.

Compliance With the National Environmental Policy Act

APHIS indicated in its proposed regulations at 51 FR 23359 on June 26, 1986, that the issuance of all permits for the introduction of a genetically engineered organism would be in accordance with National Environmental Policy Act (NEPA), USDA regulations, and APHIS Guidelines implementing NEPA.

APHIS shall prepare environmental assessments and, where necessary, environmental impact statements prior to issuing a permit for the release into the environment of a regulated article. The D.C. Circuit's decision in *FET* v. *Heckler*, stated that "NEPA requires an agency to evaluate the environmental effects of its action at the point of commitment." 756 F.2d 143 (D.C. Cir. 1985) With regard to this final rule, APHIS has concluded that the "point of commitment" occurs when the agency takes action on each individual application to issue a permit for the release into the environment of a genetically engineered organism.

The final rule does not irrevocably commit APHIS to any decision concerning issuance of any permits for release. APHIS retains the authority to grant or deny a permit for release on a case by case basis. However, APHIS has prepared a special environmental assessment on the effect of these regulations.

The special environmental assessment for the final rule discusses alternatives that were considered in lieu of promulgation of this rule and is available from the person listed under "FOR FURTHER INFORMATION CONTACT."

Editorial Changes

APHIS has also made minor editorial changes, where necessary.

Executive Order 12291 and Regulatory Flexibility Act

This final rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that the proposed rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not have 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.

As explained above, regulations regulate the introduction (importation, interstate movement, and release into the environment) of organisms and products altered or produced through genetic engineering which are plant pests or which there is reason to believe are plant pests. Such organisms and products are deemed regulated articles for which either a limited or environmental release permit would have to be obtained prior to its introduction.

It is anticipated that the cost of preparing a permit application for the release into the environment of a regulated article will be no more than $5,00 per application. The cost of preparing an application for a limited permit which requires less data than an environmental release permit should be less than $5,000. The required information about the organism, and the way it was altered or produced should be available from documents pertaining to the research and development of the regulated article. Thus, a person seeking to obtain a permit should not have to generate any new data, but rather submit to APHIS, what should be, existing data. The $5,000 estimated cost is based on the salaries of a Ph.D. researcher and the necessary clerical staff working for approximately 2 weeks in preparing an application for a permit for environmental release. During the first year, the Department does not expect to receive more than 50 applications for release into the environment. Most other costs associated with complying with the regulations, e.g., container requirements, are merely incidental to a person complying with sound laboratory and research practices. The only other costs associated with complying with the regulations would arise if a supplemental report were required, e.g., an accidental or unauthorized release of a regulated article, the regulated article is found to have substantially different characteristics than those listed in the application, or if APHIS otherwise believes monitoring reports are required. It is anticipated that the cost of such reports in most instances would be minimal.

APHIS is requiring that an application for a permit be submitted 120 days prior to the time a person seeks to release a regulated article into the environment. APHIS believes that the 120 day time period required to process a permit application will not be an unreasonable delay in the marketing of organisms or products subject to regulations under Part 340. It is anticipated that if USDA receives only 50 applications the first year for the release into the environment, the average time to process any application will be considerably less than the maximum processing periods of 120 days. APHIS does not believe that the applications will come all at once. In the short term, we anticipate receiving 50 applications the first year, growing to perhaps 3,000 by 1989. The experience gained during the first year should help expedite the review of future applications. As more applications are processed, shorter review times could be achieved through the use of data previously submitted.

Since the timing of when to submit an application to USDA is left to an applicant, USDA believes that both large and small business entities will be able to incorporate the review period into their planning process so as not to disrupt the marketing of organisms or products that are subject to regulation.

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

Paperwork Reduction Act

Information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) and have been assigned OMB control number 0579–0085.

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

7 CFR Part 330

Customs duties and inspection, Garbage, Imports, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Soil, Stone and quarry products, Transportation.

7 CFR Part 340

Agricultural commodities, Biotechnology, Genetic engineering, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

PART 330—FEDERAL PLANT PEST REGULATIONS; GENERAL; PLANT PESTS; SOIL, STONE AND QUARRY PRODUCTS; GARBAGE

Accordingly, 7 CFR Part 330 is amended to read as follows:

1. The authority citation for 7 CFR Part 330 is revised to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd–150ff, 161, 162, 450, 2260; 19 U.S.C. 1306; 21 U.S.C. 111, 114a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(c).

2. Paragraph (h) § 330.100 is revised to read as follows:

§ 330.100 Definitions.

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(h)(1) *Plant pest.* Except for §§ 330.200 through 330.212, "Plant Pest" means any living stage of any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured, or other products of plants.

(2) *Plant pest.* For purposes of §§ 330.200 through 330.212, "Plant Pest" means any living stage of insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances of the aforementioned which are not genetically engineered as defined in 7 CFR 340.1 which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured, or other products of plants.

* * * * *

Accordingly, 7 CFR, Chapter III, is amended by adding Part 340 to read as follows:

PART 340—INTRODUCTION OF ORGANISMS AND PRODUCTS ALTERED OR PRODUCED THROUGH GENETIC ENGINEERING WHICH ARE PLANT PESTS OR WHICH THERE IS REASON TO BELIEVE ARE PLANT PESTS

Sec.

Authority: 7 U.S.C. 150aa–150jj, 151–167, 1622n; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(c).

§ 340.0 Restrictions on the introduction of regulated articles.

(a) No person shall introduce any regulated article unless: (1) Such introduction is authorized by a permit; and (2) such introduction is in conformity with all of the other applicable restrictions in this part.[1]

(b) Any regulated article introduced not in compliance with the requirements of this part shall be subject to the immediate application of such remedial measures or safeguards as an inspector determines necessary to prevent the introduction of such plant pests.[2]

[1] Part 340 regulates the introduction of organisms altered or produced through genetic engineering and their products which are plant pests or which there is reason to believe are plant pests. The introduction into the United States of such articles may be subject to other regulations promulgated under the Federal Plant Pest Act (7 U.S.C. 150aa *et seq.*), the Plant Quarantine Act (7 U.S.C. 151 *et seq.*), and the Federal Noxious Weed Act (7 U.S.C. 2801 *et seq.*) and found in 7 CFR Parts 319, 321, 330, and 360. For example under regulations promulgated in 7 CFR "Subpart-Nursery Stock" (7 CFR 319.37) a permit is required for the importation of certain classes of nursery stock whether genetically engineered or not. Thus, a person should consult those regulations prior to the importation of any nursery stock.

[2] Pursuant to section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd) the Secretary of Agriculture is authorized to order prompt removal from the United States or to seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of, in such manner as the Secretary deems appropriate, certain regulated articles which are believed to be infested or infected by or contain a plant pest.

§ 340.1 Definitions.

Terms used in the singular form in this part shall be construed as the plural, and vice versa, as the case may demand. The following terms, when used in this part, shall be construed, respectively, to mean:

Courtesy permit. A written permit issued by the Deputy Administrator in accordance with § 340.3(h) of this part.

Deputy Administrator. The Deputy Administrator for Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or any other officer or employee of the Department to whom authority to act in his/her stead has been or may hereafter be delegated.

Donor organism. The organism from which genetic material is obtained for transfer to the recipient organism.

Environment. All the land, air, and water; and all living organisms in association with land, air and water.

Genetic engineering. The genetic modification of organisms by recombinant DNA techniques.

Inspector. Any employee of Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or other person, authorized by the Deputy Administrator in accordance with law to enforce the provisions of this part.

Interstate. From any State into or through any other State.

Introduce or introduction. To move into or through the United States, to release into the environment, to move interstate, or any attempt thereat.

Move (moving, movement). To ship, offer for shipment, offer for entry, import, receive for transportation, carry, or otherwise transport or move, or allow to be moved into, through, or within the United States.

Organism. Any active, infective, or dormant stage or life form of an entity characterized as living, including vertebrate and invertebrate animals, plants, bacteria, fungi, mycoplasmas, mycoplasma-like organisms, as well as entities such as viroids, viruses, or any entity characterized as living, related to the foregoing.

Permit. A written permit issued by the Deputy Administrator for the introduction of a regulated article under conditions determined by the Deputy Administrator not to present a risk of plant pest introduction.

Person. Any individual, partnership, corporation, company, society, association, or other organized group.

Plant. Any living stage or form of any member of the plant kingdom [3] including, but not limited to, eukaryotic algae, mosses, club mosses, ferns, angiosperms, gymnosperms, and lichens (which contain algae) including any parts (e.g. pollen, seeds, cells, tubers, stems) thereof, and any cellular components (e.g. plasmids, ribosomes, etc.) thereof.

Plant pest. Any living stage (including active and dormant forms) of insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof; viruses; or any organisms similar to or allied with any of the foregoing; or any infectious agents or substances, which can directly or indirectly injure or cause disease or damage in or to any plants or parts thereof, or any processed, manufactured, or other products of plants.

Plant Protection and Quarantine. The organizational unit within the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, delegated responsibility for enforcing provisions of the Plant Quarantine Act, the Federal Plant Pest Act, and related legislation, and quarantine and regulations promulgated thereunder.

Product. Anything made by or from, or derived from an organism, living or dead.

Recipient organism. The organism which receives genetic material from a donor organism.

Regulated article. Any organism which has been altered or produced through genetic engineering, if the donor organism, recipient organism, or vector or vector agent belongs to any genera or taxa designated in § 340.2 of this part and meets the definition of plant pest, or is an unclassified organism and/or an organism whose classification is unknown, or any product which contains such as organism, or any other organism or product altered or produced through genetic engineering which the Deputy Administrator determines is a plant pest or has reason to believe is a plant pest. Excluded are recipient microorganisms which are not plant pests and which have resulted from the addition of genetic material from a donor organism where the material is well characterized and contains only non-coding regulatory regions.

Release into the environment. The use of a regulated article outside the constraints of physical confinement that are found in a laboratory, contained

[3] The taxonomic scheme for the plant kingdom is that found in Synopsis and Classification of Living Organisms by S.P. Parker, McGraw Hill (1984).

greenhouse, or a fermenter or other contained structure.

Responsible person. The person who has control and will maintain control over the introduction of the regulated article and assure that all conditions contained in the permit and requirements in this part are complied with. A responsible person shall be a resident of the United States or designate an agent who is a resident of the United States.

Secretary. The Secretary of Agriculture, or any other officer or employee of the Department of Agriculture to whom authority to act in his/her stead has been or may hereafter be delegated.

State. Any State, the District of Columbia, American Samoa, Guam, Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States, and any other Territories or Districts of the United States.

United States. All of the States.

Vector or vector agent. Organisms or objects used to transfer genetic material from the donor organism to the recipient organism.

Well-characterized and contains only non-coding regulatory regions (e.g. operators, promoters, origins of replication, terminators, and ribosome binding regions). The genetic material added to a microorganism in which the following can be documented about such genetic material: (a) The exact nucleotide base sequence of the regulatory region and any inserted flanking nucleotides; (b) The regulatory region and any inserted flanking nucleotides do not code for protein or peptide; and (c) The regulatory region solely controls the activity of other sequences that code for protein or peptide molecules or act as recognition sites for the initiation of nucleic acid or protein synthesis.

§ 340.2 Groups of organisms which are or contain plant pests.

The organisms that are or contain plant pests are included in the taxa or group of organisms contained in the following list. Within any taxonomic series included on the list, the lowest unit of classification actually listed is the taxon or group which may contain organisms which are regulated. Organisms belonging to all lower taxa contained within the group listed are included as organisms that may be or may contain plant pests, and are regulated *if they meet the definition of plant pest in § 340.1*[4]

Note.—Any genetically engineered organism composed of DNA or RNA sequences, organelles, plasmids, parts, copies, and/or analogs, of or from any of the groups of organisms listed below shall be deemed a regulated article if it also meets the definition of plant pest in § 340.1.

GROUP

Viroids

Superkingdom Prokaryotae

Kingdom Virus

All members of groups containing plant viruses, and all other plant and insect viruses

Kingdom Monera

Division Bacteria

Family Pseudomonadaceae
- Genus Pseudomonas
- Genus Xanthomonas

Family Rhizobiaceae
- Genus Rhizobium
- Genus Bradyrhizobium
- Genus Agrobacterium
- Genus Phyllobacterium

Family Enterobacteriaceae
- Genus Erwinia

Family Streptomycetaceae
- Genus Streptomyces

Family Actinomycetacease
- Genus Actinomyces

Coryneform group
- Genus Clavibacter
- Genus Arthrobacter
- Genus Curtobacterium
- Genus Corynebacteria

Gram-negative phloem-limited bacteria associated with plant diseases

Gram-negative xylem-limited bacteria associated with plant diseases

And all other bacteria associated with plant or insect diseases

Rickettsiaceae
- Rickettsial-like organisms associated with insect diseases

Class Mollicutes

Order Mycoplasmatales
Family Spiroplasmataceae
- Genus Spiroplasma

Mycoplasma-like organisms associated with plant diseases

Mycoplasma-like organisms associated with insect diseases

Superkingdom Eukaryotae

Kingdom Plantae

Subkingdom Thallobionta

Division Chlorophyta
- Genus Cephaleuros
- Genus Rhodochytrium
- Genus Phyllosiphon

Division Myxomycota

Class Plasmodiophoromycetes

Division Eumycota

Class Chytridiomycetes

Order Chytridiales

Class Oomycetes

Order Lagenidiales
Family Lagenidiaceae
Family Olpidiopsidaceae
Order Peronosporales
Family Albuginaceae
Family Peronosporaceae
Family Pythiaceae
Order Saprolegniales
Family Saprolegniaceae
Family Leptolegniellaceae

Class Zygomycetes

Order Mucorales
Family Choanephoraceae
Family Mucoraceae
Family Entomophthoraceae

Class Hemiascomycetes

Family Protomycetaceae
Family Taphrinaceae

Class Loculoascomycetes

Order Myriangiales
Family Elsinoeaceae
Family Myriangiaceae
Order Asterinales
Order Dothideales
Order Chaetothyriales
Order Hysteriales
Family Parmulariaceae
Family Phillipsiellaceae
Family Hysteriaceae
Order Pleosporales
Order Melanommatales

Class Plectomycetes

Order Eurotiales
Family Ophiostomataceae
Order Ascophaerales

Class Pyrenomycetes

Order Erysiphales
Order Meliolales
Order Xylariales
Order Diaporthales
Order Hypocreales
Order Clavicipitales

Class Discomycetes

Order Phacidiales
Order Helotiales
Family Ascocorticiceae
Family Hemiphacidiaceae
Family Dermataceae
Family Sclerotiniaceae
Order Cytarriales
Order Medeolariales
Order Pezziales
Family Sarcosomataceae
Family Sarcoscyphaceae

[4] Any organism belonging to any taxa contained within any listed genera or taxa is only considered to be a plant pest if the organism "can directly or indirectly injure, or cause disease, or damage in any plants or parts thereof, or any processed, manufactured, or other products of plants." Thus a particular unlisted species within a listed genus would be deemed a plant pest for purposes of § 340.2, if the scientific literature refers to the organism as a cause of direct or indirect injury, disease, or damage to any plants, plant parts or products of plants. (If there is any question concerning the plant pest status of an organism belonging to any listed genera or taxa, the person proposing to introduce the organism in question should consult with APHIS to determine if the organism is subject to regulation.)

Class Teliomycetes

Class Phragmobasidiomycetes

Family Auriculariaceae
Family Ceratobasidiaceae

Class Hymenomycetes

Order Exobasidiales
Order Agaricales
Family Corticiaceae
Family Hymenochaetaceae
Family Echinodontiaceae
Family Fistulinaceae
Family Clavariaceae
Family Polyporaceae
Family Tricholomataceae

Class Hyphomycetes

Class Coelomycetes

And all other fungi associated with plant or insect diseases

Subkingdom Embryobionta

Note.—*Organisms listed in the Code of Federal Regulations as noxious weeds are regulated under the Federal Noxious Weed Act*

Division Magnoliophyta

Family Balanophoraceae—parasitic species
Family Cuscutaceae—parasitic species
Family Hydnoraceae—parasitic species
Family Krameriaceae—parasitic species
Family Lauraceae—parasitic species
  Genus Cassytha
Family Lennoaceae—parasitic species
Family Loranthaceae—parasitic species
Family Myzodendraceae—parasitic species
Family Olacaceae—parasitic species
Family Orobanchaceae—parasitic species
Family Rafflesiaceae—parasitic species
Family Santalaceae—parasitic species
Family Scrophulariaceae—parasitic species
  Genus Alectra
  Genus Bartsia
  Genus Buchnera
  Genus Buttonia
  Genus Castilleja
  Genus Centranthera
  Genus Cordylanthus
  Genus Dasistoma
  Genus Euphrasia
  Genus Gerardia
  Genus Harveya
  Genus Hyobanche
  Genus Lathraea
  Genus Melampyrum
  Genus Melasma
  Genus Orthantha
  Genus Orthocarpus
  Genus Pedicularis
  Genus Rhamphicarpa
  Genus Rhinanthus
  Genus Schwalbea
  Genus Seymeria
  Genus Siphonostegia
  Genus Sopubia
  Genus Striga
  Genus Tozzia
Family Viscaceae—parasitic species

Kingdom Animalia

Subkingdom Protozoa

  Genus Phytomonas

  And all Protozoa associated with insect diseases

Subkingdom Eumetazoa

Phylum Nemata

Class Secernentea

Order Tylenchida
Family Anguinidae
Family Belonolaimidae
Family Caloosiidae
Family Criconematidae
Family Dolichodoridae
Family Fergusobiidae
Family Hemicycliophoridae
Family Heteroderidae
Family Hoplolaimidae
Family Meloidogynidae
Family Nacobbidae
Family Neotylenchidae
Family Nothotylenchidae
Family Paratylenchidae
Family Pratylenchidae
Family Tylenchidae
Family Tylenchulidae
Order Aphelenchida
Family Aphelenchoididae

Class Adenophorea

Order Dorylaimida
Family Longidoridae
Family Trichodoridae

Phylum Mollusca

Class Gastropoda

Subclass Pulmonata
Order Basommatophora
  Superfamily Planorbacea
Order Stylommatophora
  Subfamily Strophocheilacea
Family Succineidae
  Superfamily Achatinacae
  Superfamily Arionacae
  Superfamily Limacacea
  Superfamily Helicacea
Order Systellommatophora
  Superfamily Veronicellacea

Phylum Arthropoda

Class Arachnida

Order Parasitiformes
  Suborder Mesostigmata
  Superfamily Ascoidea
  Superfamily Dermanyssoidea
Order Acariformes
  Suborder Prostigmata
  Superfamily Eriophyoidea
  Superfamily Tetranychoidea
  Superfamily Eupodoidea
  Superfamily Tydeoidea
  Superfamily Erythraenoidea
  Superfamily Trombidioidea
  Superfamily Hydryphantoidea
  Superfamily Tarsonemoidea
  Superfamily Pyemotoidea
Suborder Astigmata
  Superfamily Hemisarcoptoidea
  Superfamily Acaroidea

Class Diplopoda

Order Polydesmida

Class Insecta

Order Collembola
Family Sminthoridae
Order Isoptera
Order Thysanoptera
Order Orthoptera
Family Acrididae
Family Gryllidae
Family Gryllacrididae
Family Gryllotalpidae
Family Phasmatidae
Family Ronaleidae
Family Tettigoniidae
Family Tetrigidae
Order Hemiptera
Family Thaumastocoridae
Family Aradidae
  Superfamily Piesmatoidea
  Superfamily Lygaeoidea
  Superfamily Idiostoloidea
  Superfamily Coreoidea
  Superfamily Pentatomoidea
  Superfamily Pyrrhocoroidea
  Superfamily Tingoidea
  Superfamily Miroidea
Order Homoptera
Order Coleoptera
Family Anobiidae
Family Apionidae
Family Anthribidae
Family Bostrichidae
Family Brentidae
Family Bruchidae
Family Buprestidae
Family Byturidae
Family Cantharidae
Family Carabidae
Family Cerambycidae
Family Chrysomelidae
Family Coccinellidae
  Subfamily Epilachninae
Family Curculionidae
Family Dermestidae
Family Elateridae
Family Hydrophilidae
  Genus Helophorus
Family Lyctidae
Family Meloidae
Family Mordellidae
Family Platypodidae
Family Scarabaeidae
  Subfamily Melolonthinae
  Subfamily Rutelinae
  Subfamily Cetoniinae
  Subfamily Dynastinae
Family Scolytidae
Family Selbytidae
Family Tenebrionidae
Order Lepidoptera
Order Diptera
Family Agromyzidae
Family Anthomyiidae
Family Cecidomyiidae
Family Chloropidae
Family Ephydridae
Family Lonchaeidae
Family Muscidae
  Genus Atherigona
Family Otitidae
  Genus Euxeta
Family Syrphidae
Family Tephritidae
Family Tipulidae
Order Hymenoptera
Family Apidae
Family Caphidae
Family Chalcidae
Family Cynipidae
Family Eurytomidae
Family Formicidae
Family Psilidae
Family Siricidae
Family Tenthredinidae

Family Torymidae
Family Xylocopidae

Unclassified organisms and/or organisms whose classification is unknown.

§ 340.3 Permits for the introduction of a regulated article.

(a) *Application for permit.* Two copies of a written application for a permit to introduce a regulated article shall be submitted by the responsible person on an application form obtained from Plant Protection and Quarantine, to the Biological Assessment Support Staff (Biotech Unit), Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782. If there are portions of the application deemed to contain trade secret or confidential business information (CBI), each page of the application containing such information should be marked "CBI Copy". In addition, those portions of the application which are deemed "CBI" shall be so designated. The second copy shall have all such CBI deleted and shall be marked on each page of the application where CBI was deleted, "CBI Deleted". If an application does not contain CBI then the first page of both copies shall be marked "No CBI".

(b) *Permit for release into the environment.* An application for the release into the environment of a regulated article shall be submitted at least 120 days in advance of the proposed release into the environment. An initial review shall be completed by Plant Protection and Quarantine within 30 days of the receipt of the application. If the application is complete, the responsible individual shall be notified of the date of receipt of the application for purposes of advising the applicant when the 120 day review period commenced.[5] If the application is not complete, the responsible individual will be advised what additional information must be submitted. Plant Protection and Quarantine shall commence the 120 day review period upon receipt of the additional information, assuming the additional information submitted is adequate. When it is determined that an application is complete, Plant Protection and Quarantine shall submit to the State department of agriculture of the State where the release is planned, a copy of the initial review and a copy of the application marked, "CBI Deleted", or "No CBI" for State notification and review. The application shall include the following information: [6]

(1) Name, title, address, telephone number, signature of the responsible person and type of permit requested (for importation, interstate movement, or release into the environment);

(2) All scientific, common, and trade names, and all designations necessary to identify the: Donor organism(s); recipient organism(s); vector or vector agent(s); constituent of each regulated article which is a product; and, regulated article;

(3) Names, addresses, and telephone numbers of the persons who developed and/or supplied the regulated article;

(4) A description of the means of movement (e.g., mail, common carrier, baggage, or handcarried (and by whom));

(5) A description of the anticipated or actual expression of the altered genetic material in the regulated article and how that expression differs from the expression in the non-modified parental organism (e.g., morphological or structural characteristics, physiological activities and processes, number of copies of inserted genetic material and the physical state of this material inside the recipient organism (integrated or extrachromosomal), products and secretions, growth characteristics);

(6) A detailed description of the molecular biology of the system (e.g., donor-recipient-vector) which is or will be used to produce the regulated article;

(7) Country and locality where the donor organism, recipient organism, vector or vector agent, and regulated article were collected, developed, and produced;

(8) A detailed description of the purpose for the introduction of the regulated article including a detailed description of the proposed experimental and/or production design;

(9) The quantity of the regulated article to be introduced and proposed schedule and number of introductions;

(10) A detailed description of the processes, procedures, and safeguards which have been used or will be used in the country of origin and in the United States to prevent contamination, release, and dissemination in the production of the: Donor organism; recipient organism; vector or vector agent; constituent of each regulated article which is a product; and regulated article;

(11) A detailed description of the intended destination (including final and all intermediate destinations), uses, and/or distribution of the regulated article (e.g., greenhouses, laboratory, or growth chamber location; field trial location; pilot project location; production, propagation, and manufacture location; proposed sale and distribution location);

(12) A detailed description of the proposed procedures, processes, and safeguards which will be used to prevent escape and dissemination of the regulated article at each of the intended destinations;

(13) A detailed description of any biological material (e.g., culture medium, or host material) accompanying the regulated article during movement; and

(14) A detailed description of the proposed method of final disposition of the regulated article.

(c) *Limited permits for interstate movement or importation of a regulated article.* An application for the interstate movement or importation of a regulated article shall be submitted at least 60 days in advance of the first proposed interstate movement and at least 60 days prior to each importation. An initial review shall be completed by Plant Protection and Quarantine within 15 days of the receipt of the application. If the application is complete, the responsible person shall be notified of the date of receipt of the application for purposes of advising the applicant when the 60 day review period commenced. If the application is not complete, the responsible person will be advised what additional information must be submitted. Plant Protection and Quarantine shall commence the 60 day review period upon receipt of the additional information, assuming the additional information submitted is adequate. When it is determined that an application is complete, Plant Protection and Quarantine shall submit to the State department of agriculture of the State of destination of the regulated article a copy of the initial review and the application marked, "CBI Deleted", or "No CBI" for State notification and review.

(1) *Limited permit for interstate movement.* The responsible person may apply for a single limited permit for the interstate movement of multiple regulated articles in lieu of submitting an application for each individual interstate movement. Each limited permit issued shall be numbered and shall be valid for one year from the date

[5] The 120 day review period would be extended if preparation of an environmental impact statement in addition to an environmental assessment was necessary.

[6] Application forms are available without charge from the Biological Assessment Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782, or from local offices which are listed in telephone directories. A person should specify in requesting the application that the permit is for the introduction of a regulated article subject to regulation under Part 340.

of issuance. If a permit is sought for multiple interstate movements between contained facilities the responsible individual shall specify in the permit application all the regulated articles to be moved interstate; the origins and destinations of all proposed shipments; a detailed description of all the contained facilities where regulated articles will be utilized at destination; and a description of the containers that will be used to transport the regulated articles. A limited permit for interstate movement of a regulated article shall only be valid for the movement of those regulated articles moving between those locations specified in the application. If a person seeks to move regulated articles other than those specified in the application, or to a location other than those listed in the application, a supplemental application shall be submitted to Plant Protection and Quarantine. No person shall move a regulated article interstate unless the number of the limited permit appears on the outside of the shipping container. The responsible person shipping a regulated article interstate shall keep records for one year demonstrating that the regulated article arrived at its intended destination. The responsible person seeking a limited permit for interstate movement shall submit on an application form obtained from Plant Protection and Quarantine the data required by § 340.3(b)(1), (2), (4), (6), (7), (9), and (11)–(14).

(2) *Limited permit for importation.* The responsible person seeking a permit for the importation of a regulated article shall submit an application for a permit prior to the importation of *each* shipment of regulated articles. The responsible person importing a regulated article shall keep records for one year demonstrating that the regulated article arrived at its intended destination. The responsible person seeking a limited permit for importation shall submit on an application form obtained from Plant Protection and Quarantine data required by § 340.3(b)(1), (2), (4), (6), (7), (9), and (11)–(14).[7]

(d) *Premises inspection.* An inspector may inspect the site or facility where regulated articles are proposed, pursuant to a permit, to be released into the environment or contained after their interstate movement or importation. Failure to allow the inspection of a premises prior to the issuance of a permit or limited permit shall be grounds for the denial of the permit.

(e) *Administrative action on applications.* After receipt and review by Plant Protection and Quarantine of the application and the data submitted pursuant to paragraph (a) of this section, including any additional information requested by Plant Protection and Quarantine, a permit shall be granted or denied. If a permit is denied, the applicant shall be promptly informed of the reasons why the permit was denied and given the opportunity to appeal the denial in accordance with the provisions of paragraph (g) of this section. If a permit is granted, the permit will specify the applicable conditions for introduction of the regulated article under this part.

(f) *Permit conditions.* A person who is issued a permit and his/her employees or agents shall comply with the following conditions, and any supplemental conditions which shall be listed on the permit, as deemed by the Deputy Administrator to be necessary to prevent the dissemination and establishment of plant pests:

(1) The regulated article shall be maintained and disposed of (when necessary) in a manner so as to prevent the dissemination and establishment of plant pests.

(2) All packing material, shipping containers, and any other material accompanying the regulated article shall be treated or disposed of in such a manner so as to prevent the dissemination and establishment of plant pests.

(3) The regulated article shall be kept separate from other organisms, except as specifically allowed in the permit;

(4) The regulated article shall be maintained only in areas and premises specified in the permit;

(5) An inspector shall be allowed access, during regular business hours, to the place where the regulated article is located and to any records relating to the introduction of a regulated article;

(6) The regulated article shall, when possible, be kept identified with a label showing the name of the regulated article, and the date of importation;

(7) The regulated article shall be subject to the application of measures determined by the Deputy Administrator to be necessary to prevent the accidental or unauthorized release of the regulated article;

(8) The regulated article shall be subject to the application of remedial measures (including disposal) determined by the Deputy Administrator to be necessary to prevent the spread of plant pests;

(9) A person who has been issued a permit shall submit to Plant Protection and Quarantine monitoring reports on the performance characteristics of the regulated article, in accordance with any monitoring reporting requirements that may be specified in a permit;

(10) Plant Protection and Quarantine shall be notified within the time periods and manner specified below, in the event of the following occurrences:

(i) Orally notified immediately upon discovery and notify in writing within 24 hours in the event of any accidental or unauthorized release of the regulated article;

(ii) In writing as soon as possible but not later than within 5 working days if the regulated article or associated host organism is found to have characteristics substantially different from those listed in the application for a permit or suffers any unusual occurrence (excessive mortality or morbidity, or unanticipated effect on non-target organisms);

(11) A permittee or his/her agent and any person who seeks to import a regulated article into the United States shall:

(i) Import or offer the regulated article for entry only at a port of entry which is designated by an asterisk in 7 CFR 319.37–14(b);

(ii) Notify Plant Protection and Quarantine promptly upon arrival of any regulated article at a port of entry, of its arrival by such means as a manifest, customs entry document, commercial invoice, waybill, a broker's document, or a notice form provided for such purpose; and

(iii) Mark and identify the regulated article in accordance with § 340.5 of this part.

(g) *Withdrawal or denial of a permit.* Any permit which has been issued may be withdrawn by an inspector or the Deputy Administrator if he/she determines that the holder thereof has not complied with one or more of the conditions listed on the permit. APHIS will confirm the reasons for the withdrawal of the permit in writing within ten (10) days. Any person whose permit has been withdrawn or any person who has been denied a permit may appeal the decision in writing to the Deputy Administrator within ten (10) days after receiving the written notification of the withdrawal or denial. The appeal shall state all of the facts and reasons upon which the person relies to show that the permit was wrongfully withdrawn or denied. The Deputy Administrator shall grant or

[7] Renewals may receive shorter review. In the case of a renewal for a limited permit for importation that has been issued less than one year earlier, APHIS will notify the responsible person within 15 days that either: (1) The renewal permit is approved or (2) that a 60 day review period is necessary because the conditions of the original permit have changed.

deny the appeal, in writing, stating the reasons for the decision as promptly as circumstances allow. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict. Rules of practice concerning such a hearing will be adopted by the Administrator.

(h) *Courtesy permit*—(1) *Issuance.* The Deputy Administrator may issue a courtesy permit for the introduction of organisms modified through genetic engineering which are not subject to regulation under this part to facilitate movement when the movement might otherwise be impeded because of the similarity of the organism to other organisms regulated under this part.

(2) *Application.* A person seeking a courtesy permit shall submit on an application form obtained from Plant Protection and Quarantine data required by §§ 340.3(b)(1), (2), and (5) of this part and shall indicate such data is being submitted as a request for a courtesy permit. A person should also include a statement explaining why he or she believes the organism or product does not come within the definition of a regulated article. The application shall be submitted at least 60 days prior to the time the courtesy permit is sought.

(3) *Administrative action.* Plant Protection and Quarantine shall complete an initial review within 15 days of the date of receipt of the application. If the application is complete, the responsible individual shall be notified of the date of receipt of the application for purposes of advising the applicant when the 60 day review period commenced. If the application is not complete, the responsible individual will be advised what additional information must be submitted, and shall commence the 60 day review period upon receipt of the additional information, assuming the additional information submitted is adequate. Within 60 days from the date of receipt of a complete application, Plant Protection and Quarantine will either issue a courtesy permit or advise the responsible individual that a permit is required under § 340.3(b) or (c).

§ 340.4 Petition to amend the list of organisms.

(a) *General.* Any person may submit to the Deputy Administrator a petition to amend the list of organisms in § 340.2 of this part by adding or deleting any genus, species, or subspecies. A petitioner may supplement, amend, or withdraw a petition in writing without prior approval of the Deputy Administrator and without prejudice to resubmission at any time until the Deputy Administrator rules on the petition. A petition to amend the list of organisms shall be submitted in accordance with the procedures and format specified by this section.

(b) *Submission procedures and format.* A person shall submit two copies of a petition to the Deputy Administrator of Plant Protection and Quarantine, in care of the Director of the Biotechnology and Environmental Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, 6505 Belcrest Road, Room 406, Federal Building, Hyattsville, Maryland 20782. The petition should be dated, and structured as follows:

Petition To Amend 7 CFR 340.2

The undersigned submits this petition under 7 CFR 340.4 to request the Deputy Administrator of Plant Protection and Quarantine, to [add the following genus, species, or subspecies to the list of organisms in 7 CFR 340.2] or [to remove the following genus, species, or subspecies from the list of organisms in § 340.2].

A. Statement of Grounds

[A person must present a full statement explaining the factual grounds why the genus, species, or subspecies to be added to § 340.2 of this part is a plant pest or why there is reason to believe the genus, species, or subspecies is a plant pest or why the genus, species, or subspecies sought to be removed is not a plant pest or why there is reason to believe the genus, species, or subspecies is not a plant pest. The petition should include copies of scientific literature which the petitioner is relying upon, copies of unpublished studies, or data from tests performed. *The petition should not include trade secret or confidential business information.*

A person should also include representative information known to the petitioner which would be unfavorable to a petition for listing or delisting. [If a person is not aware of any unfavorable information the petition should state, Unfavorable Information: NONE].

B. Certification

The undersigned certifies, that to the best knowledge and belief of the undersigned, this petition includes all information and views on which the petitioner relies, and that it includes representative data and information known to the petitioner which are unfavorable to the petition.

(Signature) _____
(Name of petitioner) _____
(Mailing address) _____
(Telephone number) _____

(c) *Administrative action on a petition.* (1) A petition to amend the list of organisms which meets the requirements of paragraph (b) of this section will be filed by the Director of the Biotechnology and Environmental Coordination Staff, stamped with the date of filing, and assigned a docket number. The docket number shall identify the file established for all submissions relating to the petition. The Biotechnology and Environmental Coordination Staff, will promtply notify the petitioner in writing of the filing and docket number of a petition. If a petition does not meet the requirements of paragraph (b) of this section, the petitioner shall be sent a notice indicating how the petition is deficient.

(2) After the filing of a petition to amend the list or organisms USDA shall publish a proposal in the **Federal Register** to amend § 340.2 and solicit comments thereon from the public. An interested person may submit written comments to the Director of the Biotechnology and Environmental Coordination Staff on a filed petition, which shall become part of the docket file.

(3) The Deputy Administrator shall furnish a response to each petitioner within 180 days of receipt of the petition. The response will either: (i) Approve the petition in whole or in part in which case the Deputy Administrator shall concurrently take appropriate action (publication of a document in the **Federal Register** amending § 340.2 of this part; or (ii) deny the petition in whole or in part. The petitioner shall be notified in writing of the Deputy Administrator's decision. The decision shall be placed in the public docket file in the offices of the Biotechnology and Environmental Coordination Staff, and in the form of a notice published in the **Federal Register.**

§ 340.5 Marking and identity.

(a) Any regulated article to be imported other than by mail, shall, at the time of importation into the United States, plainly and correctly bear on the outer container the following information:

(1) General nature and quantity of the contents;

(2) Country and locality where collected, developed, manufactured, reared, cultivated or cultured;

(3) Name and address of shipper, owner, or person shipping or forwarding the organism;

(4) Name, address, and telephone number of consignee;

(5) Identifying shipper's mark and number; and

(6) Number of written permit authorizing the importation.

(b) Any regulated article imported by mail, shall be plainly and correctly addressed and mailed to Plant Protection Quarantine at a port of entry designated by an asterisk in 7 CFR 319.37–14(b) and shall be accompanied

by a separate sheet of paper within the package plainly and correctly bearing the name, address, and telephone number of the intended recipient, and shall plainly and correctly bear on the outer container the following information:

(1) General nature and quantity of the contents;

(2) Country and locality where collected, developed, manufactured, reared, cultivated, or cured;

(3) Name and address of shipper, owner, or person shipping or forwarding the regulated article; and

(4) Number of permit authorizing the importation;

(c) Any regulated article imported into the United States by mail or otherwise shall, at the time of importation or offer for importation into the United States, be accompanied by an invoice or packing list indicating the contents of the shipment.

§ 340.6 Container requirements for the movement of regulated articles.

(a) *General requirements.* A regulated article shall not be moved unless it complies with the provisions of paragraph (b) of this section, unless a variance has been granted in accordance with the provisions of paragraph (c) of this section. [8]

(b) *Container requirements*—(1) *Plants and plant parts.* All plants or plant parts, except seeds, cells, and subcellular elements, shall be packed in a sealed plastic bag of at least 5 mil thickness, inside a sturdy, sealed, leak-proof, outer shipping container constructed of corrugated fiberboard, corrogated cardboard, wood, or other material of equivalent strength.

(2) *Seeds.* All seeds shall be transported in a sealed plastic bag of at least 5 mil thickness, inside a sealed metal container, which shall be placed inside a second sealed metal container. Shock absorbing cushioning material shall be placed between the inner and outer metal containers. Each metal container shall be independently capable of protecting the seeds and preventing spillage or escape. Each set of metal containers shall then be enclosed in a sturdy outer shipping container constructed of corrugated fiberboard, corrugated cardboard, wood, or other material of equivalent strength.

(3) *Live microorganisms and/or etiologic agents, cells, or subcellular elements.* All regulated articles which are live (non-inactivated) microorganisms, or etiologic agents, cells, or subcellular elements shall be packed as specified below:

(i) *Volume not exceeding 50 ml.* Regulated articles not exceeding 50 ml shall be placed in a securely closed, watertight container (primary container, test tube, vial, etc.) which shall be enclosed in a second, durable watertight container (secondary container). Several primary containers may be enclosed in a single secondary container, if the total volume of all the primary containers so enclosed does not exceed 50 ml. The space at the top, bottom, and sides between the primary and secondary containers shall contain sufficient nonparticulate absorbent material (e.g., paper towel) to absorb the entire contents of the primary container(s) in case of breakage or leakage. Each set of primary and secondary containers shall then be enclosed in an outer shipping container constructed of corrugated fiberboard, corrugated cardboard, wood, or other material of equivalent strength.

(ii) *Volume greater than 50 ml.* Regulated articles which exceed a volume of 50 ml. shall comply with requirements specified in paragraph (b)(3)(i) of this section. In addition, a shock absorbing material, in volume at least equal to that of the absorbent material between the primary and secondary containers, shall be placed at the top, bottom, and sides between the secondary container and the outer shipping container. single primary containers shall not contain more than 1,000 ml. of material. However, two or more primary containers whose combined volumes do not exceed 1,000 ml. may be placed in a single, secondary container. The maximum amount of microorganisms or etiologic agents, cells, or subcellular elements which may be enclosed within a single outer shipping container shall not exceed 4,000 ml.

(iii) *Dry ice.* If dry ice is used as a refrigerant, it shall be placed outside the secondary container(s). If dry ice is used between the secondary container and the outer shipping container, the shock absorbing material shall be placed so that the secondary container does not become loose inside the outer shipping container as the dry ice sublimates.

(4) *Insects, mites, and related organisms.* Insects, mites, and other small arthropods shall be packed for shipment as specified in this paragraph or in paragraph (b)(3) of this section. Insects (any life stage) shall be placed in an escape-proof primary shipping container (insulated vacuum container, glass, metal, plastic, etc.) and sealed to prevent escape. Such primary container shall be placed securely within a secondary shipping container of crushproof styrofoam or other material of equivalent strength; one or more rigid ice packs may also be placed within the secondary shipping container; and sufficient packing material shall be added around the primary container to prevent movement of the primary shipping container. The secondary (styrofoam or other) container shall be placed securely within an outer shipping container constructed of corrugated fiberboard, corrugated cardboard, wood, or other material of equivalent strength.

(5) *Other macroscopic organisms.* Other macroscopic organisms not covered in paragraphs (b) (1), (2), and (4) of this section which do not require continuous access to atmospheric oxygen shall be packaged as specified in paragraph (b) (3) or (4) of this section. All macroscopic organisms which are not plants and which require continuous access to atmospheric oxygen shall be placed in primary shipping containers constructed of a sturdy, crush-proof frame of wood, metal, or equivalent strength material, surrounded by escape-proof mesh or netting of a strength and mesh size sufficient to prevent the escape of the smallest organism in the shipment, with edges and seams of the mesh or netting sealed to prevent escape or organisms. Each primary shipping container shall be securely placed within a larger secondary shipping container constructed of wood, metal, or equivalent strength material. The primary and secondary shipping containers shall then be placed securely within an outer shipping container constructed of corrugated fiberboard, corrugated cardboard, wood, or other material of equivalent strength, which outer container may have air holes or spaces in the sides and/or ends of the container, provided that the outer shipping container must retain sufficient strength to prevent crushing of the primary and secondary shipping containers.

(c) *Request for a variance from container requirements.* A responsible person who believes the container requirements normally applicable to the movement of the person's regulated article(s) are inappropriate due to unique circumstances (such as the nature, volume, or life stage of the regulated article) may submit in an application for a permit, a request for a variance from the container requirements. The request for a variance under this section shall consist of a short statement describing why the

[8] The requirements of this section are in addition to and not in lieu of any other packing requirements such as those for the transportation of etiologic agents prescribed ty the Department of Transportation in Title 49 of the Code of Federal Regulations or any other agency of the Federal government.

normally applicable container requirements are inappropriate for the regulated article which the person proposes to move and what container requirements the person would use in lieu of the normally prescribed container requirements. USDA shall advise the responsible person in writing at the time a permit is granted on the person's request for a variance.

§ 340.7 Cost and charges.

The services of the inspector during regularly assigned hours of duty and at the usual places of duty shall be furnished without cost.[9] The U.S. Department of Agriculture will not be responsible for any costs or charges incident to inspections or compliance with the provisions of this part, other than for the services of the inspector.

[9] The Department's provisions relating to overtime charges for an inspector's services are set forth in 7 CFR Part 354.

Done at Washington, DC, this 10th day of June, 1987.

D. Husnik,

Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

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Tuesday
June 16, 1987

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 61, 71, and 91

Terminal Control Area Classification and Pilot and Equipment Requirements; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61, 71, and 91

[Docket No. 25304, Notice No. 87-7]

Terminal Control Area (TCA) Classification and TCA Pilot and Equipment Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: The FAA proposes to establish a single-class TCA and to revise the associated pilot and equipment requirements. Currently, TCA's are classified as Group I or Group II with those classified as Group I having higher levels of enplaned passenger and instrument operation counts. Operating requirements have been established for Group III TCA's, but none has ever been designated. Under this proposal, the separate classifications would be eliminated. Existing and future TCA's would be designated simply as "terminal control areas." This notice also proposes expanded pilot and equipment requirements for operations in and near TCA's as follows: (a) The pilot-in-command of a civil aircraft operating within a TCA would be required to hold at least a private pilot certificate, with a limited exception for student pilots with certain training; (b) automatic pressure altitude reporting equipment (Mode C) would be required in all airspace from the surface to and including 12,500 feet mean sea level (MSL) within 30 miles of the primary TCA airport; and (c) helicopters would be required to operate under the same equipment requirements as fixed-wing aircraft. Student pilots would not be allowed to operate at certain primary airports and would require specific training and an instructor's endorsement for all other TCA operations.

DATE: Comments must be received on or before August 17, 1987.

ADDRESS: Comments may be mailed or delivered in duplicate to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 25304, 800 Independence Avenue, SW., Washington, DC 20591. Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Burns, Airspace-Rules and Aeronautical Information Division, ATO-200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in these proposed rulemaking procedures by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address above. All communications received on or before the closing date for comments will be considered by the Administrator before taking further rulemaking action. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25304." The proposals contained in this notice may be changed in light of 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 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 NPRM by submitting a request to the FAA, Office of Public Affairs, Attention: Public Inquiry Center, APA-200, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future notices should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

Background

With somewhat different purposes and at different times, the National Airspace Review (NAR) Task Group 1-2.1 and a special FAA TCA Review Task Group both made in-depth analyses of TCA's. NAR was established as a joint FAA/aviation industry effort to study airspace and procedural aspects of the National Airspace System (NAS). Its broad objectives were to simplify and improve air traffic control (ATC) regulations and procedures. Task Group 1-2.1 specifically studied the terminal ATC system. The FAA TCA Review Task Group, composed entirely of FAA employees, was assembled in September 1986 in the aftermath of the midair collision that occurred within the Los Angeles TCA over Cerritos, California, in late August 1986. Its purpose was to review all aspects of TCA's. The review included size, shape, traffic count, complexity, number and type of flight infractions, procedures, past enforcement efforts, and any other factor which would allow the FAA to measure TCA effectiveness and to improve traffic flow and safe separation of aircraft.

Between them, the groups made recommendations in such diverse areas as simplification of TCA design; the need for common pilot, equipment, and operating requirements; levels of service that should be provided; TCA establishment/disestablishment criteria; improved charting of TCA's; TCA-oriented pilot and controller educational programs; and enforcement.

The NAR task group made 17 recommendations which were subsequently submitted to the Administrator through the NAR executive committee for dispostion. The FAA TCA Review Task Group submitted 40 recommendations to the FAA which were subsequently consolidated and approved by the Administrator as 39 action items.

As an underlying basis for their recommendations, both the NAR and the TCA review groups concluded that the continued existence of TCA's was necessary. NAR Task Group 1-2.1 stated that TCA's, with their associated operating requirements, promote efficiency, minimize delay, reduce controller workload, and provide a level of safety necessary for busy terminal areas. The TCA Review Task Group stated there is a valid need for positive control airspace around high density terminal areas to afford a high degree of protection for aircraft being controlled by ATC to and from the primary airport. The group concluded that the TCA program remains a valid part of the ATC system.

There were several other common areas in the two groups' recommendations, including the recommendation that there should be a single type or class of TCA. Both groups arrived at the recommendation for a single-class TCA in the framework of their overall study of the safety and efficiency factors associated with a TCA. The NAR group also proposed criteria associated with the establishment and disestablishment of the recommended single-class TCA, although these criteria would not be the subject of regulatory action.

Single-Class TCA

The TCA program was developed to reduce the midair collision potential in the congested airspace surrounding large air transportation hubs, and to provide an area in which all aircraft would be subject to certain operating and aircraft equipment rules. The regulatory requirements of TCA airspace afford the greatest protection for the greatest number of people by providing ATC with an increased capability to provide aircraft separation service within this airspace, thereby minimizing the mixing of controlled and uncontrolled aircraft. The criteria for considering a given terminal area as a TCA candidate is based on factors, or combinations of factors, that include the number of aircraft in that airspace, the area's potential for midair collision because of traffic density, and the type or nature of operations being conducted. Accordingly, guidelines have been established to identify TCA locations based on two basic elements—the number of enplaned passengers and the number of aircraft operations.

A TCA consists of controlled airspace extending upward from the surface or higher to a specified altitude, within which all aircraft are subject to the operating rules, pilot qualifications, and equipment requirements specified in FAR sections 91.24 and 91.90. Existing TCA's are described in FAR section 71.12 and have been designated as either Group I or Group II. Each TCA includes at least one primary airport around which the TCA is located.

Present Group I TCA's were established at nine locations with the greatest number of aircraft operations and passengers boarded. The 14 current Group II TCA locations represent high-traffic airports with operations and passenger counts which originally did not meet Group I criteria, although several now do. Strict requirements apply in all TCA's but currently are somewhat more stringent in Group I TCA's.

One of the action items resulting from the Task Group report was the recommendation to initiate rulemaking to eliminate the separate Group I, II, and III classifications of TCA's and to establish a single-class TCA, which is consistent with a recommendation made by the FAA-Industry National Airspace Review (NAR) advisory committee in 1984. This notice includes the proposal that the single-class TCA have pilot and equipment requirements now applicable to Group I TCA's. The effect of the rule, if promulgated, would be that all 23 TCA's will have the same operating and equipment rules (with one exception for pilot qualifications, discussed below). The current Group I, II, and III classifications would be eliminated.

An additional item was to simplify and standardize the TCA airspace dimensions and configuration in order to make the airspace easier to understand by both pilots and controllers. This proposed simplified design is being circulated to FAA offices as well as to interested aviation user groups. The basic design proposal is as follows: The TCA airspace should be composed of three concentric circles of 10-mile, 20-mile, and 30-mile radii from the primary TCA airport. The inner 10 miles should normally extend from the surface to the upper limits of the TCA. The 10- to 20-mile areas should have a base of approximately 2,800 to 3,000 feet above airport elevation. The 20- to 30-mile areas should have a base consistent with the TCA arrival and departure procedures, which should be approximately 5,000 to 6,000 feet above airport elevation. The tops of all TCA's should be established at either 10,000 or 12,500 feet MSL, consistent with arrival and departure flows and field elevations.

Criteria for candidacy for establishing additional single-class TCA's, similar to that suggested by the NAR Task Group, were discussed by the TCA Review Task Group. These establishment criteria, which would likely be adopted simultaneously with this rule, if promulgated, would be: 1 percent of the enplaned passengers in the United States, or 300,000 annual operations at the primary airport, of which at least 50 percent must be air carriers. There are approximately nine additional airports which currently meet the establishment criteria under consideration with this rule. All meet current Group II TCA establishment criteria, and some meet current Group I TCA establishment criteria. The FAA is considering the adoption of the NAR-recommended establishment criteria in conjunction with implementation of the other regulatory and nonregulatory TCA action items. The requirements proposed in this notice, if adopted, would apply to any TCA's in effect at that time as well as any TCA's established in the future.

TCA Pilot Qualification Requirements

There are two general FAA efforts which concern pilot qualifications and which bear on this proposal. One is the agency's airspace reclassification project, and the other may be considered to be a group of recommendations made by the FAA TCA Review Task Force. The set of recommendations relative to the issue were those on pilot proficiency, qualification, and education requirements.

The first principal area of effort, an airspace reclassification project, was announced by the FAA in Notice No. 85-5, an advanced notice of proposed rulemaking (ANPRM) published on February 5, 1985 (50 FR 5046). The ANPRM set forth FAA's intention to consider adopting certain recommendations resulting from the NAR. The proposal was made to simplify airspace designations; to achieve international commonality of airspace designations; and to associate appropriate pilot certification requirements, visibility and distance from cloud requirements, and air traffic services with each proposed airspace designation.

The airspace reclassification proposal included the adoption of a single class of TCA. However, pilot qualification requirements, as proposed in the AMPRM, were split. A private pilot certificate would be required to take off or land at airports within what are now the nine Group I TCA's. A student pilot certificate would be required to operate similarly in all other TCA's which today are designated as Group II TCA's. Further rulemaking in the airspace reclassification project will reflect the TCA pilot requirements proposed in this notice.

NAR's specific recommendation in the area of pilot qualification was that a student pilot may not operate an aircraft in solo flight within a TCA unless, within the preceding 90 days, the pilot logbook had been endorsed by an authorized flight instructor. As a part of that endorsement, that instructor would have to give the student instruction in TCA operating procedures, and would have to find that as a result of actual flight within a TCA the student is competent to make a safe solo flight within the TCA environment.

The second principal area of FAA effort, involving pilot qualifications to operate in TCA airspace, is considered to be the list of recommendations submitted by the FAA TCA review task group. Included in this list is the task group's specific recommendation that the FAA initiate rulemaking to require the pilot-in-command of a civil aircraft, operating within a TCA, to hold a private pilot certificate or higher.

The TCA Review task group did not agree with NAR on the issue of pilot qualification requirements. The TCA review group believed that the level of expertise of student pilots is not generally adequate to operate safely in a TCA. The group's position on this matter is presented below.

The majority of student pilots are not introduced to TCA's until late in their training, if at all. Currently, a private pilot certificate is required to operate a civil aircraft in a Group I TCA for the purposes of landing or taking off from an airport within that TCA. Private pilots being certificated today have, at a minimum, passed an FAA written test which includes airspace/TCA questions. They have also been flight tested, to an FAA minimum standard, prior to the issuance of that certificate by an FAA-designated pilot examiner and have demonstrated a level of proficiency that should enable them to operate safely in this type of airspace.

The TCA review group found that experience with student pilot operations, in the busy terminal areas within the current Group I TCA's, has indicated that these pilots, on many occasions, have difficulty comprehending and following ATC instructions. The review group, therefore, specifically disagreed with the NAR proposal to allow student pilot operations in TCA's after an instructor's endorsement.

The FAA TCA review task group made a specific recommendation that the FAA initiate rulemaking to require the pilot-in-command of a civil aircraft, operating within a TCA, to hold a private pilot certificate or higher. This particular task group recommendation goes beyond current TCA pilot qualification requirements because it encompassess all operations within a TCA; i.e., landing, departing, and en route. This recommendation is partially incorporated in this proposal. Accordingly, the FAA proposes to revise § 91.90(b) by requiring the pilot-in-command of a civil aircraft, in order to operate within TCA airspace or to take off or land at an airport within a TCA, to possess at least a private pilot certificate with the following exceptions. A person possessing a student pilot certificate may operate within a TCA or take off from or land at an airport within a TCA, provided the student pilot has: (1) Received certain specified training from a certified flight instructor in that TCA and, if applicable, at that airport, and (2) obtained an appropriate logbook endorsement to that effect within the preceding 90 days from that flight instructor. The specific training includes both ground instruction regarding that airport and TCA and flight instruction at that TCA airport by a certified flight instructor. The logbook endorsement must be made by the same flight instructor who conducted the training and must certify the student has been found competent to make safe landings and takeoffs at that airport and to operate within that TCA. The FAA also proposes to revise the current Part 61 by adding a new § 61.95 and by revising §§ 61.193 and 61.195 to establish training and certification requirements for solo student pilot operations in TCA airspace and at airports within TCA's. In this proposal, a student pilot would be permitted to operate at airports other than the primary airport in the current Group I TCA's, and through TCA airspace after receiving a specific endorsement from the student's flight instructor for flight in that TCA and to the airport where training is received. The student pilot would be required to have the logbook endorsement within the preceding 90 days. Although this provision was not included in the primary recommendation of the TCA review task group, the FAA believes that this proposal is consistent with the safety objectives of the task group's recommendations and will provide an equivalent level of safety. Also, the proposed provision would minimize the burden on student pilots and flight schools that operate from some current Group II TCA primary and satellite airports. This is also consistent with related recommendations of the NAR Task Group and the TCA review task group concerning pilot proficiency, education, and testing.

Currently, there are flight training schools located in the Las Vegas, Nevada; Cleveland, Ohio; Detroit, Michigan; and Honolulu, Hawaii, Group II TCA's. The FAA assumes that some level of flight instruction occurs at the other Group II TCA's as well. Requiring a pilot to possess a private pilot's certificate in order to take off or land at current Group II TCA airports would eliminate student solo flights and place an undue economic hardship on these flight schools. This subject will be discussed further in the Regulatory Evaluation section of this notice.

The FAA believes that operations of student pilots who normally receive their flight training at an airport in a TCA or who normally operate in TCA airspace should not have an adverse effect on safety. Experience at the Group II TCA's that currently have flight schools at the primary airport has been that pilots who receive their flight training at airports within the TCA pose few problems in the later solo phases of flight training. During the initial phases of training, the student is accompanied by a qualified flight instructor who is responsible for teaching not only safe flying techniques but also proper responses to ATC instructions. These instructions are given in a TCA environment which enables the majority of these student pilots, when in solo phases of flight training, to quickly comprehend the necessity of following ATC instructions in a timely manner. Student pilots are not now allowed to land and take off at the primary airports in the current Group I TCA's, and the FAA does not propose to relax this restriction. However, the FAA believes that with appropriate training and supervision, student pilots can continue to operate safely in other TCA operations.

The FAA believes that student pilot operations, other than those at 12 specific airports, should be permitted provided that these student pilots receive appropriate ground and flight instruction from, and are properly supervised and certified by, their flight instructors for operation in the particular TCA and at the airport where instruction was received. A student pilot currently is required to have an endorsement in his logbook from a flight instructor within the preceding 90 days for solo operation. The FAA believes that the proposal to require that a student pilot have an endorsement within the preceding 90 days to continue to exercise student pilot privileges in a TCA will cause no additional hardship.

A corollary benefit of the endorsement procedure is the training of pilots qualified to operate in TCA airspace. A student pilot with the specific training required for the TCA endorsement may be more familiar with TCA procedures than a private pilot who has not received training in a TCA.

The FAA recognizes that there may be interest in alternate or additional restrictions on student pilot operations in TCA's. Accordingly, the FAA requests comments on the need for additional restrictions on solo student operations or alternate means of achieving the same objectives as the endorsement procedure proposed in this notice. Such restrictions could include, for example, limiting duration of the endorsement to 60 or 30 days; prior permission of the ATC facility having jurisdiction over the airspace concerned for solo operation in the TCA, or restriction of student solo operations to non-peak traffic hours.

Additionally, the FAA is proposing to require that persons conducting pilot training in a TCA comply with any procedures established by ATC for training flights in that TCA. Establishment of the ATC procedures could take the form of a facility memorandum issued by the ATC facility having jurisdiction over the TCA airport involved, and communicated by a Letter to Airmen, or a letter of agreement

between the ATC facility and a flight school or flying club conducting pilot training in the TCA. The procedures could cover subjects such as preferred routes; times when student solo flight could or could not be handled; and other procedures to enhance the safety and efficiency of TCA operations. Flight schools operating at existing Group II TCA's generally have such agreements in effect at this time, and the cooperation of such schools with ATC facilities has been high. The proposed requirement would not, therefore, have a significant impact on existing operations. The proposal would permit ATC facilities to revise procedures as necessary in the future, however, and would ensure that new flight training operations were subject to any such procedures.

Other TCA review task group action items which relate closely to the pilot qualification issue are those in the areas of pilot proficiency, education, and testing in TCA matters. Those items which have been implemented or are being studied by the agency include:

a. Revision, updating, and reprinting for distribution of Air Carrier Operations Bulletin #8–78–3 "Importance of Cockpit Crew Members External Vigilance."

b. Examination of all existing information available to the airmen regarding TCA concept, design, procedures, etc. Determination if that information is adequate, and updating of both the content and methods of distribution where necessary.

c. Taking steps necessary to ensure that Designated Examiners test all airman applicants on their knowledge of TCA's and other controlled airspace.

d. Taking steps necessary to ensure that all certified flight instructors (CFI) are familiar with TCA's and other controlled airspace prior to biennial recertification. Provide CFI's with methods for use in training their students about TCA's.

e. Development of a "Back-to-Basics" presentation which teaches what a TCA is, how to access it, and how to use it.

f. Development of advisory circular material that identifies topics to be covered by CFI's and others when administering Biennial Flight Reviews (BFR). The use of TCA and other controlled airspace shall be a topic.

Requirement for Mode C Automatic Altitude Encoding/Reporting Equipment

As stated in the summary of this proposal, the equipment and operating requirements proposed for the single-class TCA are those now associated with the Group I TCA. These include the requirement for an ATC transponder (as specified in § 91.24 of the FAR); and for automatic pressure altitude reporting (Mode C) equipment (as specified in § 91.24 of the FAR). On January 29, 1987, the FAA issued new regulations pertaining to the use, installation, inspection, and testing of Air Traffic Control Radar Beacon System (ATCRBS) and Mode S Transponders in U.S.-registered civil aircraft (52 FR 3380, February 3, 1987). In the same action, the FAA required use of Mode C altitude reporting equipment within all TCA's, specifically to include Group II TCA's, effective December 1, 1987. Therefore, the proposed consolidation of TCA's into a single classification with Group I Mode C requirements will not impose any new Mode C requirements on operators.

However, in this notice the FAA is proposing an independent requirement for Mode C equipment, from the surface to 12,500 feet MSL, within 30 miles of each TCA primary airport. The proposed requirement would be consistent with the horizontal boundaries of the proposed TCA design criteria. This would allow the controllers in terminal areas with TCA's to discern the altitude of aircraft outside the TCA airspace but within the horizontal limits either above or below the TCA, and to use this information for traffic advisories or other safety purposes.

Background: Required Use of Mode C in TCA'S

Interest in greater use of Mode C automatic altitude reporting equipment in NAS has been expressed by Congress and several national aviation organizations as well as by the FAA. The following is a brief synopsis of the Mode C initiatives.

FAA Mode C Initiatives

(a) *History.* Operational experience has shown that Mode C has been particularly beneficial in the higher density TCA airspace environment. Mode C equipment has been required and has been proven in use in conjunction with ATC transponder equipment in Group I TCA's and above 12,500 feet MSL since 1973. The equipment has been used to provide essential aircraft identity, location, and altitude information in those airspace areas where such information provides a fundamental means of providing airspace users safe, orderly, and efficient use of available airspace.

In early 1985, the FAA requested the Aircraft Owners and Pilots Association (AOPA) to actively encourage all members and nonmembers alike to equip and use Mode C in their aircraft as part of a stepped up safety awareness program. In this request, it was noted that Mode C enables the controller to quickly determine where potential traffic conflicts may exist. It further noted that even pilots who are not in contact with ATC will be afforded greater protection from instrument flight rules (IFR) and visual flight rules (VFR) aircraft which are receiving traffic advisories.

(b) *The Transponder-On Rule.* On December 2, 1985, the FAA issued a rule, informally called the transponder-on rule, requiring the use of transponders if installed (50 FR 45599 December 5, 1985). The transponder-on rule is intended to enhance aviation safety by providing an increased degree of aircraft target visibility to radar controllers in ATC facilities. A transponder-on environment is expected to help increase controller awareness and facilitate recognition and resolution of potential traffic conflict situations. The transponder-on rule requires aircraft equipped with an operable radar beacon transponder to have the transponder turned on while airborne in controlled airspace. In addition, if the aircraft is Mode C-equipped, Mode C must be turned on.

(c) *The Mode S Transponder Rule.* On January 29, the FAA issued the Mode S final rule which was published in the **Federal Register** on February 3, 1987 (52 FR 3380). This rule pertains to the use, installation, inspection, and testing of ATCRBS and Mode S Transponders in U.S.-registered civil aircraft. In that same rule, Mode C equipment would be required in all TCA's, specifically to include Group II TCA's. In the preamble to the proposal and the final rule, the usefulness and value of Mode C is described in the framework of operational experience with the equipment. To restate, experience has shown that its use can help to—

(1) Improve ATC system safety by automatically displaying the altitude of all aircraft operating in selected airspace;

(2) Reduce the midair collision potential through provision of constant and current aircraft altitude data;

(3) Reduce volume of communication and controller workload by eliminating the need for verbal altitude reports;

(4) Improve use of airspace through continuous altitude data on climbing and descending aircraft;

(5) Increase ATC effectiveness through greater controller selectivity in viewing targets;

(6) Reduce number of traffic advisories or avoidance vectors during the provision of radar service; and

(7) Improve ATC system safety by enhancing participation in automated

safety systems such as Conflict Alert and Minimum Safe Altitude Warning.

The portion of this rule requiring Mode C automatic altitude reporting equipment for operation in Group II TCA's is effective on December 1, 1987, with other portions effective in phases through January 1, 1992.

(d) *FAA TCA Review Task Group.* The FAA TCA Review Task Group was assembled in September of 1986 in the aftermath of the midair collision that occurred within the Los Angeles TCA over Cerritos, California, in late August 1986. The purpose of the task force, which was composed of FAA employees from headquarters and all regional offices, was to review all aspects of TCA's. The review included size, shape, traffic count, complexity, number and type of flight infractions, procedures, past enforcement efforts and any other factor which would allow the FAA to measure TCA effectiveness and to improve traffic flow and safe separation of aircraft. The result of the task group's work was the submission of 40 recommendations to the FAA Administrator, which subsequently were adopted as 39 action items for further review and/or implementation. One of the approved action items is contained in this proposal; i.e., the requirement for Mode C altitude reporting equipment in all airspace from the surface to and including 12,500 feet MSL within 30 miles of the primary TCA airport.

Industry Initiatives on Mode C

The major initiatives presented below represent those generated from the TCA Review Task Group, the FAA, and the ALPA and ATA petitions for rulemaking.

(a) *The ALPA Petition for Rulemaking.* On October 1, 1984, the ALPA presented a statement before the U.S. Senate's Subcommittee on Aviation giving its views of the status of the ATC system. The statement included a list of recommendations which ALPA stated would make a "good system better." Two of the recommendations were later considered by the FAA as a petition for rulemaking in consideration of the congressional interest displayed. The essence of ALPA's petition was to lower required use of Mode C equipment requirements for 12,500 to 10,000 feet MSL, and to establish all TCA ceilings at 10,000 feet MSL.

ALPA's petition was originally published in summary form in the **Federal Register** for comment on May 3, 1985 (50 FR 18869, Docket No. 24496). On July 17, 1984, the comment period was reopened by Notice 85-PR-4A (50 FR 28950) to promote public participation. The reopened comment period was extended to September 6, 1985, and in the reopening notice, the petition was published verbatim for clarity.

Twelve public comments were received. Two commenters supported the proposal; 10 opposed it. Those in support were the National Business Aircraft Association, Inc. (NBAA) and the U.S. Coast Guard. Those opposed were the Aircraft Owners & Pilots Association (AOPA), State of Oregon Aeronautics Division, State of Wisconsin Department of Transportation, National Air Transportation Association (NATA), Soaring Society of America, Inc. (SSA), Boeing Commercial Airplane Company, Physical Therapy Associates, Inc., Experimental Aircraft Association (EAA) and two private citizens.

ALPA's support for expanded use of Mode C in NAS is contained in its statement before the U.S. Senate Aviation Subcommittee, which is given below.

> At the present time, Federal Aviation Regulations (FAR) Section 91.24 requires Mode C-equipped transponders only above 12,500 feet. Section 91.70 authorizes speeds above 250 knots when operating at 10,000 feet or above. In that 2,500-foot altitude structure, operations can be conducted at high speeds that reduce a pilot's ability to see and avoid. Air traffic controllers are deprived of essential altitude information from visual flight rules (VFR) aircraft that could be used to provide traffic advisories to aircraft operating within the ATC system. Revising Section 91.24 to require Mode C at 10,000 feet and above would provide compatibility with FAR Section 91.70, enable controllers to assist pilots in meeting their see-and-avoid responsibilities, and at the same time, elevate the level of safety provided to the traveling public.

The FAA concurs in general principle with a concept that effectively aids a pilot's "see and avoid" responsibility. Further, the FAA agrees that there are certain advantages from using Mode C altitude equipment. Those advantages include the elimination of the need for verbal altitude reports which reduces controller workload; the increase of ATC effectiveness through greater controller selectivity in viewing targets; and the reduction of the number of advisories or avoidance vectors through the elimination of unnecessary traffic advisories during the provision of radar services. However, as described below, the FAA does not believe these advantages, of themselves, warrant an immediate imposition of a mandatory altitude encoding/Mode C equipment requirement above 10,000 feet MSL on a national scale.

General aviation represents approximately 98 percent of the U.S. civil air fleet and consumes approximately 79 percent of its total flying time. This segment of the U.S. civil fleet conducts such varied operations as industrial, agricultural, business, personal, instructional, research, patrol, and sport flying. Over the years, this major segment of the airspace user population has made steady progress in upgrading its avionics allowing aircraft to fly higher and to access larger portions of available airspace. This progress is evidenced by a voluntary equipage trend which includes transponder/Mode C equipment capability.

An example of the voluntary equipage trend is that in 1977, 60 percent of the general aviation fleet had ATCRBS transponders and 39 percent had Mode C capability. By 1983, the percentage of the fleet with transponders grew to 80 percent and an estimated 51 percent had Mode C capability. The growth rate in these percentages has been stable. The FAA believes the equipage rates will continue to increase. By 1992, the FAA expects that 92 percent of the general aviation fleet will have transponders and that at least 69 percent will have automatic altitude reporting capability.

Though a voluntary equipage trend definitely exists within the majority ranks of airspace users, there remains a question whether or not a flight safety problem exists within the 10,000 to 12,500 feet airspace stratum affected by the petitioner's proposal and whether or not petitioner's proposal would help to correct the problem. Also at question is whether petitioner's proposal would provide a real and measurable improvement in flight safety within large expanses of non-high density airspace areas. The majority of public response to the proposal would indicate otherwise.

There is little authoritative data to indicate that the proposal would provide a perceptible increase in flight safety in low density airspace areas. There is also little to prove or disprove the airspace accessibility issue raised by commenters. There are, however, three foremost considerations concerning these issues which are discussed below.

The first consideration is that though the voluntary equipage trend exists, at present, approximately 58 percent of the general aviation fleet cannot fly above 12,500 feet MSL due to transponder limitations. An analysis of the various equipment categories of users in the FAA *General Aviation Activity and Avionics Survey* of October 1985 indicates the limitation is the lack of altitude encoding/Mode C capability. The effect of petitioner's proposal would be imposition of an immediate

equipment requirement which would act to suddenly bring that restriction down to 10,000 feet MSL. The effect would be felt throughout all of the NAS, to include en route and terminal, and low density airspace areas. The widespread effects will be felt by those presently unable to fly above 12,500 feet but who are now able to fly within the 10,000-to 12,500-foot stratum without need of altitude reporting equipment.

The second consideration involves the question of whether or not there exists a flight safety problem in the altitude stratum 10,000 to 12,500 feet MSL in the en route airspace areas. One barometer may be considered to be the incidence of near midair collisions (NMAC). Examination of FAA NMAC data for the years 1983 through 1985 indicates that only about 7 percent of all NMAC's occur within the 10,000 to 12,500 feet altitude stratum. Moreover, when the reported NMAC's that are found to be no hazards are discounted, the overall percentage is found to be less than 5 percent of the total. The yearly percentage relative to this overall stratum is stable. In consideration of the low number and the many ways to classify and study the phenomenon of near misses (e.g., type operator, flight plan, type ATC, operational area, pilot certification, visibility, violations, etc.) it becomes particularly difficult to equate a real or potential flight safety problem with the 10,000 to 12,500 feet MSL altitude stratum within the en route airspace structure.

The third consideration involves the provision of aircraft altitude information. The petitioner maintains that air traffic controllers are deprived of essential altitude information from VFR aircraft that could be used to provide traffic advisories to aircraft operating within the ATC system. The petitioner further states that revising § 91.24 to require Mode C at 10,000 feet and above would assist pilots in meeting their see-and-avoid responsibilities and elevate the level of safety provided the traveling public. This appears to support the FAA proposal to require Mode C at 12,500 feet MSL and below in the major terminal airspace areas. The vast majority of large aircraft operations in this altitude stratum are in terminal areas where one or both of these aircraft are being controlled by or communicating with a radar-equipped ATC facility. The Mode C requirement has no safety benefit unless one or both aircraft are air traffic controlled.

The petitioner's argument would appear to be that the only feasible solution to the alleged problem is through the mandating of Mode C above 10,000 feet which would provide altitude information available for traffic advisory purposes. It would also appear from petitioner's statement that nothing else has been done or now exists that would provide such information. This is not the case. Other actions have been implemented. One of the most visible as stated above, is issuance of the "Transponder-On" rule. That amendment requires all aircraft equipped with an operable radar beacon transponder to have the transponder turned on while operating in controlled airspace. Included in the rule is the requirement to operate Mode C equipment, if installed. The scope of this requirement is broad; it applies within all controlled airspace.

As stated above, there are other regulatory initiatives to expand use of Mode C in NAS. They include the Mode S rule which creates a total Mode C environment in TCA's, and this proposal which would expand that Mode C environment to a veil of airspace in the vicinity of a TCA in addition to that presently required in TCA airspace.

Relative to the concept of a common 10,000 feet cap to all TCA's, the petitioner provides two basic supporting arguments for this proposal, both of which are rooted in the concept of standardization. The first is that if the rule were revised to require Mode C transponders for all operations at 10,000 feet and above, and the top of all TCA's were raised to that level, controllers would be provided the opportunity to have precise information on all traffic that could affect the safety of air carrier arrival and departure flights at TCA-designated airports. The second supporting point is that if the base of the Mode C requirement and the TCA ceiling were to be established at a common altitude, it would help remove any misunderstanding by general aviation pilots about the configuration of any TCA.

The focal point of the petitioner's request appears to be increased safety for operations in areas where turbojet aircraft are accelerating as they climb through 10,000 feet MSL or decelerating prior to descent through 10,000 feet MSL. However, in order to protect these terminal area operations, it is not necessary to require a Mode C restriction throughout the United States when the major areas where these turbojets operate in the altitudes specified in the petition are not over the prairies of Kansas or Nebraska but in the airspace around the major airports which are contained in TCA airspace. Few turbojets operate in an en route environment at altitudes of 10,000 to 12,500 feet MSL. Although there are other airports with turbojet operations in the United States, approximately 85 percent of the annual enplaned passengers and approximately 60 percent of the air carrier operations are at the airports contained within TCA's. The FAA recognizes that aircraft and passengers at these other airports are entitled to equal protection but does not believe that imposing an additional equipment restriction for all aircraft nationwide in the altitudes petitioned would be the most efficient solution.

The concept of standardization as it generally applies to airspace applications may have many attractive features, to the extent that the FAA now has under consideration a proposal of the NAR regarding airspace reclassification which involves standardization of the airspace structure. Currently, the FAA is also involved in a nonregulatory initiative to consider the task group's recommendation on the issue of TCA ceilings. One of the recommendations of the FAA TCA review task group is to simplify and standardize TCA design as much as practicable. The task group recommended that TCA design criteria achieve several objectives, one of which was the establishment of the tops of TCA's at 10,000 feet MSL or 7,000 feet above airport elevation, whichever is higher. An FAA working group was convened in December 1986 to consider the task group's recommendations and to propose TCA design criteria. Their design criteria proposals, which differ slightly from the task group recommendations and have been discussed above, are being circulated within the FAA, to the public, and to industry for comment.

The recommendations of the FAA TCA review task group provide other nonregulatory platforms for TCA improvement and which are also indirectly responsive to ALPA's contentions involving misunderstandings by general aviation pilots about the configuration of TCA's. In their overall review of all safety aspects of a TCA, the task group recognized this issue. For example, the task group made recommendations, addressed above, concerning improved, simplified TCA designs. There were other recommended areas of improvement as well, including standardized and improved TCA charting to encompass clearer depictions of TCA boundaries, traffic flows, altitudes, airways, and readily-visible radio frequencies. In this area, the task group even touched upon

cockpit environmental aids, such as convenient size and foldability of charts.

In summary analysis of the ALPA petition, the agency believes there is inherent merit in the use of Mode C altitude reporting equipment. The FAA recognizes that an effective method of detecting the potential unsafe proximity of aircraft is through Mode C automatic altitude reports. Experience in use of Mode C shows that its most tangible benefits to both airspace users and ATC are those from its use in the more complex, higher density traffic areas and in the higher speed environment. The agency therefore supports graduated expansion of Mode C on an airspace-needs basis, a needs basis that augments a steady rising, voluntary equipage of the general aviation fleet. The percentage of the transponder-equipped fleet that also has Mode C equipment (57%) is expected to increase to 69% by 1992.

It is FAA's policy to systematically review the equipment requirements for operations in all airspace environments. At present, the agency does not find sufficient flight safety benefits to support an all-inclusive requirement for Mode C use throughout the entire stratum of airspace above 10,000 feet MSL.

Therefore, at this time, the FAA has proposed the required use of Mode C in all airspace within 30 miles of TCA airports from 12,500 feet MSL to the surface, but has not proposed a Mode C requirement in all airspace above 10,000 feet MSL. The agency proposal focuses on providing the greatest margin of safety to the greatest number of people and aircraft in the high-density terminal airspace surrounding major airports. However, the FAA will continue to review the ALPA Mode C petition for benefits in non-terminal airspace.

(b) *The ATA Petition for Rulemaking.* By letter dated March 25, 1986, the ATA submitted a five-part petition to the FAA. In petitioner's words, ATA requests FAA to undertake rulemaking with an advanced notice of proposed rulemaking (ANPRM) addressing the need to improve safety and effectiveness in the ATA system through further implementation of automatic altitude reporting. The petitioner proposed that the FAA should—

(1) Revise § 91.24 of the FAR to establish an additional requirement for carriage of an operating transponder with automatic altitude reporting for flight operations in terminal airspace where FAA provides radar service and in all controlled airspace above 4,000 feet above ground level (AGL) effective July 1, 1989;

(2) Accelerate applicability of the requirements discussed in the preamble of Notice 85–16 (Mode S proposal) by revising §§ 91.24, 91.36, 121.345, 127.123, and 135.143 effective July 1, 1992, to require altitude reporting equipment with all new transponder installations:

(i) To meet improved performance standards. ATA proposes that the improvements be based on the accuracy criteria contained in Society of Automotive Engineers, Inc. (SAE) Aerospace Standard 8009, requiring automatic correction of static system errors which exceed plus or minus 100 feet; and

(ii) To reply to Mode S interrogations with altitude information in 25 feet increments compatible with RTCA Document DO–181, with appropriate correspondence (e.g. 35 feet);

(3) Revise §§ 91.24, 91.36, 121.345, 127.123, and 135.143 effective July 1, 1997, to require all operating transponders to comply with the standards identified in (b) above;

(4) Revise FAR Part 43, Appendix E to incorporate the new standards for improved altitude reporting accuracy and reduced increments identified in (b) above for inspections and maintenance; and

(5) Revise § 91.171 to require biennial checks of automatic altitude reporting installations in all aircraft so equipped, not just for IFR flight as presently required.

Disposition of the ATA petition will be accomplished in separate action. However, in consideration of the larger Mode C issue, this preamble discusses that part of the ATA petition that deals with Mode C usage requirements.

In support of (1) above, ATA noted that Mode C provides the ATC system with the present altitude of an aircraft and timely information on changes in altitude. Continuous display of this information to the ATC controller facilitates performance of the ATC safety mission and reduces voice frequency congestion. Mode C also provides the basic means to effectively operate the automated conflict alert and conflict resolution services of ATC. ATA recognized that while this part of the proposal would be ideal, it did not adequately consider the few aircraft operators, such as agricultural aircraft, who seldom enter heavily used airspace. Nevertheless, ATA said the airlines believe there is a need for Mode C in the terminal area and their proposal combines the several possible approaches to both lower the altitude of en route airspace where Mode C is required and to require it within terminal airspace with radar service.

The petition was published in the **Federal Register** July 9, 1986 (51 FR 24845). The FAA received 30 public comments during the comment period which closed September 9, 1986. Comments were received from 17 private citizens, 9 aviation organizations, and 2 state governments. Of the comments received, one was in unqualified support and one was in partial support in concept. The remaining 28 were in strong opposition.

Support of the ATA Petition. ALPA supported ATA's proposal saying it would reduce near midair collisions and would enhance safety. To an extent, the National Transportation Safety Board (NTSB) also supported the proposal. In support of the proposal, the NTSB stated that since the airborne Traffic Alert and Collision Avoidance System (TCAS) and the ground-based conflict alert functions depend upon the airplane's altitude reporting transponder, it supports rulemaking which will require this equipment. Specifically, the Safety Board supports implementation of a collision avoidance system aboard air carrier aircraft and more stringent Mode C equipment requirements to detect VFR traffic in TCA's and Airport Radar Service Areas (ARSA). However, the Safety Board stated that the ATA-proposed 4,000 feet AGL limitation might be unnecessarily restrictive in some areas of the country and that the severity of the airspace restriction must be carefully examined for possible compromise before final rulemaking.

Nonsupport of the ATA Petition. The aviation organizations opposing the proposal were Petroleum Helicopters, Inc. (PHI); Appalachian Helicopter Pilots Association, Inc. (AHPA); Helicopter Association International (HAI); Experimental Aircraft Association (EAA); National Air Transportation Association (NATA); Soaring Society of America (SSA); General Aviation Manufacturers Association (GAMA); and the Aircraft Owners and Pilots Association (AOPA). Opposition to the proposal was based generally on the lack of perceived safety benefits; the cost as opposed to any identifiable safety benefits; the supposition that the proposed regulation would make airspace areas inaccessible to a great number of users; the increase in controller workload; and its inappropriateness where radar coverage does not exist.

FAA Analysis of ATA petition. The FAA concurs in concept with expanded use of Mode C equipment. Mode C has been in effective use for some time above 12,500 feet MSL and in the higher density Group I TCA's. Also, the agency

has adopted a requirement for Mode C in all other TCA's effective December 1, 1987. However, while the agency agrees that Mode C can be an effective aid to both users and the ATC system, expansion of Mode C requirements to other designated airspace areas of the NAS must be on a carefully examined, selective, and reasonable needs basis. While the ATA proposal is considered to be an initiative in the proper direction, and while the FAA encourages voluntary equipage, the ATA proposal would mandate the carriage of sophisticated equipment in the entire Nation's airspace, both controlled and uncontrolled, above the relatively low altitude of 4,000 feet MSL. The proposed requirement would affect a majority of all flying activity and all classes and types of users in broad expanses of uncontrolled airspace.

In summary analysis of the ATA petition, the FAA concurs in concept with expanded use of Mode C in the NAS. However, the agency does not find that requiring Mode C on the broad scale recommended by ATA is currently supported by the benefits of that requirement. Accordingly, at this time, the FAA is proposing a new Mode C requirement only within 30 miles of TCA airports, as previously discussed. As with the ALPA petition, the FAA will continue to review the ATA Mode C petition for potential benefits in non-terminal airspace.

Congressional Interest in Mode C

The Congressional initiative was specifically expressed in section 113 of Pub. L. 99–591 directing the FAA to initiate rulemaking action to consider expanding the requirement for altitude-encoding radar transponder equipment (Mode C) in terminal airspace areas served by radar and in all controlled airspace at a minimum altitude to be determined by the FAA. House Report 99–831 contained a recommended timetable for this rulemaking and requested quarterly reports to the House and Senate committees on Appropriations on the progress of the rulemaking. House Joint Resolution 730 and 738 recommended mandatory expansion of Mode C; however, language contained in the House Report stated that while it is the clear intent of the Committee that stronger and more comprehensive Mode C requirements be promulgated, the Committee stressed that this provision is not intended to limit the FAA's discretion in fashioning a fair and justifiable regulation.

The Proposed Mode C Requirement

In consideration of the above, the FAA proposes expanded use of Mode C in airspace areas which completely envelop the higher density airspace areas, specifically, TCA's. To assure the integrity of the Mode C environment, the agency proposes its use from the surface to and including 12,500 feet MSL and within 30 nautical miles of the primary airport. This proposal is identical to the recommendation made by the FAA TCA Review Task Group and forms a major part of the complete TCA safety improvement package recommended by the group. The requirement would have the additional effect of requiring a transponder in this airspace, because Mode C cannot be installed unless the aircraft is equipped with a transponder.

Exceptions

FAR § 91.24(d) allows ATC authorized deviations to the transponder and Mode C requirements of § 91.24(b). Deviations may be authorized for short periods of time or on a continuing basis under certain conditions after requests are made to and approval received from the appropriate ATC facility. The FAA will retain this section without change which will allow these deviations in TCA's and in the airspace below 12,500 feet MSL within 30 miles of the TCA primary airport for operations of aircraft including balloons, sailplanes, and other VFR recreational aircraft.

The FAA is not proposing any exceptions to the operating requirement for Mode C between the surface and 12,500 feet MSL within 30 miles of the TCA primary airport. However, the agency is aware that a number of aircraft are based at airports within the proposed 30-mile areas which do not have Mode C equipment, and that a small number of these aircraft are not equipped with electrical systems. Some of these aircraft are in the "antique" category and do not have the capability of installing electrical systems.

For these reasons, the FAA solicits comment on whether an exception to the Mode C requirement should be incorporated in the rule to permit aircraft to operate for the purposes of ingress and egress at airports within the 30-mile area below 2,500 feet AGL and outside of TCA airspace. Comments are specifically solicited on whether 2,499 feet AGL is an appropriate maximum altitude for the excepted operations. Also, each TCA has particular operational requirements and traffic characteristics. Therefore, the FAA requests comments on whether the applicability or extent of an exception should be applied uniformly to all TCA's or should be determined on a case-by-case basis for each TCA location.

Equipment and Operating Requirements

As stated in the summary of this proposal, the equipment and operating requirements proposed for the single-class TCA are those now associated with the Group I TCA. Current Group I TCA equipment requirements are—

(a) An operable VOR or TACAN receiver (except in the case of helicopters);

(b) An operable two-way radio capable of communicating with ATC on appropriate frequencies for that terminal control area:

(c) An ATC transponder (as specified in § 91.24 of the FAR); and

(d) Automatic pressure altitude reporting (Mode C) equipment (as specified in § 91.24 of FAR).

The current Group I TCA operating requirements are—

(a) An appropriate authorization from ATC prior to operating in the TCA; and

(b) Operation of large turbine engine-powered aircraft at or above designated floors while within lateral limits of the TCA if operating to or from a primary airport.

(c) Operation of an aircraft within a TCA at no more than 250 knots indicated speed.

(d) Operation of an aircraft below the confines of a TCA or in a VFR corridor through a TCA at no more than 200 knots indicated speed.

Application of current Group I TCA equipment requirements to the proposed single-class TCA would entail two additional equipment requirements for those operations now conducted in Group II TCA's. The first is the requirement for use of Mode C automatic pressure altitude reporting equipment. However, the FAA has already extended a Mode C requirement to current Group II TCA's, effective December 1, 1987, in the Mode S rule, discussed above under "FAA Mode C Initiatives."

Second, FAR § 91.24(b)(2)(iii) currently allows aircraft operating under IFR to or from an airport outside of but in close proximity to a Group II TCA but whose commonly used transition, approach, or departure procedures to such airport require flight within the TCA to operate without a transponder. Applying the current Group I TCA equipment requirements to the proposed single-class TCA would entail a new transponder requirement for those operations. The portions of § 91.24(d)(3) which allow individual flights through a TCA without a transponder with prior approval by ATC are believed to be sufficient for continued IFR operations from these airports. Under the proposals

contained in this notice and the requirements of the Mode C portion of the Mode S rule, this exception is found to be unnecessary and will no longer be allowed.

Helicopter Equipment Requirements

In it recommendations, the TCA review task group specifically recommended that Group I TCA aircraft equipment requirements be extended to all aircraft, including helicopters, operating in TCA's. Presently, helicopters may operate in TCA airspace without meeting the VOR or TACAN requirements in § 91.24(b). They are also permitted to operate in TCA's at or below 1,000 feet AGL without complying with the transponder requirements of § 91.90(a)(3)(i). When these rules were adopted on May 21, 1970, (Amdt. 91–78, 35 FR 7784), and June 4, 1973, (Amdt. 91–116, 38 FR 14672), the FAA had determined that helicopters operate in a unique manner at low altitudes below navigational aid and transponder reception. In 1973, there were only 2,196 active civil helicopters operating in the United States. Today, there are approximately 9,000 active civil helicopters. The majority of today's operational helicopters are turbine-powered and are equipped with the latest modern avionics, including VOR, TACAN or LORAN C, and transponders. The helicopters of today are being operated in all areas of air transportation and have far superior operating characteristics and capabilities over those in operation when the exclusion for helicopters was first introduced.

Operations by helicopters in the more densely congested airspace and in close proximity to TCA's have been steadily increasing. Since 1980, there have been 17 midair collisions and 161 near midair collisions involving helicopters in controlled airspace. As a result of the further need to improve safety in major terminal areas, especially in the airspace in and around TCA's, the FAA has determined that it would be inappropriate to continue to relax the equipment standards for helicopters in these terminal areas. Therefore, the FAA proposes to amend the appropriate portions of FAR sections 91.24 and 91.90 to require that helicopters operating in TCA's comply with the navigational equipment and transponder requirements that apply to fixed-wing aircraft.

Related Non-Rule TCA Improvement Actions

The Background section of this proposal includes discussion of TCA improvement recommendations made by the NAR and FAA TCA Review Groups. As mentioned, the Agency has underway many improvement actions. Notably included in the improvement actions are simplification and standardization of TCA airspace and the considered adoption of NAR-proposed TCA establishment criteria for a single-class TCA.

Economic Impact

The FAA is proposing to eliminate separate classification of TCA's. Existing and future TCA's would be designated simply as "terminal control areas." The current Group I TCA operating rules and equipment requirements would be applied to the new single-class TCA, with the exception that student pilots with a logbook endorsement from an authorized flight instructor would be able to operate solo to and from what are currently classified as Group II TCA primary airports. Although student pilots would be prohibited from operating solo to and from the 12 currently classified Group I TCA primary airports, they would be allowed to transit through TCA's provided they had a logbook endorsement from an authorized flight instructor. In addition, the FAA is proposing that Mode C equipment be required for all fixed- and rotary-wind aircraft in all airspace from the surface to 12,500 feet MSL within 30 miles of the primary TCA airport.

The FAA has concluded that this proposed operating rule regarding pilot certification would have no adverse economic impact because it would merely formalize present training practices. Students are currently being provided with ground instruction and dual flight training before being allowed to fly solo within either a Group I or Group II TCA, although no formal endorsement from an instructor is now required. The requirement for a logbook endorsement would impose only a minimal burden on flight instructors.

The FAA has determined that the Mode C equipment requirement would have an economic impact. The cost (discounted) of equipping the general aviation aircraft that are expected to be affected by this requirement over the next 10 years (including maintenance costs) would range from $24.0 million up to $47.9 million, depending on the assumption regarding current rates of voluntary equipage with Mode C. This estimate includes the cost of adding Mode C to aircraft already equipped with a transponder, as well as the cost of equipping an aircraft that previously had no transponder with both a basic transponder and with Mode C equipment. The FAA estimates that the total cost (discounted) of this requirement over the next 10 years for rotorcraft only would range between $1.66 million and $3.31 million. In estimating the cost of this requirement, the FAA assumed that only those aircraft which presently operate within a 30-mile radius of the primary TCA airports and are not equipped with Mode C (or and ATCRBS transponder) would be affected. The upper boundaries are based on the conservative assumption that the current rate of equipage with Mode C of the general aviation fleet (as well as rotorcraft) based within a 30-mile radius of the primary airports within TCA's is the same as the equipage rate for the general aviation aircraft population (and rotorcraft) based within the state containing the TCA. In reality, this rate may increase in proportion with the proximity to the TCA because aircraft operating in the vicinity of a TCA are more likely to have occasion to transit through the TCA if not land at its primary airport. Furthermore, all aircraft based at the primary airport of Group I TCA's are currently required to have Mode C. The lower boundaries of the expected range of costs were derived assuming that the rate of equipage with Mode C of the general aviation fleet (and rotorcraft) within a 30-mile radius of the primary TCA airport is twice as great as the rate for all aircraft (and rotorcraft only) based within the relevant state. The FAA solicits information from the public regarding current Mode C equipage of aircraft based in areas covered by this proposal. The FAA estimates that there are approximately 43,300 aircraft based at the 588 airports located within a 30-mile radius of the primary airports of the 23 TCA's.

The estimated range of costs may be overstated because it does not allow for an increase in voluntary equipage with Mode C over the next 10 years (assuming that this requirement is not imposed). This is probable based on the trend over the past 10 years. The FAA is also interested in hearing from the affected public regarding proclivities for installing Mode C on a voluntary basis in future years.

The requirement for all aircraft operating in close proximity to TCA's to have an altitude encoding transponder (Mode C) would afford controllers and pilots the opportunity to use Mode C to help provide and maintain sufficient separation between aircraft. This opportunity is not available today outside the TCA's since aircraft operating in this area are not required to have altitude reporting capability. In an

FAA paper entitled *An Analysis of Selected Near Midair Collisions* (December 1986), it is suggested that the equipment and operating requirements imposed on aircraft operating within TCA's significantly reduce collision risk. Therefore, expanding the equipment and operating requirements around the TCA's as proposed would increase the safety level both in and around the TCA's. For example, a midair collision occurred between an Aeromexico DC–9 and a Piper Archer PA–28–181 on August 31, 1986, killing 85 people. The collision occurred 20 miles southeast of Los Angeles International Airport at an approximate altitude of 6,500 feet MSL, which is inside the TCA. The Piper was not equipped with an altitude encoding transponder, and hence had entered the TCA without ATC's knowledge. If these proposed expanded requirements had been in effect, this accident may have been avoided.

The cost to society of this accident is the sum of the value of the two destroyed aircraft, the number of fatalities that resulted, and the property damage sustained by the surrounding homes. For the purpose of this analysis, using the minimum statistical value of $1 million per fatality avoided, the total costs of this accident to society is estimated at $93.4 million. Assuming that the proposed Mode C requirement would prevent an accident of this magnitude from occurring some time over the next 10 years, the overall benefits are estimated at $53 million on a discounted basis. These benefits are more than two times greater than the lower boundary of estimated costs of the Mode C requirement for all aircraft in the vicinity of TCA's and about 10 percent greater than the upper boundary of the estimated costs.

Over the last 10 years, there is no record of any midair collisions involving rotorcraft within TCA's. The historical record is not necessarily a reliable indicator of these types of accidents occurring in the future, however. The significance of these hazards will probably increase over time as traffic in the vicinity of TCA's increases. If this regulation prevented one midair collision involving six fatalities from occurring over the next 10 years, the benefits of $3.72 million (discounted) would exceed the upper boundary of estimated costs of $3.31 million.

The proposals in this notice would have little or no impact on trade for both U.S. firms doing business overseas and foreign firms doing business in the U.S. They would potentially affect only those operators of flight schools and flying clubs based at airports within Group II TCA's. There is not expected to be any impact on international trade because those domestic operators do not compete with foreign firms.

For the reasons set forth in the preamble, the FAA has determined that the proposal does not involve a major proposal under Executive Order 12991. The proposal is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 25, 1979). A copy of the draft Regulatory Evaluation prepared for this action is contained in the regulatory docket, and a copy may be obtained by contacting the person identified under the caption.

Initial Regulatory Flexibility Determination

The FAA has also determined that the proposed changes in TCA pilot and operating requirements will not have a significant economic impact on a substantial number of small entities. These changes would not affect the operations or impose any costs on the individual flight schools and flying clubs that are based at Group II TCA's, because their student training activities would not be affected. Any benefits in terms of enhanced safety are not expected to be substantial for individual entities.

At most, the annual incremental cost (discounted) per transponder for Part 135 operators would approximate $100 per year. Even when the threshold of significant cost is at its lowest, namely for a Part 135 air taxi operator ($3,666 per year), the largest small entity will not have an economic impact exceeding the threshold.

Therefore, I certify that under the criteria of the Regulatory Flexibility Act, this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

Trade Impact Assessment

The proposals, if adopted, will have little or no impact on trade opportunities for both United States firms doing business overseas and foreign firms doing business in the United States.

List of Subjects

14 CFR Part 61

Certification: Pilots and flight instructors.

14 CFR Part 71

Controlled airspace, Terminal control area.

14 CFR Part 91

Aviation safety, Safety, Aircraft, Air traffic control, Pilots, Airspace, Air transportation, Airports.

The Proposal

In consideration of the foregoing, it is proposed to amend Parts 61, 71, and 91 of the Federal Aviation Regulations, as follows:

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

1. Revise the authority citation for Part 61 to read as follows:

Authority: 49 USC 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983); unless otherwise noted.

2. Add a new § 61.95 to read as follows:

§ 61.95 Operations in a terminal control area

(a) *General.* A student pilot may not operate an aircraft on a solo flight in the airspace of a terminal control area unless he has received ground and flight instruction from an authorized flight instructor for operation in that terminal control area and the flight instructor has entered an endorsement in the student pilot's logbook within the preceding 90 days stating that the student pilot has received the required flight and ground training and has been found competent to make a solo flight within that terminal control area.

(b) Operation at an airport within a terminal control area. A student pilot may not make a solo takeoff or landing at an airport in the surface area of a terminal control area unless that student pilot has received ground and flight instruction from an authorized flight instructor for operation at that airport and the flight instructor has entered an endorsement in the student's logbook within the preceding 90 days stating that the student pilot has received the required flight and ground training and has been found competent to make a solo takeoff and landing at that airport.

3. Amend § 61.193 to redesignate paragraphs (b)(4), (b)(5) as paragraphs (b)(5) and (b)(6) respectively, and to add new paragraph (b)(4) to read as follows:

§ 61.193 Flight instructor authorizations.

* * * * *

(b) * * *

(4) In accordance with § 61.95, the logbook of a student pilot he has instructed authorizing solo flights in a terminal control area or at an airport within a terminal control area.

* * * * *

4. In § 61.195, revise paragraph (d) to read as follows:

§ 61.195 Flight instructor limitations.

* * * * *

(d) *Logbook endorsement.* He may not endorse a student pilot's logbook—

(1) For solo flight unless he has given that student flight instruction and found that student pilot prepared for solo flight in the type of aircraft involved, or for a cross-country flight, and he has reviewed the student's flight preparation, planning, equipment, and proposed procedures and found them to be adequate for the flight proposed under existing circumstances; or

(2) For solo flights in a terminal control area or at an airport within the surface area of a terminal control area unless he has given that student ground and flight instruction and has found that student prepared and competent to conduct the operations authorized.

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

5. 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.

6. In § 71.12 the second sentence is revised to read as follows:

§ 71.12 Terminal control areas.

* * * * *

Each such location includes at least one primary airport around which the terminal control area is located.

§ 71.401 [Redesignated as § 71.403]

7. Section 71.401 is redesignated as § 71.403.

PART 91—AIR TRAFFIC AND GENERAL OPERATING RULES

8. The authority citation for Part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 31(a) of the Convention on International Civil Aviation (61 Stat 1180); 42 U.S.C. 4321 et seq; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

9. In § 91.24, paragraph (b) is revised to read as follows:

§ 91.24 ATC Transponder and altitude reporting equipment and use.

* * * * *

(b) *Controlled airspace: all aircraft.* Except for persons operating gliders above 12,500 feet MSL but below the floor of the positive control area, no person may operate an aircraft in the airspace prescribed in (b)(1), (b)(2), or (b)(3) of this section, unless that aircraft is equipped with an operable coded radar beacon transponder having a Mode3/A 4096 code capability replying to Mode 3/A interrogations with the code specified by ATC, or a Mode S capability, replying to Mode 3/a interrogations with the code specified by ATC and intermode and Mode S interrogations in accordance with the applicable provisions specified in TSO–C112, and that aircraft is equipped with automatic pressure altitude reporting equipment having a Mode C capability that automatically replies to Mode C interrogations by transmitting pressure altitude information in 100-foot increments.

(1) In Terminal Control Areas.

(2) In airspace 12,500 feet MSL and below within 30 miles of a terminal control area primary airport as identified in Part 71, Subpart K of this chapter.

(3) In all controlled airspace of the 48 contiguous states and the District of Columbia, above 12,500 feet MSL, excluding the airspace at and below 2,500 feet AGL.

* * * * *

10. Section 91.90 is revised to read as follows:

§ 91.90 Terminal control areas.

(a) *Operating rules.* No person may operate an aircraft within a terminal control area designated in Part 71 of this chapter except in compliance with the following rules:

(1) No person may operate an aircraft within a terminal control area unless that person has received an appropriate authorization from ATC prior to operation of that aircraft in that area.

(2) Unless otherwise authorized by ATC, each person operating a large turbine engine-powered airplane to or from a primary airport shall operate at or above the designated floors while within the lateral limits of the terminal control area.

(3) Any person conducting pilot training operations at an airport within a terminal control area shall comply with any procedures established by ATC for such operations in the terminal control area.

(b) *Pilot requirements.* (1) No person may take off or land a civil aircraft from an airport within a terminal control area or operate a civil aircraft within a terminal control area unless:

(i) The pilot-in-command holds at least a private pilot certificate; or;

(ii) The aircraft is operated by a student pilot who has fulfilled the requirements of § 61.95.

(2) Notwithstanding the provisions of (b)(1) of this section, at the following TCA primary airports, no person may take off or land a civil aircraft unless the pilot-in-command holds at least a private pilot certificate:

(i) Atlanta Hartsfield Airport, GA.

(ii) Boston Logan Airport, MA.

(iii) Chicago O'Hare International Airport, IL.

(iv) Dallas/Fort Worth International Airport, TX.

(v) Los Angeles International Airport, CA.

(vi) Miami International Airport, FL.

(vii) Newark International Airport, NJ.

(viii) New York Kennedy Airport, NY.

(ix) New York LaGuardia Airport, NY.

(x) San Francisco International Airport, CA.

(xi) Washington National Airport, DC.

(xii) Andrews Air Force Base, MD.

(c) *Equipment requirements.* Unless otherwise authorized by ATC in the case of an in-flight VOR, TACAN, or two-way radio failure, or unless otherwise authorized by ATC in the case of a transponder failure occurring at any time, no person may operate an aircraft within a terminal control area unless that aircraft is equipped with—

(1) An operable VOR or TACAN receiver;

(2) An operable two way radio capable of communications with ATC on appropriate frequencies for that terminal control area; and

(3) The applicable equipment specified in § 91.24.

Issued in Washington, DC, on June 11, 1987.

John R. Ryan,

Director, Air Traffic Operations Service.

[FR Doc. 87–13661 Filed 6–11–87; 11:34 am]

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federal register

Tuesday
June 16, 1987

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Species; Geocarpon Minimum, Sacramento Mountains Thistle, Cyathea Dryopteroides and Ilex Cookii, Alabama Red-Bellied Turtle, and Large-Fruited Sand-Verbena; Final Rules and Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Threatened Status for Geocarpon Minimum

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines a plant, *Geocarpon minimum*, to be a threatened species under the authority contained in the Endangered Species Act (Act) of 1973, as amended. *Geocarpon minimum* is only known from four sites in Arkansas (four counties) and thirteen sites in southwestern Missouri (six counties). However, of these 17 sites, only four Missouri sites and one Arkansas site contain vigorous populations. This species is threatened by its limited distribution and by habitat destruction or modification from pasturing, off-road vehicle (ORV) use, forestry practices, and succession. This action will extend the Act's protection to *Geocarpon minimum*.

DATES: The effective date of this rule is July 16, 1987.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Endangered Species Field Station, U.S. Fish and Wildlife Service, Jackson Mall Office Center, Suite 316, 300 Woodrow Wilson Avenue, Jackson, Mississippi 39213.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis B. Jordan (see **ADDRESSES** section) at 601/965–4900 or FTS 490–4900.

SUPPLEMENTARY INFORMATION:

Background

Geocarpon minimum is a small, succulent annual, 1–4 centimeters (0.4–1.6 inches) in height. The stems, which may be simple or branched near the base, extend from a slender taproot. Leaves are opposite, sessile, joined at base, 3–4 millimeters (0.1–0.2 inches) long, and narrowly oblong in shape. The flowers, which are inconspicuous in the leaf axils, are apetalous, and have a greenish-red calyx. The fruit, a capsule, dehisces into three parts at maturity, releasing numerous seeds measuring 0.5 millimeter (0.02 inch) long. Young plants are dull gray and turn reddish-purple at maturity. The species is ephemeral, usually completing its life cycle within a 4-week period (Morgan 1980, Kral 1983, Tucker 1983).

Geocarpon minimum, the only species of a monotypic genus, was first collected in 1913 by E.J. Palmer in Jasper County, Missouri. MacKenzie (1914) described this new taxon and placed it in the family Aizoaceae. Palmer and Steyermark (1950) later transferred the genus to the family Caryophyllaceae based on the following characters: Staminodial rudiments, apetalous flowers, lack of stipules, gamophyllous calyx, 5 perigynous stamens, 1-celled ovary, and free-central placentation. Chemotaxonomic studies on *Geocarpon* by Bogle *et al.* (1971) revealed the presence of anthocyanins, which provided further support for its placement in the Caryophyllaceae family.

In Missouri, *Geocarpon* grows on moist, sandy soils on exposed sandstone outcrops which are primarily of the Channel sands formation (Morgan 1980). Arkansas sites are characterized as sandy-clay prairies occurring in otherwise savanna-type areas. In these areas, *Geocarpon* occurs on bare mineral soils of the Lafe or Wing Series (high in sodium and magnesium) which may represent relict Pleistocene Lake beds (Tucker 1983, Kral 1983). Species diversity is low at these sites. Species commonly associated with *Geocarpon* include *Houstonia minima, Nothoscordum bivalve, Plantago hybrida, Plantago elongata, Krigia occidentalis, Krigia virginica*, and *Oenothera linifolia* (Morgan 1980, Tucker 1983, Kral 1983). Sites in Arkansas are also characterized by prominent colonies of blue-green algae (Tucker 1983).

Extensive searches of suitable habitat for *Geocarpon* have been conducted by Steyermark *et al.* (1959), Rettig (1983), Tucker (1983), S. Orzell (Texas Natural Heritage Program, pers. comm., 1986), E. Bridges (The Nature Conservancy, pers. comm., 1986), and S. Morgan (Missouri Department of Conservation, pers. comm., 1985). Currently, populations are known at 13 sites in Missouri including five in Dade County; two each in Polk, St. Clair, and Cedar Counties; and one each in Lawrence and Greene Counties. However, only four of these 13 sites support vigorous populations (S. Morgan, pers. comm., 1985). *Geocarpon* has not been observed at the type locality in Jasper County, Missouri (the location where the species was first collected) since 1949 and is believed extirpated from this site (S. Morgan, pers. comm., 1985). Four populations of *Geocarpon* are known in Arkansas: a large one at Warren Prairie in parts of Bradley and Drew Counties (Warren Prairie), two small depauperate populations in Cleveland County (Kingsley Prairie), and one recently discovered moderate-sized population in Franklin County (S. Orzell, pers. comm., 1986; Smith 1986). The Warren Prairie site contains the largest population of *Geocarpon*, with plants occurring locally in parts of five contiguous sections (Tucker 1983). Population structure consists of solitary individuals or small groups within these communities. Morgan (1980) reports that in Missouri the colonies range in size from 1 to 6 square meters (1.2 to 7.2 square yards) while Tucker (1983) states the largest colonies do not exceed 1 square meter in Arkansas. However, larger colonies have been observed at several areas in Missouri by Chaplin (1986) and in Arkansas by the author. The majority of the sites are on privately-owned lands; four sites are located on public lands. Many of these sites continue to be damaged by grazing and off-road vehicles (ORVs), which threaten the continued existence of *Geocarpon*.

Federal Government actions on this species began with section 12 of the Endangered Species Act of 1973 (Act), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the Smithsonian Institution report as a petition within the context of section 4(c)(2) of the Act (petition acceptance is now governed by section 4(b)(3)(A) of the Act), and of its intention thereby to review the status of the plant taxa named therein. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. *Geocarpon minimum* was included in the Smithsonian petition and the June 16, 1976, proposal, as amended. General comments received in relation to the 1976 proposal were summarized in the **Federal Register** on April 26, 1978 (43 FR 17909).

The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. On December 10, 1979, the Service published a notice (44 FR 70796) withdrawing the June 16, 1976, proposal

along with four other proposals that had expired. On December 15, 1980, the Service published a revised notice of review for native plants in the **Federal Register** (45 FR 82480); *Geocarpon minimum* was included in that notice as a category-1 species. *Geocarpon minimum* was maintained in category 1 in the Service's updated plant notice of September 27, 1985 (50 FR 39526). Category 1 comprises taxa for which the Service presently has substantial biological information to support their being proposed to be listed as endangered or threatened species.

Section 4(b)(3) of the Endangered Species Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Geocarpon minimum* because of the acceptance of the 1975 Smithsonian report as a petition. On October 13, 1983, October 12, 1984, and October 11, 1985, the Service found that the petitioned listing of *Geocarpon minimum* was warranted. On April 10, 1986, The Service published in the **Federal Register** (51 FR 12460), a proposal to list *Geocarpon minimum* as a threatened species. The Service now determines *Geocarpon minimum* to be a threatened species with the publication of this final rule.

Summary of Comments and Recommendations

In the April 10, 1986, proposed rule (51 FR 12460) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment were published in the *Pine Bluff Commercial*, Pine Bluff, Arkansas, on May 1, 1986, and in the *Springfield Daily News*, Springfield, Missouri, on May 4, 1986. Eight comments were received and are discussed below. No public hearing was requested or held. Seven comments were received expressing support for the proposal, four from State agencies, and three from conservation organizations. One State agency and one private organization provided additional information on the distribution of and threats to *Geocarpon*. This information has been incorporated into appropriate sections of the rule. The eighth comment from the Department of the Army (Office of the Chief of Engineers) stated that the two populations of *Geocarpon* on Corps of Engineeers (COE) land in the Kansas City District are managed as Natural Areas and that no future development is proposed that would affect this species or its habitat.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Geocarpon minimum* 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 *Geocarpon minimum* MacKenzie are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Geocarpon minimum* is only known from Missouri and Arkansas (see "Background" section for number of populations). A major threat to *Geocarpon* is the destruction or adverse modification of its habitat. In Missouri, some sites have been damaged by trampling and grazing by cattle (S. Morgan, pers. comm., 1985); however, Chaplin (1986) suggests that the physical disturbance associated with cattle grazing may actually benefit *Geocarpon* at some sites by maintaining bare substrate for seedling establishment. A more serious threat concerns pasture improvement, which, coupled with the invasion of prairie species, is thought to have destroyed *Geocarpon* at the type locality (Chaplin 1986). The habitat of *Geocarpon* has been damaged by ORVs, and this problem is amplified by the easy access to many of the sites from adjacent roads (Tucker 1983). Suitable habitat for *Geocarpon* is limited, and most such areas have been heavily disturbed. In southern Arkansas many of the areas have been adversely modified by silvicultural practices (Tucker 1983, pers. comm., 1985). Populations in close proximity to roads are further threatened by future road expansions and improvements. Even though habitat is of low agricultural quality, some areas have been cultivated in the past or are presently in pasture (Kral 1983). *Geocarpon* appears to require some type of natural disturbance to maintain bare substrate for seedling establishment (Tucker 1983). Research on the biology of this species would increase the likehood that management plans developed would be effective.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Taking for these purposes poses a risk to *Geocarpon minimum* due to the ease of access to the sites and its desirability due to its taxonomic uniqueness (*Geocarpon* is a monotypic genus; genus contains only one species).

C. *Disease or predation. Geocarpon* is not known to be threatened by disease or predation.

D. *The inadequacy of existing regulatory mechanisms. Geocarpon* is considered endangered by the Missouri Department of Conservation and the Arkansas Natural Heritage Commission; however, it is afforded legal protection only in Missouri. Missouri legislation prevents commercial exploitation of rare and endangered plants without a permit. However, the Missouri law does not provide protection against habitat loss, the major threat to *Geocarpon*. Of the four publicly owned sites, three are designated as Natural Areas (NA) and are thereby afforded protection. The Arkansas Natural Heritage Commission owns and manages the Warren Prairie NA (300 acres, 125 hectares) in Bradley County, which contains a portion of the largest known population of *Geocarpon;* however, no protection is provided for the plants and their habitat outside the NA in adjacent Drew County. The other two NAs are in Missouri: The Bona Glade NA (Dade County), owned by the U.S. Army Corps of Engineers and supporting a large, healthy population; and the Taberville Prairie NA (St. Clair County), owned and managed by the Missouri Department of Conservation, but a less suitable site with a smaller population. At these areas, collecting is prohibited except for scientific or educational purposes under permit, but these regulations are difficult to enforce. The Act would enhance the existing protection through section 7 (interagency cooperation) and section 9, which prohibits removal and reduction to possession from Federal lands and restricts interstate commercial activity.

E. *Other natural or manmade factors affecting its continued existence. Geocarpon* is vulnerable due to the small amount of available habitat, its limited range, and low numbers at many of the sites. Furthermore, the species is susceptible to inadvertent destruction because of its diminutive size, ephemeral nature, and localized distribution. As with all annuals, population size may fluctuate from year to year due to variable reproductive success. For example, *Geocarpon* does

not germinate every year, a condition perhaps related to moisture availability (Morgan 1980, Tucker 1983). Successful germination from a seed bank can reestablish populations following reproductive failure; however, local extirpation is likely in areas as populations decrease in size. *Geocarpon* is a pioneer species that tolerates little competition from other species. Overcrowding and shading by invading plants which occur with succession pose a major threat to this species (Tucker 1983), and are especially evident in Missouri (Chaplin 1986).

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 *Geocarpon minimum* as threatened. Threatened status seems appropriate since two populations and a portion of a third population are located in designated Natural Areas and are thus protected. Critical habitat is not being determined for reasons discussed in the following section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Geocarpon minimum* at this time. The involved State agencies and the U.S. Army Corps of Engineers are aware of the locations for this species. Publication of exact locations of *Geocarpon* would increase public interest and possibly lead to additional threats for the species from collecting and vandalism. The sites where *Geocarpon* occurs are easily accessible. *Geocarpon* is a monotypic genus and may be desired for plant collections or for study. No benefit can be identified through critical habitat designation that would outweigh these potential threats. Protection of this species' habitat will be addressed through the recovery process and through the section 7 jeopardy standard. Therefore, it would not be prudent or beneficial to determine critical habitat for *Geocarpon minimum* 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. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against collection are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat. 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.

Two populations of *Geocarpon minimum* occur on lands under jurisdiction of the U.S. Army Corps of Engineers (Dade County, Missouri). Both are managed as Natural Areas, thereby supporting the preservation of *Geocarpon* (Blakey 1986). Currently, no activities to be authorized, funded, or carried out by Federal agencies are known to exist that would affect *Geocarpon*.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plant species. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any threatened plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. It is anticipated that few trade permits would be sought or issued since *Geocarpon minimum* is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235–1903).

National Environmental Policy Act

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

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Tucker, G.E. 1983. Status report on *Geocarpon minimum* MacKenzie. Provided under contract to the U.S. Fish and Wildlife Service, Southeast Region, Atlanta, Georgia. 41 pp.

Author

The primary author of this final rule is Cary Norquist (see **ADDRESSES** section).

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 § 17.12(h) by adding the following, in alphabetical order under Caryophyllaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species						
Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules
Caryophyllaceae—Pink family:						
*	*	*	*	*		
Geocarpon minimum	None	U.S.A. (AR, MO)	T	275	NA	NA
*	*	*	*	*		

Dated: May 27, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–13662 Filed 6–15–87; 8:45 am]

BILLING CODE 4310–55–M

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Rule To Determine Cirsium Vinaceum (Sacramento Mountains Thistle) To Be a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines a plant, *Cirsium vinaceum* (Sacramento Mountains thistle), to be a threatened species under the authority contained in the Endangered Species Act of 1973, as amended. Critical habitat was proposed but is being withdrawn. This plant occurs in Otero County, New Mexico, in the Sacramento Mountains. There are 20 known populations, which contain a total of 10,000 to 15,000 sexually reproducing plants. Threats to this species are habitat destruction by livestock and water development, competition with introduced plant species, road construction, logging, and recreational activities. This action implements the protection provided by the Endangered Species Act.

DATES: The effective date of this rule is July 16, 1987.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Service's Regional Office of Endangered Species, 500 Gold Avenue SW., Room 4000, Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT: Peggy Olwell, Endangered Species Botanist, Region 2, U.S. Fish and Wildlife Service, Office of Endangered Species, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766–3972 or FTS 474–3972).

SUPPLEMENTARY INFORMATION:

Background

Cirsium vinaceum was first collected on July 12, 1899, by E.O. Wooton and was described by Wooton and Standley in 1913. *Cirsium vinaceum* is a perennial thistle that grows 1–2 meters (3.3–6.6 feet) tall. The stems are purple and highly branched. The leaves are up to 50 centimeters (20 inches) long and have deep, narrow, pointed lobes. The lobes on the leaf tips have short, slender, yellow spines. Flowering occurs in July, August, and possibly into September with many purple flower heads per plant. Some of the populations now occur only on steep calcium carbonate deposits immediately adjacent to flowing springs. The steep deposits provide adequate moisture and limit access of livestock to these plants. One population is known from the moist banks of a stream and adjacent wet meadows, and livestock trampling is a problem there. Many of these plants grow directly in the stream. The dominant associated species are Ponderosa pine *(Pinus ponderosa)*, Douglas fir *(Pseudotsuga taxifolia)*, New Mexico locust *(Robinia neomexicana)*, and Gambel's oak *(Quercus gambelii)*. *Cirsium vinaceum* is found at elevations of 2,400–2,700 meters (7,860–8,820 feet) (Martin and Hutchins 1980, Todsen 1976).

Cirsium vinaceum was included as a category 1 species in a revised list of plants under review for threatened or endangered classification, published in the December 15, 1980, **Federal Register** (45 FR 82480). Category 1 comprises taxa for which the Service presently has sufficient biological information to support their being proposed to be listed as endangered or threatened species.

The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. The species listed in the December 15, 1980, notice of review were considered to be petitioned, and the deadline for a finding on the merits of those petitioned actions, including that for *Cirsium vinaceum*, was October 13, 1983. A finding was made on October 13, 1983, that listing *Cirsium vinaceum* was warranted but precluded by pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Such a finding requires a recycling of the petition, pursuant to section 4(b)(3)(C)(i) of the Act. The Service published a proposed rule to list *Cirsium vinaceum* as a threatened species with critical habitat on May 16, 1984 (49 FR 20735), which constituted the next required finding.

Summary of Comments and Recommendations

In the May 16, 1984, proposed rule (49 FR 20735) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A

newspaper notice was published in the *Alamogordo Daily News* on June 10, 1984, that invited general public comment. Eight comments were received and are discussed below. No public hearing was requested or held.

Letters of support were received from the New Mexico Natural Resources Department, the International Union for Conservation of Nature and Natural Resources, the U.S. Forest Service, and Dr. T.K. Todsen (Professor Emeritus, New Mexico State University). Dr. Todsen also included information on *Cirsium vinaceum* sites observed in his 1976 survey and recommended the Water Canyon site and the Silver Springs Canyon site as important areas for *Cirsium vinaceum*. The Service is aware of all of these localities and will work towards their protection through the recovery process.

The Forest Service commented that *Cirsium vinaceum* merits listing as threatened. They recommended clarification of the critical habitat section to reflect that adverse modification of critical habitat would only occur when actions negatively impacted areas occupied by the plants or the constituent elements of critical habitat. The Service upon reexamination has decided that the large critical habitat proposed is inappropriate and the proposed critical habitat is being withdrawn (see "Critical Habitat" section).

The Forest Service also pointed out that accurate counts of the plant's numbers have not been made, and that the existing number is probably several times larger than the estimate in the proposal. The Service realizes that the exact number of plants is unknown; however, the best data available at the time of the proposal indicated 2,000–3,000 plants in 14 populations. The final rule reflects the most current information (20 populations with 10–15,000 individual plants total).

The Forest Service indicated that water development is a real and potential threat to *Cirsium vinaceum*, but that the suggested limit on water development of 500–1,000 meters (1,640–3,280 feet) downstream from *Cirsium* populations was somewhat extreme because surface water is present only a few hundred feet downstream of *Cirsium* populations. The Forest Service also indicated that water can be developed immediately below existing populations without affecting long term survival of the species. The Service agrees that 500–1,000 meters may be somewhat extreme but the Service does not agree that water can be developed immediately below existing populations without harmful effects. Removal of water immediately below a population of *Circium vinaceum* would dry out the soil in the area of the water development. Through the processes of diffusion and gravity the potential exists for water in the soil to move from the higher, wetter site into the lower, drier area thus creating unsuitable conditions at the upstream location of *Cirsium*. The Service believes water development can occur with the details worked out on a case-by-case basis.

The Forest Service requested that the provisions of section 9(a)(2) of the Act prohibiting removal and reduction to possession of the plant from areas under Federal jurisdiction not be implemented because this would impede recovery activities. The Service does not agree that implementation of section 9(a)(2) of the Act would impede the recovery process. The Act provides for issuance of a permit for collection of plants for scientific purposes or to enhance the propagation or survival of the listed plant. A permit for collection of *Cirsium vinaceum* may be obtained from the Service for recovery activities. The Service will work with the Forest Service in planning and implementing the recovery process after the species is listed.

The National Park Service and the Bureau of Land Management (BLM) commented that this species is not known to occur on their lands. The Department of the Army commented that "the habitat of this species is not located within those stream reaches normally associated with Corps of Engineers' water resource developments. No significant interaction with water resource studies or plans is foreseen should this species be listed as a threatened species and critical habitat designated."

The Bureau of Reclamation (BR) said the area proposed as critical habitat would not impact existing BR projects. BR has studied three alternative dam and reservoir sites and "the drainage area studies included western portions of the proposed critical habitats." These studies, however, were preliminary site studies, and no further studies have been funded to date. The Service has noted this.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Cirsium vinaceum* 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 at 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 *Cirsium vinaceum* Wooton and Standley are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Cirsium vinaceum* is known only from the Sacramento Mountains of southeastern New Mexico. The species was historically known to occur along the moist banks of streams and in wet meadows throughout the Sacramento Mountains. The only population now known to grow in this type of habitat is located at the Lincoln National Forest—Mescalero Indian Reservation boundary. All other known populations are restricted to the area around springs flowing from limestone rock (Fletcher 1978). Twenty populations are known, with a total of 10,000–15,000 sexually reproducing plants. Most of the populations are in the Lincoln National Forest, and several are on private lands and the Mescalero Indian Reservation. This plant is dependent on springs or streams. Reduction or removal of this water supply would reduce or eliminate the populations. Water development, as the Forest Service indicated in its comments (see "Summary of Comments and Recommendations"), is a potential threat to *Cirsium vinaceum* and its habitat. The unauthorized water development (installation of a 1,900-foot pipeline and construction of a cement water collection box) of a spring, which was habitat for *Cirsium vinaceum*, had a detrimental effect on the involved population and its habitat. Several populations occur at Bluff Springs, an area heavily used by recreationists. Overuse for recreation or any human-caused deterioration of the area around the springs could harm the species. Logging activities could also impact the populations and their associated habitat if planning does not include consideration of this species (Fletcher 1978). Ground disturbance by livestock is detrimental to *Cirsium vinaceum* since this thistle is slow to reestablish itself in disturbed areas (Fletcher 1979). The threat from livestock trampling may be greater than previously thought as evidenced by the increase in numbers of *Cirsium vinaceum* in the Bluff Springs area due to exclusion of livestock, and as evidenced by the depletion in numbers of the Lucas Canyon population due to excessive livestock use (Overbay 1984).

The Bureau of Reclamation has completed subappraisal-level studies of three potential dam and reservoir sites that would be utilized for industrial and domestic water supply. Development of any of these sites might pose a threat to *Cirsium vinaceum* populations (Olson 1984). No further studies, however, have been funded to date.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Plants may occasionally be cut or trampled by recreationists or collected for scientific or educational purposes.

C. *Disease or predation.* The amount of predation on *Cirsium vinaceum* by herbivores is minimal. On occasion a browsed flowering stalk or leaf was observed, but the majority of detrimental effects on this species by livestock are due to ground disturbance.

D. *The inadequacy of existing regulatory mechanisms. Cirsium vinaceum* is protected from taking in the National Forest by Federal regulations found in 36 CFR 261.9(b). No other State or Federal regulations protect this species.

E. *Other natural or manmade factors affecting its continued existence.* There are numerous areas where *Cirsium vinaceum* formerly existed (such as the type locality) or now exists in very low numbers. Many of these sites still appear to be suitable habitat for the species. The populations that formerly occurred on them apparently have been eliminated or reduced by livestock impacts or through competition with the introduced exotic plant species *Carduus nutans* and *Dipsacus sylvestris* (Fletcher 1978 and 1979).

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 *Cirsium vinaceum* as threatened. Threatened status seems appropriate since only 20 populations are known, and these plants face potential threats from ground disturbance due to water development and livestock trampling. Critical habitat is not being determined due to factors discussed in the following 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. Critical habitat was included in the May 16, 1984, proposal (49 FR 20735) which also proposed threatened status for *Cirsium vinaceum*. The area proposed as critical habitat included 155 square miles and encompassed areas: (1) Occupied by *Cirsium vinaceum*, (2) containing the constituent elements required by the thistle, and (3) additional areas requested by the Forest Service to allow it to adequately plan for and manage this plant. Upon review of the comments and other information in the record, the large area included in the proposal to accommodate the Forest Service's management needs cannot be justified as an area that is essential to the conservation of *C. vinaceum*. The proposed critical habitat is thus being withdrawn.

The Service considered the option of designating a smaller area (occupied areas and areas with constituent elements) as critical habitat, but concluded that such a designation is not prudent at this time. Such a designation would involve description of a number of very small areas (approximately 29 acres total) which are not contiguous but rather exist as one to several acre parcels scattered throughout the 155 square mile area originally proposed as critical habitat. The provision of this very specific location information (highlighting the actual springs) could result in vandalism or increased taking pressures. Springs are easily located and modified by vandals. The Forest Service is aware of the areas which need to be managed for the *Cirsium* and is proceeding to develop plans for their protection. The Forest Service supports the withdrawal of critical habitat and feels that designation of 29 tracts of one to several acres each would only complicate and detract from their ability to manage and protect this species. Over 90% of the areas occur on lands administered by the U.S. Forest Service. The Service will also work with the Indian Reservation and private landowners through the recovery process to identify areas where the species occurs and to protect the species. No additional notification benefits would accrue from the designation of critical habitat. Protection of this species' habitat will be addressed through the recovery process and through the section 7 jeopardy standard. Therefore, there is no net benefit and it is not prudent to designate critical habitat for *Cirsium vinaceum* 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. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against collecting are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to any critical habitat. 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. The only Federal agencies that may affect or be affected by the listing of *Cirsium vinaceum* are the Forest Service and the Bureau of Indian Affairs. Cattle trampling and water development disturbances are active threats on Forest Service lands and may result in interagency consultation between the Forest Service and the Service.

Effects of water development on *Cirsium vinaceum* can be eliminated or minimized by cooperative efforts to allow protection of *Cirsium* and its habitat and to enable water use to occur. If water is to be removed from a water source supporting a *Cirsium* population, diverting the water at a point sufficiently downstream of the plants will leave enough water for *Cirsium's* survival and will avoid habitat disturbance. Water development immediately below *Cirsium* populations may have harmful effects; therefore, water development effects will be determined on a case-by-case basis and the Service will work closely on this matter with the Forest Service. Effects of grazing can be minimized by fencing *Cirsium* populations to eliminate livestock trampling. Logging threats have been minimized by a no entry area condition on a recent timber sale. This condition was imposed by the Forest Service.

The Forest Service is currently preparing a District Management Plan for threatened and endangered species and has begun implementing protective measures for *Cirsium vinaceum* including: Fencing, livestock management to eliminate or alleviate grazing of important areas, and rerouting of recreational activities.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plant species. With respect to *Cirsium vinaceum*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export this plant, transport it in interstate or foreign commerce in the course of a commercial activity, or sell or offer it for sale in interstate or foreign commerce, or remove it from Federal lands and reduce it to possession. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. International and interstate commercial trade in *Cirsium vinaceum* is not known to exist. It is anticipated that few trade permits would ever be sought or issued since this plant is not common in the wild or in cultivation. *Cirsium vinaceum* occurs on Federal lands involving the Forest Service and Mescalero Indian Reservation. It is anticipated that few removal and possession permits for the species will ever be requested. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235–1903).

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).

Literature Cited

Abbott, J.R. 1983. *Cirsium vinaceum*. U.S. Forest Service, Southwest Region, Intraregional Memorandum. July 18, 1983.

Curran, N.L. 1983. *Cirsium vinaceum*. U.S. Forest Service Memorandum from Cloudcroft Ranger District to Lincoln Forest Supervisor. October 27, 1983.

Fletcher, R. 1978. Status report: *Cirsium vinaceum*. U.S. Forest Service, Region 3, Albuquerque, New Mexico. 5 pp.

Fletcher, R. 1979. Status report supplement: *Cirsium vinaceum*. U.S. Forest Service, Region 3, Albuquerque, New Mexico. 5 pp.

Martin, W.C., and C.R. Hutchins. 1980. A Flora of New Mexico. J. Cramer. viii + 2591 pp.

Olson, R.A. 1984. *Cirsium vinaceum*. Bureau of Reclamation, Washington, D.C. June 27, 1984.

Overbay, J.C. 1983. *Cirsium vinaceum*. Response to preliminary listing letter. U.S. Forest Service, Region 3. July 29, 1983.

Overbay, J.C. 1984. *Cirsium vinaceum*. U.S. Forest Service Southwestern Regional Intraregional Memorandum. October 24, 1984.

Todsen, T.K. 1976. *Cirsium vinaceum*, a threatened New Mexico species. Abstract of report presented at the annual meeting of the New Mexico Academy of Sciences. 1 p.

Wooton, E.O., and P.C. Standley. 1913. Description of new plants preliminary to a report upon the flora of New Mexico. Contributions from the U.S. National Herbarium. 16:109–196.

Authors

The authors of this final rule are Peggy Olwell and Alisa Shull, Office of Endangered Species, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766–3972 or FTS 474–3972). Status information was provided by Mr. R. Fletcher, U.S. Forest Service, Region 3, 517 Gold SW., Albuquerque, New Mexico 87103. E. LaVerne Smith of the Service's Washington Office of Endangered Species served as editor.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulations 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 reads 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 § 17.12(h) by adding the following, in alphabetical order under Asteraceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
ASTERACEAE—Aster family:						
*	* *	* *	*	*		
Cirsium vinaceum	Sacramento Mountains thistle	U.S.A. (NM)	T	276	NA	NA
*	* *	* *	*	*		

Dated: May 29, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–13663 Filed 6–15–87; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Cyathea Dryopteroides and Ilex Cookii

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines two plants, *Cyathea dryopteroides* and *Ilex cookii*, to be endangered species pursuant to the Endangered Species Act (Act) of 1973, as amended. These plants are endemic to elfin forests of the Central Cordillera of Puerto Rico at elevations above 1,000 meters (3,280

feet). The species are threatened by construction and expansion of communications facilities and other activities. This final rule will implement the Federal protection and recovery provisions afforded by the Act for *Cyathea dryopteroides* and *Ilex cookii*.

DATES: The effective date of this rule is July 16, 1987.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boqueron, Puerto Rico 00622, and at the Service's Regional Office, Suite 1282, 75 Spring Street, SW, Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Mr. David Densmore at the Caribbean Field Office address (809/851-7297) or Mr. Richard P. Ingram at the Atlanta Regional Office address (404/331-3583 or FTS 242-3583).

SUPPLEMENTARY INFORMATION:

Background

Cyathea dryopteroides was first collected by Britton and Brown on Monte Cerrote in 1915, by Sargent on Monte Jayuya in 1943, and by Woodbury on Monte Guilarte in the late 1960's (Vivaldi *et al.* 1981a). The species has not been collected at any other sites. The Monte Cerrote population has since been eliminated, and only a small population of approximately 10 plants remains on Monte Guilarte. The largest population, consisting of more than 60 individuals, exists on Monte Jayuya.

Cyathea dryopteroides is a small ("dwarf") tree fern reaching 24 inches (60 centimeters) in height, with a trunk approximately 1 inch (2-3 centimeters) in diameter, and bipinnate, nearly hairless fronds up to 36 inches (90 centimeters) long and 10 inches (25 centimeters) wide. Although the species has always been considered distinct, it has been alternately placed in the genera *Cyathea* and *Alsophila*, depending upon the relative importance placed on various morphologic characters. The designation here as *Cyathea* is based on the most recent classification of the ferns of Puerto Rico (Proctor 1986). The species is endemic to the elfin forests of the Central Cordillera of Puerto Rico and is presently known from populations on two peaks approximately 12 miles (20 kilometers) apart, Monte Guilarte and Monte Jayuya. Both sites are within units of the Commonwealth Forest System (Monte Guilarte and Toro Negro).

Ilex cookii was discovered in 1926 by H.A. Gleason and M.T. Cook during what was probably the first botanical exploration of the highest mountain in Puerto Rico, Cerro de Punta (4,402 feet or 1,338 meters). Subsequently, the species was found a little more than 1 mile (2 kilometers) to the east on Monte Jayuya (Vivaldi *et al.* 1981b). At present, only a single 15 foot (4.8 meter) tree with 4 small root sprouts is known from Cerro de Punta, and several (up to 30) sprouts or seedlings less than 24 inches (60 centimeters) tall are known to be scattered along the ridgetops of Monte Jayuya.

Ilex cookii is an evergreen shrub or small tree with light brown bark, hairless green twigs, and alternate elliptic leaves which are leathery, entire, shiny dark green on the upper surface, and pointed at the apex. The female flowers are small and white, and the fruits are drupes. Like *Cyathea dryopteroides*, *Ilex cookii* is endemic to the elfin forests of the Central Cordillera, but the species has only been found near the summits of Cerro de Punta and Monte Jayuya, both of which are within the Toro Negro Commonwealth Forest.

Both *Cyathea dryopteroides* and *Ilex cookii* occur at the highest elevations in Puerto Rico, where temperatures as low as 4 degrees centigrade have been recorded, and rainfall exceeds evapotranspiration throughout the year. The vegetation of these areas is variously termed elfin, dwarf, or cloud forest (Howard 1968, Ewel and Whitmore 1973), and is physiognomically analogous to similarly named forests elsewhere in the montane tropics. Within this vegetation type, *Ilex cookii* occurs on more exposed ridges at or below canopy height, while *Cyathea dryopteroides* is generally a component of the ground cover within nearly monotypic stands of sierra palm (*Prestoea montana*).

The montane forests of central Puerto Rico have been subjected to increased human disturbance in recent years with the construction of roads and installation of communications facilities on the highest peaks. Although the sites of concern are on lands owned by the Commonwealth of Puerto Rico and managed as part of the Commonwealth Forest System, the summits of Monte Guilarte, Cerro de Punta, and Monte Jayuya, in addition to some adjacent peaks and ridges, have been cleared for construction after being leased to communications companies. At one site (Monte Jayuya), clearing of the summit destroyed what was once thought to be the only population of *Cyathea dryopteroides*, which consisted of more than 100 plants (Vivaldi *et al.* 1981a). More recently, these forests have been used as military training areas, resulting in additional disturbance to the relatively fragile vegetation.

Cyathea dryopteroides and *Ilex cookii* were recommended for Federal listing by the Smithsonian Institution (Ayensu and DeFilipps 1978). Both species were included among the plants being considered as endangered or threatened species by the Fish and Wildlife Service, as published in the **Federal Register** (45 FR 82480) dated December 15, 1980. Both species were designated category 1 (species for which the Service has substantial information supporting the appropriateness of proposing to list them as endangered or threatened), and both were retained in category 1 in the November 28, 1983, update (48 FR 53640) of the 1980 notice, and the September 27, 1985, revised notice (50 FR 39526).

In a notice published in the **Federal Register** on February 15, 1983 (48 FR 6752), the Service reported the earlier acceptance of the new taxa in the Smithsonian's 1978 book as under petition within the context of section 4(b)(3)(A) of the Act, as amended in 1982. The Service subsequently found on October 13, 1983, October 12, 1984, and October 11, 1985, that listing *Cyathea dryopteroides* and *Ilex cookii* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. The Service proposed listing *Cyathea dryopteroides* and *Ilex cookii* on September 25, 1986 (51 FR 34103).

Summary of Comments and Recommendations

In the September 25, 1986, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate agencies of the Commonwealth of Puerto Rico, municipal governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice inviting general public comment was published in *The San Juan Star* on October 19, 1986. A public hearing was neither requested nor held. Three letters of comment were received from the Secretary of the Puerto Rico Department of Natural Resources, the Forest Supervisor of the Caribbean National Forest (U.S. Forest Service), and an administrator of the U.S. Army Corps of Engineers (Jacksonville District Office). The Department of Natural Resources letter supported the proposed listing of *Cyathea dryopteroides* and *Ilex cookii*, while the Forest Service acknowledged the proposal and added that its personnel would look for these

species when conducting surveys of rare plants in similar habitats within the Caribbean National Forest. The Corps of Engineers acknowledged the proposal and stated that no actions proposed or under consideration by the Corps would affect the species.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Cyathea dryopteroides* and *Ilex cookii* should be classified as endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Cyathea dryopteroides* Maxon (elfin tree fern) and *Ilex cookii* Britton & Wilson (Cook's holly) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Modification of habitat or direct destruction of plants through deforestation, selective cutting, or trampling appear to be the most serious threats to both *Cyathea dryopteroides* and *Ilex cookii.* A significant proportion of the total number of known plants of *Cyathea dryopteroides* was destroyed by construction of a single communications installation on Monte Jayuya. It is likely that individuals of *Ilex cookii* were lost when a similar facility was constructed on Cerro de Punta. Construction of new facilities or expansion of existing ones would affect surviving populations of *Cyathea dryopteroides,* and could lead to the extinction of *Ilex cookii.* In addition, the original construction of Road 143 through the Toro Negro forest undoubtedly affected populations of both species, and the remaining plants in this area are close enough to the road that significant roadwork or the indirect effects of such work (i.e., slope instability) could further reduce their numbers. Finally, repeated trampling or clearing of ground cover during the military training maneuvers which are planned for the general area could adversely modify habitat and cause the direct loss of some plants. Proper planning for both the road construction and military maneuvers will need to include provisions to provide for the survival of these two plants.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Taking for commercial or recreational purposes could become a threat to these two plants, particularly *Cyathea dryopteroides.* Both species are attractive and can be perceived as having ornamental value, and considerable commercial trade in fern species exists. All species of the family Cyatheaceae are listed in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

C. *Disease or predation.* Disease and predation have not been documented as factors in the decline of these species.

D. *The inadequacy of existing regulatory mechanisms.* The Commonwealth of Puerto Rico has recently adopted a regulation that recognizes and provides protection for certain Commonwealth listed species. However, *Cyathea dryopteroides* and *Ilex cookii* are not yet on the Commonwealth list. Federal listing would provide interim protection and enhance their protection and possibilities for recovery. The listing of *Cyathea dryopteroides* in Appendix II of CITES provides little protection beyond some regulation of international trade.

E. *Other natural or manmade factors affecting its continued existence.* The known populations of *Cyathea dryopteroides* and *Ilex cookii* are confined to geographically small areas and specialized habitats; thus they are more susceptible to natural disturbances, such as hurricanes or landslides. *Ilex cookii* is believed to be dioecious (male and female flowers occur on separate plants), and therefore dependent upon the existence of both male and female plants in close proximity to each other. The fact that male flowers and ripe fruit have never been observed suggests that production of viable seed rarely occurs.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Cyathea dryopteroides* and *Ilex cookii* as endangered. Since there are few individuals remaining and a continuing risk of damage to the plants and/or their habitat, endangered status is believed to be an accurate assessment of the species' condition. It is not prudent to designate critical habitat because doing so would increase the risk to each species, as detailed below.

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 the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for these species at this time. As discussed under threat factor "B" above, *Cyathea dryopteroides* and *Ilex cookii* may be threatened by collecting (other species of *Cyathea* are endangered for this reason), an activity regulated by the Endangered Species Act with respect to plants only on lands under Federal jurisdiction. Publication of a critical habitat maps would increase the risk of taking or vandalism. The small size of the populations and their close proximity to principal roads and human habitations exacerbate this risk. All involved parties and landowners have been notified of the location and importance of protecting these species' habitat. Protection of these species' habitat will be addressed through the recovery process and through the section 7 jeopardy standard. Thus, determination of critical habitat for *Cyathea dryopteroides* and *Ilex cookii* would not be prudent 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, Commonwealth, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the Commonwealth and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against collecting are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a 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. No critical habitat is being designated for either *Cyathea dryopteroides* or *Ilex cookii*, as discussed above. Federal involvement exists with regard to the aforementioned road construction and maintenance (Federal Highway Administration) and military maneuvers (U.S. Army) (see discussion under Factor A. of the "Summary of Factors" section). Through careful planning, adverse impacts to these two species can be minimized.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. With respect to *Cyathea dryopteroides* and *Ilex cookii*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export these plants, transport them in interstate or foreign commerce in the course of a commercial activity, sell or offer them for sale in interstate or foreign commerce, or remove them from areas under Federal jurisdiction and reduce them to possession. Certain exceptions can apply to agents of the Service and Commonwealth conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. Although there may be some horticultural interest in *Cyathea dryopteroides*, it is anticipated that few trade permits would ever be sought or issued since neither species is known to be in cultivation and both are uncommon in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235–1903).

National Environmental Policy Act

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

References Cited

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Vivaldi, J.L., R.O. Woodbury, and H. Diaz-Soltero. 1981a. Status report on *Alsophila dryopteroides* (Maxon) Tryon. Unpublished status report submitted to the U.S. Fish and Wildlife Service, Atlanta, Georgia. 41 pp.

Vivaldi, J.L., R.O. Woodbury, and H. Diaz-Soltero. 1981b. Status report on *Ilex cookii* Britton & Wilson. Unpublished status report submitted to the U.S. Fish and Wildlife Service, Atlanta, Georgia. 44 pp.

Author

The primary author of this final rule is Mr. David Densmore, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boqueron, Puerto Rico 00622 (809/851–7297).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulations 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 § 17.12(h) by adding the following, in alphabetical order under the families indicated, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*		
Aquifoliaceae—Holly family:						
Ilex cookii	Cook's holly	U.S.A. (PR)	E	277	NA	NA
*	*	*	*	*		
Cyatheaceae—Tree-fern family:						
Cyathea dryopteroides	Elfin tree fern	U.S.A. (PR)	E	277	NA	NA
*	*	*	*	*		

Dated: May 29, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–13664 Filed 6–15–87; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Alabama Red-Bellied Turtle

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the Alabama red-bellied turtle (*Pseudemys alabamensis*) to be an endangered species. This herbivorous freshwater turtle is restricted to the lower part of the floodplain of the Mobile River drainage system in Baldwin and Mobile Counties, Alabama. There is only one known nesting area receiving repeated annual use, and turtles nesting at this location are threatened by high incidence of egg predation and human disturbance. These factors combined with an apparent small population size, low recruitment, and this turtle's

restricted range make this action necessary. This determination implements the protection of the Endangered Species Act of 1973, as amended.

DATES: The effective date of this rule is July 16, 1987.

ADDRESSES: 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. Dennis B. Jordan at the above address (601/965–4900 or FTS 490–4900).

SUPPLEMENTARY INFORMATION:

Background

Although recognized as distinct as early as 1856 (Agassiz 1857), the Alabama red-bellied turtle was not formally described until 1893 (Baur 1893), when the species was described from type-specimens from Mobile Bay in the Gustav Kohn collection (now in the National Museum of Natural History, Washington, DC). The Alabama red-bellied turtle is considered to be a valid species by Carr and Crenshaw (1957), Mount (1975), McCoy and Vogt (1979), Pritchard (1979), Ward (1984), and Dobie (1985a).

The Alabama red-bellied turtle is a large (20–25 centimeters or 8–10 inch carapace length), freshwater, herbivorous turtle, normally with an orange to reddish plastron and a prominent notch at the tip of the upper jaw, bordered on either side by a toothlike cusp. The elongated carapace is highly arched and elevated along the mid-line; its highest point is often anterior to the midbody where the carapace is widest. The carapace is brown to olive, with yellow, orange, or reddish streaks and mottling that form distinct, light vertical bars on the pleural scutes. The skin is olive to black with yellow to light orange stripes.

Characteristics most useful in distinguishing this species from other members of its genus in the Southeast include the number and configuration of stripes on the head (Ernst and Barbour 1972, Mount 1975, Dobie 1985a). The Alabama red-bellied turtle has more stripes than the Florida red-bellied turtle, and both the former and latter have a prefrontal arrow which is normally absent in the river cooter (*Pseudemys concinna*) and the cooter (*Pseudemys floridana*). Arching of the shell, and the presence of a notch with prominent cusps also distinguish the Alabama red-bellied turtle from the river cooter and the cooter; cusps and shell arching are normally absent in the latter two species.

The Alabama red-bellied turtle inhabits the lower part of the floodplain of the Mobile River System in Baldwin and Mobile Counties, Alabama. Review of available information leads to the conclusion that the Alabama red-bellied turtle is restricted entirely to small areas along the Lower Mobile drainage system. It was once found as far north as the lake in Little River State Park (Mount 1975) in southern Monroe County and now only occurs as far north as the Mobile River below David Lake in Mobile County. It appears to be most abundant from a point on the Tensaw River adjacent to Hurricane Landing south along the river system to Interstate Highway 10 (21 kilometers or 13 miles). The turtle occurs in greatest numbers in the backwater areas of bays between Interstate Highway 10 and U.S. Highway 90 (1.3 kilometers or 0.8 mile) and north of Highway 90. Water depth in these bay backwaters is 1–2 meters (3.3–6.6 feet), and these areas have extensive beds of submerged and emergent aquatic vegetation. These broad, vegetated expanses of shallows are considered to be the principal habitat of this species (McCoy and Vogt 1979, Dobie 1985a). Dobie (1985a) suggested that dense beds of aquatic vegetation provide turtles with substrate for basking (these turtles are heliothermic) and predator avoidance, in addition to food. This turtle is believed to repeatedly nest in only one area, although Dobie (1985a) suggested that the species may periodically nest along embankments of the causeway across Mobile Bay.

Total population size of this species are poorly known. McCoy and Vogt (1979) provided the only data on relative abundance for this turtle; they trapped 20 animals in 1008 hours of sampling (.02 turtles/hour). Dobie (1985a) questioned the utility of these relative abundance data since trapping was more opportunistic than systematic. However, age class data suggest a declining trend in this turtle. Dobie (1985b) showed a decline of young turtles in the population between 1970 and 1983. Of the 24 individuals collected from 1968 to 1970, 10 were juveniles and small adults, whereas only 1 of 20 collected between 1971 and 1983 was a juvenile or small adult. Dobie (1985a) believed that decline in recruitment was caused mostly by disturbance and egg predation on the known nesting area. Dobie (1985b) observed 63 nests of the species on the nesting area between 1971 and 1983. Fourteen Alabama red-bellied turtle nests were found on the same nesting area in the summer of 1985 (B. Weisberger, Auburn University, personal communication). Clutch sizes observed in 1985 by Weisberger ranged from 4 to 9 eggs (average of 6, which is low when compared to other *Pseudemys*).

The only known nesting habitat, an island bank bordered on one side by wooded swamp, is privately owned by four different parties. One parcel is 7 hectares (17 acres), and each of the other three is 0.4 hectares (1 acre). The owners of the largest parcel of the nesting island have been contacted and are very willing to cooperate with the Service for the benefit of the turtle.

The following is a brief history of actions which led up to this determination. A symposium sponsored by the Alabama Department of Conservation and Natural Resources resulted in the publication of a list of endangered and threatened plants and animals in Alabama, which included the Alabama red-bellied turtle as a threatened species (Mount 1976). Based on this status, the Service included the Alabama red-bellied turtle in a notice of review, published in the **Federal Register** on June 6, 1977 (42 FR 28903). Subsequently, two surveys were funded to determine the status of the Alabama red-bellied turtle. The first of these, by C.J. McCoy and R.C. Vogt (1979), found that the species occurred from the confluence of the Mobile and Tensaw Rivers, south into Mobile Bay. They also added information on the location of this species' primary habitat. This study was cut short by Hurricane Frederick. The Service funded a second study (Dobie 1985a) to determine this species' range east and west of the Mobile River system. Twelve drainages and the lakes on St. Vincent Island were trapped (total trap hours—2087, total daylight trap hours—1022), and emphasis was placed on sampling the Pascagoula, Escambia, Choctawhatchee, and Apalachicola rivers. Each of these four rivers is large and they have habitats similar to those on the lower parts of the Mobile River System. This intensive effort failed to locate individuals outside the Mobile River System, supporting the conclusion that this turtle is endemic to the Mobile River system. Dobie (1985a) also provided other information on aspects of the natural history of the turtle which he obtained from previous studies. In 1982, the International Union for Conservation of Nature recognized the status of the Alabama red-bellied turtle as either endangered, vulnerable, or rare (Dobie 1982); a final determination of this turtle's status was not made due to lack of information. In 1983, the

Alabama red-bellied turtle was assigned the status of "Threatened and Declining" by a committee on reptiles and amphibians at the Alabama Non-game Conference (Mount 1984). The Service published the proposed rule to list this species as threatened on July 8, 1986 (51 FR 24727). After reviewing the comments received on the proposal and reevaluating existing data, the Service now believes that endangered status is appropriate.

Summary of Comments and Recommendations

In the July 8, 1986, proposed rule (51 FR 24727) 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. A newspaper notice inviting general public comments was published in *The Mobile Register* on July 29, 1986. Eight comments were received and are discussed below. Two comments were from State agencies, four from private conservation groups, one from a university, and one from a museum. No public hearing was requested or held. The eight comments expressed support for the listing although two commented that critical habitat should be designated and one that the species should be listed as endangered rather than threatened. The Service's justification for not determining critical habitat is discussed below in the 'Critical Habitat' section. In response to the comment that the turtle should be listed as endangered rather than threatened, the Service has reconsidered the turtle's status and has determined that endangered status is most appropriate for this species. The Service has changed the status to endangered in this final rule.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Alabama red-bellied turtle should be classified as an endangered species. Procedures found in 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 Alabama red-bellied turtle (*Pseudemys alabamensis*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The Alabama red-bellied turtle is threatened primarily by human activities on this species' only known nesting site. Dobie (1985a) reported heavy use of the sand beach nesting habitat by campers on summer holidays during times when turtles were nesting. Camp lights, people, and noise associated with high recreational use likely reduce nesting by the Alabama red-bellied turtle on the island. The tires of three-wheeled vehicles which are driven over sand beaches were observed uncovering turtle nests, resulting in dehydration, predation, and breakage of eggs during the summer of 1985 (B. Weisberger, personal communication). These disturbances to nesting habitat, and predation (see factor "C" in this section), have apparently reduced reproductive success and recruitment since 1970 (see the "Background" section).

The remainder of the turtle's habitat, the marshes and bays of the lower part of the Mobile River System, are not as disturbed as the nesting island. However, Dobie (1985a) observed what appeared to be areas with reduced amounts of aquatic vegetation south of Clover Leaf Landing. He suggested that these areas had been chemically treated. Mike Eubanks of the Mobile Office of the Corps of Engineers (Corps) (personal communication) indicated that the Corps and State of Alabama had treated a limited amount of aquatic habitat with 2,4-D (an herbicide) within the Lower Mobile Bay area. These treatments started in the 1950's and were limited to only a few small areas. The Corps discontinued its program in 1978, although the State of Alabama has continued small treatments since 1981. Chemical treatments were initiated primarily to control introduced aquatic vegetation such as water hyacinths. The Service believes that these treatments have not significantly reduced the quality of Alabama red-bellied turtle habitat in the area. Rather, natural phenomena, such as movement of salt wedges up into bays during hurricanes, more likely account for major reductions in aquatic vegetation along the Lower Mobile Bay area.

More information is needed to determine how turtles use certain microhabitats to perform ecological functions, such as nesting, feeding, wintering, and thermoregulation.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Dobie (1985a) reported that residents in the vicinity of the known nesting habitat of this turtle spent several days a year gathering and eating turtle eggs. This practice has apparently declined in response to decreases in the number of nesting females and eggs.

Some Alabama red-bellied turtles have been trapped and sold as pets and food (Dobie 1985a). Headlights and dip nets have been used to collect turtles in weed beds during warm months, especially for obtaining turtles for the pet trade (Dobie 1985a). Pet dealers have advertised this species for up to twenty-five dollars per turtle (Dobie 1985a). Trawling has been used to obtain winter aestivating turtles for sale as food (Dobie 1985a). In addition, Alabama red-bellied turtles are incidentally harvested by commercial fishermen and shrimpers in gill, hoop, and trammel nets, and crab traps (McCoy and Vogt 1979). When combined with predation and physical disturbance to the nesting area, taking of this species increases the overall precarious nature of this turtle's future.

C. *Disease or predation.* There is no known threat from disease. The alligator is probably a frequent predator of red-bellied turtles as evidenced by the high frequency of tooth scars found on the shells of young turtles (Dobie 1985a).

Domestic pigs were released on the nesting island during the late 1960's. These pigs follow turtles from the water to nest sites where they eat eggs during and subsequent to laying (Dobie 1985a). Domestic pigs are still on the island, although their predation on turtle eggs has not been verified in recent years.

Fish crow (*Corvus ossifragus*) predation appears to be one of the main factors limiting nest success of Alabama red-bellied turtles on the only known nesting site (Dobie 1985a). Of nine red-bellied turtle nests (containing 3–6 eggs each) found between May 27 and July 15, 1978, 100 percent of the eggs had been destroyed by crows (Meany 1979). Similar rates of predation were noted during the summer of 1985 (B. Weisberger, personal communication). Fish crows also prey upon black-knobbed sawback turtle (*Graptemys nigrinoda*) nests on this island; 95 percent of the nests were destroyed by crows during a study by Lahanas (1982). Heavy predation on Alabama red-bellied turtles is facilitated by concentration of nests on the sand banks of the island; these natural dry sand beaches are relatively rare within the vicinity of the island. Fire ants may also prey upon turtle eggs, as they have

been found in the nest chambers of the Alabama red-bellied turtle (See Mount 1981, and Mount *et al.* 1981, for possible significance of predation of fire ants on eggs).

D. *The inadequacy of existing regulatory mechanisms.* Although recognized as a threatened species on the Alabama Department of Conservation's list, this species currently receives no statutory protection within the State of Alabama. The Endangered Species Act will provide much needed recovery provisions, prohibitions against taking, and protection under section 7.

E. *Other natural or manmade factors affecting its continued existence.* Hurricanes may periodically reduce aquatic vegetation by forcing salt water wedges up into bays (see discussion in factor "A" of this section). Historically, these losses of aquatic vegetation probably had no permanent impact on the species; turtle numbers were reduced in years immediately following hurricanes, but increased as aquatic vegetation became reestablished. However, a reduction in recruitment of young turtles since 1970, primarily due to predation (see factor "C" of this section), may decrease the ability of the Alabama red-bellied turtle to recover from catastrophic events such as hurricanes.

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 Alabama red-bellied turtle as an endangered species. Endangered status, rather than threatened as was originally proposed, is appropriate because of the species' restricted range, scarcity, low population recruitment, take for trade, lack of statutory protection, and severe threats from predation. Critical habitat is not being determined for reasons discussed in the following 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 the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the Alabama red-bellied turtle at this time. As discussed under factor "B" in "Summary of Factors Affecting the Species," collecting contributes to the threat of this turtle's continued survival. The publication of critical habitat maps and other publicity accompanying critical habitat designation could increase collecting pressure and enforcement problems. Only one nesting site is known for this species, and identification of this area, which is privately owned, could increase the taking of nesting individuals, hatchlings, or eggs.

Available Conservation Measures

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

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(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 involvement related to this species is expected to include the U.S. Army Corps of Engineers' permit activities (e.g., Clean Water Act, section 404 permits). The Service is in contact with the Corps of Engineers since coordination may be necessary to develop a vegetation control program that will enhance habitat of the Alabama red-bellied turtle in the Mobile River Basin. No major conflicts with Federal projects are foreseen at this time.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take any listed species, import or export it, ship it in interstate commerce in the course of commercial activity, or sell or offer it for sale in interstate or foreign commerce. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a 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 under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Meany, D.B. 1979. Nesting habits of the Alabama red-bellied turtle, *Pseudemys alabamensis*. J. Alabama Acad. Sci. 50:113.
Mount, R.H. 1975. The reptiles and amphibians of Alabama. Auburn Univ. Agri. Exp. Sta., Auburn, Alabama. 347 pp.
Mount, R.H. 1976. Amphibians and reptiles, pp. 66–79, *In* H. Boschung (ed.), Endangered and threatened plants and animals of Alabama. Bull. Alabama Mus. Nat. Hist., Univ. of Alabama, Tuscaloosa. 93 pp.
Mount, R.H. 1981. The red imported fire ant, *Solenopsis invicta*, as a possible serious predator on some native southeastern vertebrates. J. Alabama Acad. Sci. 52:71–78.
Mount, R.H. 1984. Amphibians and reptiles, pp. 15–24, *In* Vertebrate Wildlife of Alabama. Alabama Agri. Exp. Sta., Auburn Univ., Auburn, Alabama. 44 pp.
Mount, R.H, S.E. Trauth, and W.H. Mason. 1981. Predation by the red imported fire ant, *Solenopsis invicta*, on the eggs of the lizard *Cnemidophorus sexlineatus*. J. Alabama Acad. Sci. 52:66–70.
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Author

The primary author of this proposed rule is Fred M. Bagley of the Service's Jackson Endangered Species Field Station (see Address section).

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						
*	*	*	*	*	*		
Turtle, Alabama red-bellied	*Pseudemys alabamensis*	U.S.A. (AL)	Entire	E	278	NA	NA
*	*	*	*	*	*		

Dated: May 29, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–13665 Filed 6–15–87; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Abronia Macrocarpa (Large-Fruited Sand-Verbena)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine a plant, *Abronia macrocarpa* (large-fruited sand-verbena), to be an endangered species pursuant to the Endangered Species Act of 1973 (Act), as amended. The single known population of this plant occurs on active sand dunes on private land in Leon County, Texas. Because of its small population size and limited distribution, this species is vulnerable to the threats of residential development, recreation, and commercial use. Critical habitat is not being proposed because easy access to the species' only population creates the potential for collecting and vandalism. This proposal, if made final, would extend the protection of the Act to *Abronia macrocarpa*. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by August 17, 1987. Public hearing requests must be received by July 31, 1987.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Service's Regional Office of Endangered Species, 500 Gold Avenue, SW., Room 4000, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Sue Rutman, Endangered Species Botanist, Albuquerque, New Mexico (see **ADDRESSES** above) (505/ 766–3972 or FTS 474–3972).

SUPPLEMENTARY INFORMATION:

Background

Abronia macrocarpa is an herbaceous perennial endemic to Leon County, eastern Texas. The species is restricted to actively blowing sand dunes in the Post Oak Forest and Grassland Mosaic vegetation types (McMahan *et al.* 1984). *Quercus stellata* (post oak) and *Ilex vomitoria* (yaupon) are dominants in the small wooded islands within the dunes and in the surrounding woodlands. *Abronia macrocarpa* is one of the many herbaceous species that temporarily dominate the bare sands during spring. Some common associated species are *Gaillardia pulchella* (Indian blanket), *Coreopsis* sp. (tickseed), *Rhododon ciliatus, Stylisma* sp., and *Croton argyranthemus* (silver croton).

Showy pink-purple flower clusters make *Abronia macrocarpa* an attractive component of the spring wildflower display. Twenty to seventy-five flowers are arranged in each spherical nodding head that is golf ball size or larger. The plant's ascending or erect stems may reach 5 decimeters (20 inches) in height. Leaves are hairy, have sticky glands, and are arranged oppositely on the stems. The large scarious fruits of *Abronia macrocarpa* distinguish this species from related taxa.

The only known population of *Abronia macrocarpa* occurs on sand dunes that lie entirely within a residential resort community. The dunes cover about 30 acres, but the area occupied by *Abronia macrocarpa* is much less. In 1986, Service botanists estimated that the population contained about 250 plants.

Abronia macrocarpa was first collected in 1968 by Dr. D.S. Correll and H.B. Correll at its only known locality. Dr. L. Galloway described this species in 1972 (Galloway 1972), and later, he published a monograph of the entire genus (Galloway 1975). Galloway was writing his account of the species when the *Manual of the Vascular Plants of Texas* (Correll and Johnston 1970) was published; thus *Abronia macrocarpa* does not appear in the manual.

Federal action involving *Abronia macrocarpa* began when this species was included in category 1 of the December 15, 1980, notice (45 FR 82480) of plants under review for threatened or endangered classification. Category 1 comprises taxa for which the Service has substantial biological information to support proposing them as endangered or threatened. Further evaluation of *Abronia macrocarpa* indicated the need for more data, and the species was placed in category 2 (those species for which listing may be warranted but for which the Service does not presently have sufficient biological data to support proposing them as endangered or threatened) in a November 28, 1983, supplement (48 FR 53640) to the 1980 notice. A status report by Turner (1983) provided sufficient data to support proposing *Abronia macrocarpa* as endangered. The species was returned to category 1 in the September 27, 1985, revision (50 FR 39526) of the 1980 notice and the 1983 supplement.

Species covered in the December 15, 1980, notice (45 FR 82480), including *Abronia macrocarpa*, were considered to be petitioned for listing. Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary to make findings on certain pending petitions within one year of their receipt. Section 2(b)(1) of the Act's Amendments of 1982 further requires that all petitions pending on October 12, 1982, be treated as having been newly submitted on that date. Since *Abronia macrocarpa* was included in the 1980 notice, the petition to list this species was treated as being newly submitted on October 12, 1982. On October 13, 1983, October 12, 1984, and October 11, 1985, the Service made the required one-year finding that the petition to list *Abronia macrocarpa* was warranted but precluded by other listing actions of higher priority. The publication of this proposed rule indicates that the petitioned action is warranted, and constitutes the next required finding in accordance with section 4(b)(3)(B)(ii) of the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Abronia macrocarpa* Galloway (large-fruited sand-verbena) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The historic and present known ranges of *Abronia macrocarpa* are the same; however, residential expansion and recreational activities associated with the surrounding resort community have destroyed habitat. Roads for a new residential area were recently built adjacent to the population. The open space of the sand dunes is an attractive area for horseback riding, bicycling, off-road vehicle (ORV) riding, and general play. These high-impact uses have produced wide paths where the sand is too disturbed to support vegetation.

An active oil well occurs on the sand dunes and construction of the well and the access road have destroyed habitat. Maintenance activities and oil spills could destroy additional plants and habitat. Maintenance of electric utility

lines near the population could also contribute to site disturbance.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Presently, no commercial trade in *Abronia macrocarpa* exists, but horticultural interest may develop. *Abronia macrocarpa* could be developed as an ornamental, as has the similar species *Abronia ameliae.* Because of the easy accessibility of the site, the potential exists for uncontrolled collecting for horticultural research material or for commercial sale. Because the population occurs on private land, plants will not be protected, under the Endangered Species Act, from taking.

C. *Disease or predation.* No threats are known.

D. *The inadequacy of existing regulatory mechanisms.* Currently, *Abronia macrocarpa* is not protected by either Federal or State laws or regulations.

E. *Other natural or manmade factors affecting its continued existence.* The limited distribution of this species makes it vulnerable to a variety of threats including disease, insect predation, and extreme weather conditions. Further reduction of its small population size may result in a reduced gene pool that could threaten the species' reproductive capacity or genetic potential.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Abronia macrocarpa* as endangered without critical habitat. Endangered status is appropriate because only one known population exists and it is subject to possible destruction by residential development, recreation, and commercial activity. The reasons for not designating critical habitat are discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Abronia macrocarpa* at this time due to this species' low numbers and restriction to one population. Designation could result in an especially severe problem for *Abronia macrocarpa,* which is located on private land in a residential area and is easily accessible. Listing of a species, with attendant publicity, highlights its rarity and attractiveness to collectors. Publication of critical habitat descriptions for this species would make it more vulnerable to taking or vandalism. Although listing establishes certain prohibitions that apply to endangered plants (see below), it does not specifically protect these plants from taking or vandalism. Therefore, it would not be prudent to determine critical habitat for *Abronia macrocarpa* at this time. The location of this plant will be brought to the attention of appropriate agencies and other involved parties through regular communications.

Available Conservation Measures

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

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. However, *Abronia macrocarpa* is not known to occur on Federal lands and no Federal involvement with this species is currently known or expected.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. With respect to *Abronia macrocarpa,* it is anticipated that few trade permits would be sought or issued since the species is not presently common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235–1903).

Public Comments Solicited

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

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Abronia macrocarpa;*

(2) The location of any additional populations of *Abronia macrocarpa* and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of *Abronia macrocarpa;* and

(4) Current or planned activities in the subject area and their possible impacts on *Abronia macrocarpa.*

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

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director (see **ADDRESSES** section).

National Environmental Policy Act

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

References Cited

Correll, D.S., and M.C. Johnston. 1970. Manual of the vascular plants of Texas. Texas Research Foundation, Renner, Texas. 1881 pp.

Galloway, L.A. 1972. *Abronia macrocarpa* L. A. Galloway. Brittonia 24:148–149.

Galloway, L.A. 1975. Systematics of the North American desert species of *Abronia* and *Tripterocalyx* (Nyctaginaceae). Brittonia 27:328–347.

NcMahan, C.A., R.G. Frye, and L.K. Brown. 1984. The vegetation types of Texas including cropland. Texas Parks and Wildlife Department, Austin, Texas. 40 pp. + map.

Turner, B.L. 1983. Status report on *Abronia macrocarpa*. U.S. Fish and Wildlife Service, Albuquerque, New Mexico. 10 pp.

Author

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

Status information was provided by Dr. B.L. Turner, University of Texas at Austin, Texas.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

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

Authority: 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. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family Nyctaginaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*	*	
Nyctaginaceae—Four-o'clock family:						
Abronia macrocarpa	Large-fruited sand-verbena	U.S.A. (TX)	E		NA	NA
*	*	*	*	*	*	

Dated: May 29, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–13666 Filed 6–15–87; 8:45 am]

BILLING CODE 4310-55-M

federal register

Tuesday
June 16, 1987

Part V

Department of Education

34 CFR Parts 631, 632, 633, 634, and 635
Cooperative Education Program; Notice of Proposed Rulemaking

Notice Inviting Applications for New Awards Under the Cooperative Education Program for Fiscal Year 1987

DEPARTMENT OF EDUCATION

34 CFR Parts 631, 632, 633, 634, and 635

Cooperative Education Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the Cooperative Education Program. These amendments are needed to implement changes in Title VIII of the Higher Education Act of 1965, as amended on October 17, 1986 by the Higher Education Amendments of 1986 (Pub. L. 99-498) (Amendments). The proposed changes would affect the type of projects funded, the application contents, the duration and level of Federal support, and the selection criteria.

DATE: Comments must be received on or before July 16, 1987.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Elizabeth Slany, Education Program Specialist, Program Development Branch, Division of Higher Education Incentive Programs, Office of Postsecondary Education, U.S. Department of Education, (Room 3022, ROB #3), 400 Maryland Avenue SW., Washington, DC 20202.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Elizabeth Slany, Telephone (202) 732-4861.

SUPPLEMENTARY INFORMATION: As a result of Amendments and the need to improve the application review process, the Secretary is proposing to amend the existing program regulations. The major proposed changes are explained in the following paragraphs.

Administration projects. The period of eligibility for Federal financial support of cooperative education in a unit of an institution of higher education, as defined in proposed § 631.5(b), has been increased from five to ten years, providing certain conditions are met. After an institution has received grant funds to support cooperative education in a unit for five years, an institution may request additional funds for cooperative education in the unit if the institution provides evidence that cooperative education in the unit had been financially supported for at least two academic years without Federal financial assistance. Under proposed § 632.23, the period without Federal financial assistance includes the two years immediately preceding the year for which an application is made and a grant awarded for additional funding of the cooperative education unit. During each academic year subsequent to the fifth year of support, the institution must have expended for its entire cooperative education project an amount at least equal to the total cost of the project during the fifth year in which an administration program grant was received.

Compared to previous requirements, the Amendments also require increased matching costs, as shown in proposed § 632.24, for the first three years a cooperative education unit is Federally supported. After the fifth year a cooperative education unit is funded, matching costs would be based on the percentages described in proposed § 632.24.

Undergraduate students who are enrolled as certificate candidates at an institution of higher education, which provides a 2-year program acceptable for full credit toward a bachelor's degree, are eligible for participation in the cooperative education program providing they are enrolled at least one-half time in a certificate program of not less than one academic year (proposed § 631.5(b)). Currently, only students who are undergraduate or graduate degree candidates are eligible to participate in the program.

Under the definition of "student," as proposed in § 631.5(b), a student may be enrolled in an undergraduate certificate program of not less than one academic year. The minimum length of one academic year is considered necessary to allow sufficient time for a student to complete both the institution's required academic program and at least one alternating or parallel cooperative education work experience. The Secretary is particularly interested in receiving comments on this definition.

In addition, the proposed regualtions, in proposed § 632.21, incorporate legislative changes which require the Secretary to give special consideration to two new factors: Developing institution-wide cooperative education projects and serving special populations.

Demonstration projects.—To implement the Amendments, the Secretary proposes to revise 34 CFR Part 633 to encourage institutions and non-profit agencies to develop and demonstrate innovative concepts of cooperative education. Institution-wide projects would no longer be funded under 34 CFR Part 633, since the Amendments emphasize that special consideration be given for the funding of institution-wide projects under 34 CFR Part 632.

Training and resource center projects.—The title of 34 CFR Part 635 would be modified to include the words "resource centers" in addition to the word "training," to describe more clearly the purposes of training projects as stated in the Amendments. To reflect other changes in the legislation, the proposed regulations have included, in proposed § 635.4, the following new types of activities that Training and Resource Center projects may conduct: Technical assistance to colleges and universities for continuing cooperative education without Federal financial assistance; improvement of cooperative education materials; encouragement of model cooperative education projects in occupations in which there is a national need; and, partnerships in which comprehensive, institution-wide cooperative education colleges and universities assist other institutions in developing or expanding cooperative education projects.

Other changes.—As a result of changes in the program's legislation and the need to improve the application review process, modifications have been made in the funding selection criteria for each of the Parts in these proposed regulations.

As required by the authorizing legislation, the Secretary will only fund applications from public or private nonprofit agencies or organizations that show the greatest promise of making an especially significant contribution to cooperative education. For this reason, the Secretary proposes to fund applications from public or private nonprofit agencies or organizations under Parts 633, 634, and 635 only if the application receives an average score of 75 or more points.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regualtions established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations would not have a significant economic impact on a substantial number of small entities. The small entities affected by these regualtions are small institutions of higher education and small nonprofit organizations. These regulations describe the program and establish minimal application requirements. They will not have a

significant economic impact on the institutions and organizations affected.

Paperwork Reduction Act of 1980

Sections 631.20, 632.20, 632.21, 632.23, 633.20, 634.20 and 635.20 contain information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these proposed regulations to the Office of Management and Budget (OMB) for its review. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: Joseph F. Lackey, Jr.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3022, Regional Office Building #3, 7th and D Streets SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 631

Colleges and universities, Education, Educational research, Employment, Grant programs—education, Manpower training programs, Student aid, Students.

34 CFR Part 632

Colleges and universities, Education, Employment, Grant programs—education, Manpower training programs, Student aid, Students.

34 CFR Part 633

Colleges and universities, Education, Employment, Grant programs—education, Manpower training programs, Student aid, Students.

34 CFR Part 634

Colleges and universities, Education, Educational research, Grant programs—education, Students, Teachers.

34 CFR Part 635

Colleges and universities, Education, Grant programs—education, Students, Teachers.

Dated: June 10, 1987.

William J. Bennett,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.055—Cooperative Education Program)

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by revising Parts 631, 632, 633, 634, and 635 to read as follows:

PART 631—COOPERATIVE EDUCATION PROGRAM—GENERAL

Subpart A—General

Sec.

Subpart B—How Does One Apply for an Award?

Subpart C—How Does the Secretary Make an Award?

Subpart D—What Conditions Must Be Met After an Award?

Authority: 20 U.S.C. 1133–1133b, unless otherwise noted.

Subpart A—General

§ 631.1 What is the Cooperative Education Program?

The Cooperative Education Program provides Federal Financial assistance to—

(a) Help institutions of higher education offer students paid work experiences closely related to their academic and career pursuits; and

(b) Improve the quality of cooperative education through demonstration, research, and training.

(Authority: 20 U.S.C. 1133a)

§ 631.2 Who is eligible for an award?

Eligibility for each of the four kinds of authorized projects is explained in 34 CFR 632.2, 633.2, 634.2, and 635.2.

(Authority: 20 U.S.C. 1133a, 1133b)

§ 631.3 What kinds of projects may the Secretary fund?

Under the Cooperative Education Program the Secretary awards—

(a) Grants for Administration projects, as described in 34 CFR 632.1;

(b) Grants and contracts for Demonstration projects, as described in 34 CFR 633.1;

(c) Grants and contracts for Research projects, as described in 34 CFR 634.1; and

(d) Grants and contracts for Training and Resource Center projects, as described in 34 CFR 635.1.

(Authority: 20 U.S.C. 1133–1133b)

§ 631.4 What regulations apply?

(a) *Grants.* The following regulations apply to grants under this program:

(1) The Education Department General Administrative regulations (EDGAR) in 34 CFR Parts 74 (Administration of Grants), 75 (Direct Grant Programs), 77 (Definitions that apply to Department Regulations), and 78 (Education Appeal Board).

(2) The regulations in this Part 631.

(3) The regulations in the following parts, as applicable:

(i) 34 CFR Part 632—Cooperative Education Program—Administration Projects.

(ii) 34 CFR Part 633—Cooperative Education Program—Demonstration Projects.

(iii) 34 CFR Part 634—Cooperative Education Program—Research Projects.

(iv) 34 CFR Part 635—Cooperative Education Program—Training and Resource Center Projects.

(b) *Contracts.* The following regulations apply to contracts under this program:

(1) The Federal Acquisition Regulation in Title 48 of the Code of Regulations.

(2) The regulations in this Part 631.

(3) The regulations in the following parts, as applicable:

(i) 34 CFR Part 633—Cooperative Education Program—Demonstration Projects.

(ii) 34 CFR Part 634—Cooperative Education Program—Research Projects.

(iii) 34 CFR Part 635—Cooperative Education Program—Training and Resource Center Projects.

(Authority: 20 U.S.C. 1133)

§ 631.5 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in 34 CFR Parts 631 through 635 are defined in 34 CFR 77.1:

Applicant
Application
Contract
EDGAR
Equipment
Grant
Grantee
Nonprofit
Private
Project
Project period
Public
Secretary
State

(b) *Other definitions.* The following definitions also apply to terms used in 34 CFR Parts 631 through 635:

"Act" means the Higher Education Act of 1965, as amended.

"Alternating periods of study and employment" means alternating academic terms of classroom study and periods of monitored and supervised public or private employment of a cooperative education student.

"Combination of institutions of higher education" means two or more institutions of higher education that have entered into a cooperative arrangement (consortium) for the purpose of carrying out a common objective.

"Cooperative education" means a method of education which includes—

(1) Alternating or parallel periods of study and employment;

(2) Formal work experience agreements among the institution of higher education, the student, and the employer;

(3) Work experiences which are of sufficient number and duration, as explained in § 632.30;

(4) Work experiences which are related to the students' academic programs of study or career goals;

(5) Student work experiences which are monitored, supervised and evaluated; and

(6) Student employment which is compensated in conformity with Federal, State, and local laws, unless a waiver for compensation is justified in the application and approved by the Secretary.

"Enrolled in a cooperative education project" means the status of students who have been accepted into a cooperative education project and will be or have been placed in cooperative education work experiences.

"Institution of higher education" means an educational institution as defined in section 1201(a) of the Act, but excludes an institution that does not meet the provision of section 1201(a)(3) of the Act.

"Institution-wide cooperative education" means a comprehensive cooperative education project in an institution of higher education that—

(1) Integrates cooperative education into all or nearly all of the academic disciplines or departments of the institution;

(2) Enrolls in its coopertive education project at least a majority of the institution's students who are eligible for the cooperative education project;

(3) Enables students to participate in work experiences with a variety of employers; and

(4) Acts as a liaison between high schools and the institution's admissions office to inform high school students of the availability and advantages of cooperative education.

"Parallel periods of study and employment" means periods of both classroom study and monitored and supervised public or private employment of a student in a cooperative education project, with the student carrying a half-time academic course load and working about 20 hours per week in a cooperative education work experience.

"Student" means a person—

(1) Enrolled in an institution of higher education other than by correspondence;

(2) Enrolled in—

(i) A graduate degree program;

(ii) An undergraduate degree program of not less than two academic years; or

(iii) An undergraduate certificate program of not less than one academic year if the program is provided by an institution of higher education that offers a two-year program which is acceptable for full credit toward a bachelor's degree; and

(3) Carrying at least one half the academic workload normally required of persons who are full-time degree candidates.

"Unit of an institution of higher education."

(1) This term means the organizational entity that has the final, noncentral administrative authority to recommend or administer the requirements, standards, and credits necessary to earn academic degrees.

(2)(i) In a university, the term means a college or its equivalent within the university.

(ii) In a four-year college, the term means a school or its equivalent within the college.

(iii) In a two-year college, the term means a department or division, whichever is the higher level, within the college.

(Authority: 20 U.S.C. 1133–1133b)

Subpart B—How Does One Apply for an Award?

§ 631.10 What limitations apply to the number of applications that may be submitted?

For any single fiscal year, the Secretary accepts from the same applicant no more than one application under each of the four kinds of projects listed in § 631.3.

(Authority: 20 U.S.C. 1133–1133b)

Subpart C—How Does The Secretary Make an Award?

§ 631.20 How does the Secretary evaluate applications?

(a) The Secretary evaluates each kind of application on the basis of the selection criteria set forth in 34 CFR 632.20, 632.21, 633.20, 634.20, and 635.20, as applicable.

(b)(1) The Secretary awards up to 100 points for each set of program selection criteria.

(2) The maximum possible score for each criterion is indicated in parentheses.

(c) The Secretary may assign up to 20 additional points to applications under the Administration Program which addresses the special consideration factors in § 632.21.

(d) The Secretary funds an application from a public or private agency or organization under Parts 633, 634, and 635 only if the application receives an average score of 75 or more points.

(Authority: 20 U.S.C. 1133–1133b)

Subpart D—What Conditions Must Be Met After an Award?

§ 631.30 What costs are allowable?

Subject to 34 CFR 75.530, governing allowable costs for grants, Federal and matching funds may be used for, but are not limited to, the following:

(a) Salaries for professional and clerical cooperative education staff members.

(b) Release or overload time for faculty involved in the project.

(c) Expenses associated with conducting cooperative education seminars or courses for students.

(d) Per diem and travel expenses of cooperative education project staff and faculty for project related activities.

(e) Fees or honoraria, per diem, and travel expenses for project consultants.

(f) Supplies and telephone costs.

(g) In-service project staff, faculty, and employer training related to the project.

(h) Expenses for developing, printing, and disseminating materials related to the project, including materials designed to recruit students into the project.

(i) Registration fees for training sessions related to cooperative education.

(j) Student travel, but only if the cooperative education student is a member of an advisory board for the project.

(k) Computer equipment with related software costs, and other special equipment related to project activities, if the costs are adequately justified and specifically approved by the Secretary.

(Authority: 20 U.S.C. 1133–1133b)

§ 631.31 What costs are unallowable?

(a) In addition to the costs not allowed under 34 CFR Parts 74 and 75, a grant recipient shall not use Federal and matching funds to pay for the following:

(1) Compensation of students for cooperative education work experiences.

(2) Teaching salaries for academic courses.

(3) Recruitment activities to encourage students to enroll at the grantee institution.

(4) Individual membership fees in professional organizations.

(5) Individual or institutional membership fees in organizations that devote a substantial part of their activities to influencing the passage or defeat of legislation.

(6) Planning for determining the feasibility of establishing a cooperative education project.

(b) Except under the Administration Program under 34 CFR Part 632, a recipient of funds under the Cooperative Education Program—

(1) May use Federal funds only to supplement and, to the extent possible, increase the level of funds that would otherwise have been available from non-Federal sources to carry out the approved activities; and

(2) Shall not use Federal funds to supplant funds from non-Federal sources.

(Authority: 20 U.S.C. 1133–1133b)

PART 632—COOPERATIVE EDUCATION PROGRAM—ADMINISTRATION PROJECTS

Subpart A—General

Sec.

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make a Grant?

Subpart D—What Conditions Must Be Met after an Award?

Authority: 20 U.S.C. 1133–1133a, unless otherwise noted.

Subpart A—General

§ 632.1 What is a Cooperative Education Administration project?

An Administration project is designed to provide students enrolled at an institution of higher education with opportunities to participate in cooperative education, as defined in 34 CFR 631.5(b).

(Authority: 20 U.S.C. 1133a)

§ 632.2 Who is eligible for a grant?

The following are eligible for grants under this part:

(a) Institutions of higher education.

(b) Combinations of institutions of higher education.

(Authority: 20 U.S.C. 1133a)

§ 632.3 What students are eligible to participate?

An individual who meets the definition of "student" in § 631.5(b) is eligible to participate in a project under this part.

(Authority: 20 U.S.C. 1133a)

§ 632.4 What types of administration projects are eligible for funding?

The Secretary makes awards under this part for the planning, establishment, operation, and expansion of cooperative education projects.

(Authority: 20 U.S.C. 1133a)

§ 632.5 What regulations apply?

The following regulations apply to this program:

(a) The regulations cited in § 631.4(a) and (b).

(b) The regulations in this part.

(Authority: 20 U.S.C. 1133)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make a Grant?

§ 632.20 What selection criteria does the Secretary use to evaluate Administration applications?

The Secretary uses the following criteria to evaluate an application for an Administration grant:

(a) *Institutional commitment:* (10 points) The Secretary considers the extent of commitment by reviewing—

(1) The applicant's support for the concept of cooperative education, as reflected, for example, by the inclusion of coopeative education in the institution's mission statement, long-range planning documents, budget, and catalog; and

(2) The chief executive officer's, other key administrators', faculity's, and governing board's support for the project, including their involvement in the planning and develeopment of the project.

(b) *Plan of operation.* (60 points) The Secretary considers the quality, effectiveness, and extent of the following:

(1) Organizational structure of the project and its relationship to the institution's organizational and academic structure (3 points).

(2) Measurable objectives of the project (6 points).

(3) Strategy for implementing the project (36 points), including, as applicable—

(i) The activities to be conducted by the applicant and employers, and any training or project development activities conducted by a nonprofit organization or institution;

(ii) The schedule that will be used for conducting project activities and meeting the objectives for each year Federal funds are being requested;

(iii) Plans for modifying the institution's academic calendar and course schedule to meet the needs of the students in the proposed project; and

(iv) Involvement and extent of participation of academic departments, divisions, and colleges within the instiutions; and

(v) Adequacy of resources, including adequacy of space and equipment

(4) Provision of work experience (10 points) based on—

(i) The relevance of the work experiences to the students; academic programs of study or career objectives;

(ii) The work/study calendar for alternating and parallel periods of study and employment;

(iii) The number, frequency, and duration of the work experiences; and

(iv) The level of monitoring and supervision of cooperative education students while they are on work assignments.

(5) The proposed procedures for administering the project, including fiscal control and funds accounting procedures, and for responding to unexpected problems and evaluation results (5 points).

(c) *Quality of key personnel.* (10 points) The Secretary considers the following in determining the quality of key project personnel:

(1) The qualifications of the project director, coordinators, and other key personnel.

(2) The relationship of the qualifications of each professional person involved in the project to the project's stated purposes and objectives.

(d) *Evaluation plan.* (10 points) The Secretary considers—

(1) The quality of the proposed evaluation plan and the extent to which the plan includes evaluation methods that are objective and produce useful data that are quantifiable; and

(2) Beginning in the second year of the project, the quality of the procedures to collect and record data on the impact of the project, including the—

(i) Enrollment and placement of cooperative education students, including data on the students' academic and occupational interests, the type of cooperative education employment, and the students' jobs upon graduation;

(ii) Income earned by students placed in cooperative education jobs;

(iii) Number of employers involved in the project; and

(iv) The increase or decrease in enrollment in the project from year to year.

(e) *Adequacy and reasonableness of the budget.* (10 points) The Secretary considers the extent to which the budget—

(1) Is reasonable in relation to the objectives and scope of the project, and the number of students placed; and

(2) Is reasonable with respect to any costs to be paid to a nonprofit organization or to another institution which assists in the development or expansion of the project.

(Authority: 20 U.S.C. 1133a)

§ 632.21 What special consideration factors does the Secretary use?

The Secretary may assign up to 20 additional points to applications from institutions whose projects show the greatest promise of success based on the following factors:

(a) The extent to which public and private sector employers support the project and accept students for jobs related to the students' respective academic programs (5 points), as demonstrated by—

(1) The types of positions for which employers hire cooperative education students;

(2) The match between students' interests and their actual job experiences; and

(3) The number of employers who accept cooperative education students and the number of cooperative education students they hire.

(b) The applicant's plans for continuing cooperative education after the termination of Federal financial assistance, including the sources of support and the amount of funds, personnel and other resources that will be committed to the project (5 points).

(c) The extent to which the institution is committed to expanding cooperative education into an institution-wide cooperative education program for all students (5 points).

(d) The institution's demonstrated commitment to serving special populations such as women, the handicapped, Black, Mexican American, Puerto Rican, Cuban, other Hispanic, American Indian, Alaska Native, Aleut, Native Hawaiian, American Samoan, Micronesian, Guamian (Chamorro), and Northern Marianian students (5 points).

(Authority: 20 U.S.C. 1133a)

§ 632.22 What limitations apply to the number of years an institution may be funded?

(a) (1) Except as provided in § 632.23, the Secretary may fund an institution of higher education, either individually or as a member of a combination of institutions, by providing up to five years of financial support for each unit of the institution.

(2) The five-year limitation in paragraph (a)(1) of this section applies to grants received both before and after the enactment of the Higher Education Amendments of 1986 (Pub. L. 99-498).

(b)(1) The Secretary may fund a unit of an institution which meets the requirements given in § 632.23 for a maximum of ten years.

(2) The ten-year funding limit for an individual unit under this part applies regardless of whether the unit was funded individually, or as a part of a grant to a single institution or a combination of institutions.

(Authority: 20 U.S.C. 1133a)

§ 632.23 What requirements must an applicant meet to be eligible for funding beyond the basic five-year limitation?

The Secretary considers an application from an institution of higher education, individually or as a participant in a combination of institutions, for the first year of additional support for cooperative education in a unit which had previously been funded for five years under this part if the applicant institution—

(a) Conducted cooperative education in the unit, which previously received five years of Federal assistance, without Federal financial assistance for at least two academic years subsequent to the end of the fifth year of Federal funding, including the two academic years immediately preceding the year for which the institution reapplies for program support;

(b) Expended for its cooperative education project during each of the academic years in paragraph (a) of this section an amount at least equal to the total cost of the project in the fifth fiscal year in which the institution received an Administration grant under this part; and

(c) Submits an application which contains all the information required by the Secretary, including for each academic year in paragraph (a) of this section information on—

(1) The number of staff and faculty positions involved in the project; and

(2) The number and income of students enrolled in the project.

(Authority: 20 U.S.C. 1133a)

§ 632.24 What limitations apply to a grant amount?

(a) No grant may exceed $500,000 for a single institution of higher education or a combination of institutions in any fiscal year.

(b) The Federal share for cooperative education for a unit of a project may not exceed—

(1) Ninety percent of the cost of the unit in the first year the applicant receives a grant;

(2) Eighty percent of the cost in the second year;

(3) Seventy percent of the cost in the third year;

(4) Sixty percent of the cost in the fourth year; and

(5) Thirty percent of the cost in the fifth year.

(c) In addition, the Federal share for funding cooperative education in a unit beyond the fifth year may not exceed the following percentages:

(1) Ninety percent in the sixth year.

(2) Eighty percent in the seventh year.

(3) Seventy percent in the eighth year.

(4) Sixty percent in the ninth year.

(5) Thirty percent in the tenth year.

(Authority: 20 U.S.C. 1133a)

Subpart D—What Conditions Must Be Met After An Award?

§ 632.30 What are the minimum requirements for the frequency and duration of work experiences?

(a) A cooperative education project in an institution of higher education must provide at least one work experience for participating graduate students and undergraduate certificate students, and at least two work experiences for other participating undergraduate students which, relate to the student's program of academic study or occupational objectives.

(b) The work experiences provided under paragraph (a) of this section must—

(1) Be of a duration consistent with the grantee's academic calendar but not less than the equivalent of a quarter term; and

(2) Provide sufficient opportunities for each student to gain in-depth experience in an area related to his or her academic program or occupational objectives.

(c) Academic credit for work experiences may be awarded at the discretion of the institution.

(Authority: 20 U.S.C. 1133a)

§ 632.31 How are student work experiences evaluated?

During a student's work experiences, the grantee shall assess the student's progress to ensure that the work experiences satisfy the objectives of the student and the cooperative education project.

(Authority: 20 U.S.C. 1133a)

§ 632.32 What are the fiscal requirements?

A grantee shall expend from its own resources for its cooperative education project during the fiscal year in which a grant is received not less than the amount the grantee expended from non-Federal funds for its project during the previous fiscal year for which Federal funds were received.

(Authority: 20 U.S.C. 1133a)

PART 633—COOPERATIVE EDUCATION PROGRAM—DEMONSTRATION PROJECTS

Subpart A—General

Sec.

Subpart B—[Reserved]

Subpart C—How Does the Secretary make an Award?

Authority: 20 U.S.C. 1133, 1133b, unless otherwise noted.

Subpart A—General

§ 633.1 What is a Cooperative Education Demonstration project?

A Demonstration project is designed to demonstrate or determine the feasibility or value of innovative methods of cooperative education.

(Authority: 20 U.S.C. 1133b)

§ 633.2 Who is eligible for an award?

The following are eligible to apply for an award under this part:

(a) Institutions of higher education.

(b) Combinations of institutions of higher education.

(c) Public or private nonprofit agencies or organizations.

(Authority: 20 U.S.C. 1133b)

§ 633.3 Who is eligible to participate in a demonstration project?

An individual who meets the definition of "student" in § 631.5(b) is eligible to participate in a project under this part.

(Authority: 20 U.S.C. 1133b)

§ 633.4 What types of demonstration projects does the Secretary fund?

The Secretary makes awards under this part for projects that—

(a) Determine the value of existing, innovative methods of cooperative education which have not been fully evaluated;

(b) Determine the feasibility of a proposed, innovative method of cooperative education; or

(c) Disseminate information on successful innovative projects.

(Authority: 20 U.S.C. 1133b)

§ 633.5 What regulations apply?

The following regulations apply to this program:

(a) The regulations cited in § 631.4(a) and (b).

(b) The regulations in this part.

(Authority: 20 U.S.C. 1133b)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 633.20 What selection criteria does the Secretary use to evaluate demonstration applications?

The Secretary uses the following selection criteria to evaluate applications under this part:

(a) *Purposes and objectives of the project.* (20 points) The Secretary reviews each application to evaluate the merits of the following:

(1) The purposes of the project.

(2) The extent to which the project is designed to—

(i) Determine the value of existing, innovative methods of cooperative education which has not yet been fully evaluated;

(ii) Determine the feasibility of proposed, innovative methods of cooperative education; or

(iii) Disseminate information of successful innovative projects.

(3) Measurable objectives which relate to the purposes of the project for each year for which Federal funds have been requested.

(4) The expected outcomes of the project, and how the outcomes will benefit cooperative education.

(b) *Project design and plan of operation.* (50 points) The Secretary considers the quality of—

(1) The project's design and the activities to be conducted, including the relationship between the activities and the project objectives; (10 points)

(2) The organizational structure of the project; (5 points)

(3) A schedule for implementing the project's activities and meeting its objectives which shows the way resources will be used in meeting each objective; (10 points)

(4) The plan for effectively and efficiently administering the project; (10 points)

(5) The staffing plan and the time each project person will devote to the project; (10 points) and

(6) Other resources, such as space and equipment, that will be available to the project. (5 points)

(c) *Quality of key personnel.* (10 points) The Secretary considers—

(1) The qualifications of the project director, other professional staff, faculty, and consultants, if used.

(2) The relationship of the qualifications of each professional person involved in the project to the project's stated purposes and objectives.

(d) *Evaluation plan.* (10 points) The Secretary considers the quality of the proposed evaluation plan for the project, including the extent to which the methods of evaluation—

(1) Are appropriate to the project; and

(2) Are objective and produce useful data that are quantifiable.

(e) *Adequacy and reasonableness of the budget.* (10 points) The Secretary considers the extent to which—

(1) Costs for the project are adequate and reasonable compared with the objectives, project design, staffing plan, and plan of operation; and

(2) Funds will be contributed by the applicant and consortium members of the project, if any.

(Authority: 20 U.S.C. 1133b)

PART 634—COOPERATIVE EDUCATION PROGRAM—RESEARCH PROJECTS

Subpart A—General

Sec.

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

Authority: 20 U.S.C. 1133, 1133b, unless otherwise noted.

Subpart A—General

§ 634.1 What is a Cooperative Education Research project?

The purpose of a research project is to conduct studies to improve, develop, or evaluate methods of cooperative education for the benefit of the cooperative education community.

(Authority: 20 U.S.C. 1133b)

§ 634.2 Who is eligible for an award?

The following are eligible to apply for an award under this part:

(a) Institutions of higher education.

(b) Combinations of institutions of higher education.

(c) Public or private nonprofit agencies or organizations.

(Authority: 20 U.S.C. 1133b)

§ 634.3 What types of research projects does the Secretary fund?

(a) The Secretary makes awards under this part for research projects related, but not limited, to the following:

(1) Improving the effectiveness of cooperative education projects.

(2) Providing data on the usefulness of cooperative education as an alternative educational approach to assist students to prepare for careers and to finance their educational pursuits

(3) Developing better cooperation among high schools, institutions of higher education, business, and industry to enhance the opportunity for students to participate in work experiences related to their academic or career objectives.

(b) The Secretary does not fund a project designed to benefit only a single institution.

(Authority: 20 U.S.C. 1133b)

§ 634.4 What regulations apply?

The following regulations apply to this program:

(a) The regulations cited in § 631.4 (a) and (b).

(b) The regulations in this part.

(Authority: 20 U.S.C. 1133)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 634.20 What selection criteria does the Secretary use to evaluate research applications?

The Secretary uses the following selection criteria in evaluating research applications under this part:

(a) *Relevancy of research.* (20 points) The Secretary considers the extent to which—

(1) The proposed research is responsive to a major problem or need in cooperative education; and

(2) The findings would be of value to institutions, faculty, students, or employers involved or interested in cooperative education.

(b) *Design of research.* (20 points) The Secretary considers the research design by assessing the objectivity and quality of the—

(1) Definition of the problem or objectives to which the research is directed;

(2) Research methods;

(3) Sampling method to be used, if applicable;

(4) Data collection method to be used, if applicable; and

(5) Plan for analyzing data.

(c) *Plan of operation.* (15 points) The Secretary considers the quality and the effectiveness of—

(1) The plan of management, including the extent to which the plan will ensure proper and efficient administration of the project;

(2) The schedule for implementing the project; and

(3) The way the applicant plans to use its resources and personnel to conduct the project.

(d) *Adequacy of resources.* (10 points) The Secretary considers the extent to which—

(1) The personnel resources the applicant plans to use are adequate;

(2) The facilities that the applicant plans to use are adequate; and

(3) The equipment and supplies that the applicant plans to use are adequate.

(e) *Quality of key personnel.* (20 points) The Secretary considers the quality of the key personnel the applicant plans to use on the project by reviewing—

(1) The qualifications of the project director or principal investigator;

(2) The qualifications of each of the other key personnel to be used in the project; and

(3) The relationship of the qualifications of each professional person involved in the project to the project's stated purposes and objectives.

(f) *Dissemination of results.* (5 points) The Secretary considers the extent to which the results of the research will be disseminated by reviewing—

(1) Publication plans;

(2) Methods of dissemination; and

(3) The dissemination schedule.

(g) *Budget.* (10 points) The Secretary reviews the budget to assure that it is reasonable when compared with the design of the project, the plan of operation, and plans for disseminating the results of the research.

(Authority: 20 U.S.C. 1133b)

§ 634.21 What priorities may the Secretary use?

The Secretary may select funding priorities from the following research categories:

(a) Identification and assessment of incentives and factors that influence an institution of higher education to continue its cooperative education project successfully after Federal financial assistance has ended.

(b) Identification and assessment of the factors that influence the participation of students, faculty and employers in cooperative education.

(c) Alternatives to, and methods of, financing cooperative education without Federal support in public and private, 2- and 4-year colleges and universities.

(d) Longitudinal studies on former cooperative education students and non-

cooperative education students to determine the relationship between the students' cooperative education work experiences and one or more of the following:

(1) Initial job placement.

(2) Job advancement.

(3) Long-term earnings.

(e) Assessment of the impact of cooperative education on college retention rates and academic achievement of students participating in cooperative education, compared to non-participants.

(f) Assessment of the impact of institution-wide cooperative education projects on—

(1) The institution;

(2) Students at the institution;

(3) Faculty;

(4) Employment opportunities; and

(5) Factors influencing the successes and failures of institution-wide cooperative education projects.

(Authority: 20 U.S.C. 1133b)

PART 635—COOPERATIVE EDUCATION PROGRAM—TRAINING AND RESOURCE CENTER PROJECTS

Subpart A—General

Sec.

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

Authority: 20 U.S.C. 1133, 1133b, unless otherwise noted.

Subpart A—General

§ 635.1 What is a Cooperative Education Training and Resource Center project?

A training and Resource Center project is designed to train and assist individuals who participate in or are planning to participate in the planning, establishment, and administration of cooperative education projects.

(Authority: 20 U.S.C. 1133b)

§ 635.2 Who is eligible for an award?

The following are eligible to apply for awards under this part:

(a) Institutions of higher education.

(b) Combinations of institutions of higher education.

(c) Public or private nonprofit agencies or organizations.

(Authority: 20 U.S.C. 1133b)

§ 635.3 Who is eligible to participate?

Individuals with a need for training, project-related materials, and technical assistance in the planning, establishment, or administration of a cooperative education project, are eligible to participate in training projects assisted under this part, including—

(a) Presidents and administrators of institutions of higher education, whether or not institution administers a Federally-funded cooperative education project;

(b) Faculty and staff of institutions of higher education, whether or not their institution administers a Federally-funded cooperative education project;

(c) High school personnel responsible for career an academic guidance; and

(d) Employers or prospective employers of students in a cooperative education project.

(Authority 20 U.S.C. 1133b)

§ 635.4 What activities may the Secretary fund?

(a) The Secretary makes awards under this part for training and resource center projects designed to provide information and develop skills necessary to administer cooperative education projects.

(b) A recipient of an award for a training and resource center project shall conduct one or more of the following activities:

(1) Training project directors, coordinators, faculty members, employers, and other persons mentioned in § 635.3 who are or will be involved in cooperative education.

(2) Improving materials used in cooperative education projects.

(3) Providing technical assistance to institutions of higher education to increase their potential to continue cooperative education programs without Federal funds.

(4) Encouraging model cooperative education projects which furnish education and training in occupations in which there is a national need.

(5) Supporting partnerships in which an institution with an existing institution-wide cooperative education program assists another institution to—

(i) Develop and expand its existing cooperative education program; or

(ii) Establish, improve, or expand an institution-wide cooperative education project.

(Authority: 20 U.S.C. 1133b)

§ 635.5 What priorities may the Secretary establish?

Each year the Secretary may select as a priority one or more of the activities listed in § 635.4.

(Authority: 20 U.S.C. 1133b)

§ 635.6 What regulations apply?

The following regulations apply to this program:

(a) The regulations cited in § 631.4(a) and (b).

(b) The regulations in this part.

(Authority: 20 U.S.C. 1133)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 635.20 What selection criteria does the Secretary use to evaluate applications?

The Secretary uses the following selection criteria to evaluate an application under this part:

(a) *Needs assessment.* (21 points) The Secretary considers the extent to which the applicant provides evidence, as applicable, of current need for its project, for example, need for—

(1) Training, technical assistance, and materials in its geographic area;

(2) Training, technical assistance, and materials of a specialized nature addressed to a nationwide clientele; or

(3) Development of model programs, partnerships, and institution-wide cooperative education projects.

(b) *Purpose and scope of training and functions of the resource center.* (15 points) The Secretary considers the extent to which the purpose of the project and the scope of the project activities to be provided will address the needs of the constituency selected to receive training and information, based on the use of needs analysis data.

(c) *Plan of operation.* (36 points) The Secretary considers—

(1) The extent to which the applicant provides evidence of thorough planning for the proposed project, including the procedures to be used in conducting the project, and the commitment of personnel to be involved in conducting the project;

(2) The extent to which the objectives and proposed outcomes of the project relate to the project's purpose and the results of the needs assessment;

(3) The quality of the actual design of the project, including plans for dealing with unexpected problems and evaluation results;

(4) The quality of the activities to be conducted and their relationship to the criteria in paragraph (c)(2) of this section;

(5) The quality of the methods and procedures to be used in conducting the project's training plan;

(6) The proposed schedule for conducting project activities and training sessions, including the subject matter to be covered at each session, the duration and geographic location of the sessions, and the proposed number of participants to be served at each session;

(7) The extent to which the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition;

(8) The quality of the plan for managing the project; and

(9) The extent to which the proposed project has promise of fulfilling the proposed objectives and the current need for the project.

(d) *Quality of key personnel.* (9 points) The Secretary considers—

(1) The qualifications and training skills of the project director;

(2) The qualifications of other professional personnel, including consultants, to be used in the project; and

(3) The relationship of the qualifications of each professional person involved in the project to the project's stated purposes and objectives.

(e) *Adequacy of resources.* (8 points) The Secretary considers the extent to which—

(1) Personnel resources are available and adequate for conducting the project's activities.

(2) Physical facilities are available and adequate for conducting the project's activities; and

(3) Necessary equipment and other required resources are available for conducting the project's activities.

(f) *Evaluation plan.* (6 points) The Secretary considers the quality of the proposed evaluation plan for the project, including the extent to which the methods of evaluation—

(1) Are appropriate to the project; and

(2) Are objective and produce useful data that are quantifiable.

(g) *Budget.* (5 points) The Secretary considers the extent to which the budget is reasonable compared with the scope of training and the plan of operation.

(Authority: 20 U.S.C. 1133b)

[FR Doc. 87-13675 Filed 6-15-87; 8:45 am]

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DEPARTMENT OF EDUCATION

[CFDA No.: 84.055]

Notice Inviting Applications for New Awards Under the Cooperative Education Program for Fiscal Year 1987

Purposes: Provides (1) administration grants to institutions of higher education to plan, establish, operate, or expand cooperative education projects, including an institution-wide project, (2) demonstration grants to institutions of higher education and public and private nonprofit organizations and agencies to demonstrate or determine the feasibility or value of innovative methods of cooperative education, and (3) training and resource center grants to institutions of higher education and public and private nonprofit organizations and agencies which provide training to individuals who participate in, or are planning to participate in cooperative education.

Deadline for transmittal of applications: July 27, 1987.

Applications available: June 26, 1987.

Available funds: The Congress has appropriated $14,400,000 for this program for fiscal year 1987. Of that amount approximaely $10,364,100 will be available for new grants as follows:

Administration Grants—$9,600,000.
Demonstration Grants—$491,400.
Training and Resource Center Grants—$272,700.

Estimated range of awards:

Administration—$29,000–$300,000.
Demonstration—$50,000–$150,000.
Training and Resource Centers—$50,000–$150,000.

Estimated average size of awards:

Administration—$73,800.
Demonstration—$98,300.
Training and Resource Centers—$90,600.

Estimated number of awards:

Administration—130.
Demonstration—5.
Training and Resource Centers—3

Project periods:

Administration—12–60 months.
Demonstration—12–36 months.
Training and Resource Centers—12–36 months.

Applicable regulations: (a) Regulations governing the Cooperative Education Program as proposed to be codified in 34 CFR Parts 631 (General), 632 (Administration Projects), 633 (Demonstration Projects), and 635 (Training and Resource Center Projects). Applications are being accepted based on the Notice of Proposed Rulemaking which is published in this issue of the **Federal Register.** If any substantive changes are made in the final regulations for this program, applicants will be given the opportunity to revise or resubmit their applications; and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78.

For applications or information contact: Stanley B. Patterson, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3022, ROB–3, Washington, DC 20202. Telephone: (202) 732–4393.

Program authority: 20 U.S.C. 1133–1133(b).

Dated: June 11, 1987.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 87–13674 Filed 6–15–87; 8:45 am]

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federal register

Tuesday
June 16, 1987

Part VI

Department of Energy

10 CFR Part 625

Sale of Strategic Petroleum Reserve Petroleum; Standard Sales Provisions; Proposed Appendix to Final Rule; Request for Comments

DEPARTMENT OF ENERGY

10 CFR Part 625

Sale of Strategic Petroleum Reserve Petroleum; Standard Sales Provisions

AGENCY: Procurement and Assistance Management Directorate, Assistant Secretary for Management and Administration, Department of Energy.

ACTION: Proposed appendix to final rule; request for comments.

SUMMARY: On December 21, 1983, the Department of Energy (DOE) published in the **Federal Register** a final rule governing price competitive sales of petroleum from the Strategic Petroleum Reserve (SPR) in the event that the SPR is drawn down to respond to a severe energy supply interruption or to meet obligations of the United States under the Agreement on an International Energy Program (IEP). This final rule provided for the publication in the **Federal Register**, as an appendix thereto, of Standard Sales Provisions (SSPs) containing or describing contract clauses, terms and conditions of sale, and performance and financial responsibility measures, which may be applicable to a particular sale of SPR petroleum. On January 20, 1984, interim final SSPs were published in the **Federal Register**. As provided in the rule, DOE is now updating the SSPs and solicits written comments with respect to these draft revised SSPs.

DATES: Comments on the SSPs are requested by August 17, 1987.

ADDRESSES: Send comments to:
Fred A. Hutchinson, FE–422, Office of Strategic Petroleum Reserve, U.S. Department of Energy, Room 3E–042, 1000 Independence Avenue, SW., Washington, DC 20585

FOR FURTHER INFORMATION CONTACT:
Fred A. Hutchinson, FE–422, Office of Strategic Petroleum Reserve, U.S. Department of Energy, Room 3E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4734

E. Grant Garrison, GC–41, Office of Assistant General Counsel, International Affairs, U.S. Department of Energy, Room 6A–167, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2900

Robert W. Law, MA–442, Procurement and Assistant Management Directorate, U.S. Department of Energy, Room 1M–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8234

SUPPLEMENTARY INFORMATION:

I. Background

A. The Strategic Petroleum Reserve Drawdown Plan

The Strategic Petroleum Reserve (SPR) was established by the Energy Policy and Conservation Act of 1975 (EPCA, Pub. L. 94–163) to store up to one billion barrels of petroleum to diminish the impact of disruptions on petroleum supplies and to carry out obligations of the United States under the International Energy Program. The EPCA required the preparation of an "SPR Plan" detailing proposals for the development of the SPR; this SPR Plan was to include a Distribution Plan setting forth the methods for drawing down and distributing the SPR in the event of an emergency. The mandated SPR Plan, which was submitted to Congress and subsequently took effect on April 18, 1977, indicated that the Distribution Plan was still being formulated. On October 21, 1979, a detailed Distribution Plan was transmitted to Congress as Amendment No. 3 to the SPR Plan and became effective on November 15, 1979. This Distribution Plan set out a number of alternative distribution methods, ranging from allocation to price competitive sales.

In the Energy Emergency Preparedness Act of 1982 (EEPA), Pub. L. 97–229, Congress required that a new "Drawdown" (Distribution) Plan be transmitted to the Congress. The EEPA provided that this amendment to the SPR Plan would take effect on the date transmitted, without Congressional review. The new Distribution Plan, SPR Plan Amendment No. 4, was transmitted to Congress on December 1, 1982, and took effect on that date. The new Plan provided that the principal method of distributing SPR oil will be price competitive sale.

On March 16, 1983, DOE published a notice of proposed rulemaking (48 FR 11125) to establish a framework for implementing the policies and procedures set out in Amendment No. 4. For a discussion of the statutory authority for the SPR and the regulatory background of the proposed rule, *see* the preamble to the proposed rule at 48 FR 11125.

B. The Final Rule

The purpose of the SPR sales rule (48 FR 56541, December 21, 1983) is to facilitate the sales process during a drawdown of the SPR by providing for the establishment of Standard Sales Provisions (SSPs), containing contract terms and conditions developed in accordance with the rule which, it is expected, will be contained in contracts for the sale of SPR petroleum. The rule calls for the publication of the SSPs in the **Federal Register** and the Code of Federal Regulations as an apendix to the rule. The rule also provides for the periodic review and republication of the SSPs in the **Federal Register**, including any revisions to such provisions.

Upon a Presidential decision to draw down the SPR, DOE would issue a Notice of Sale, announcing the amounts, types, and locations of the SPR petroleum to be sold, the delivery points, and other pertinent information. The rule provides that the Secretary of Energy or his designee would specify in the Notice of Sale, by referencing the **Federal Register** and the Code of Federal Regulations in which the latest version of the SSPs was published, which of the terms and conditions in the SSPs would or would not apply to a particular sale. In the Notice of Sale, the Secretary also could revise such terms and conditions, or add new ones which would apply to that particular sale. The rule provides that no contract would be awarded to an offeror who had not unconditionally agreed to all contractual provisions and responsibility measures made applicable by the Notice of Sale. The rule also provides a mechanism for excluding purchasers that fail to perform their contractual obligations from future participation in SPR sales.

C. Interim Final Standard Sales Provisions

1. General Sales Objectives

On January 20, 1984, interim final SSPs were published in the **Federal Register** (49 FR 2692) for public comment. The procedures and provisions contained in the interim final SSPs were designed to balance and achieve two objectives of SPR Plan Amendment No. 4, i.e., to provide that SPR price competitive sales will be open to all interested buyers, but establish measures to assure purchaser performance under the resulting contracts.

In order to maximize competition by the widest possible universe of offerors, DOE made the interim final SSPs as unrestricted and nonjudgmental as possible. As required by Amendment No. 4, price was to be the determining factor in the award of SPR petroleum sale contracts.

The measures included in the draft SSPs to ensure the offeror's fulfillment of its responsibilities included:

a. Requirement for offer guarantee;
b. Requirement for letter of credit or cash deposit to guarantee payment and performance;
c. Assessment of liquidated damages for failure to lift oil in accordance with the contract; and
d. Possible termination for default.

An offer or contract to acquire SPR oil thus would involve a substantial commitment to the implementation of SPR drawdown and distribution in a manner consistent with the purposes of the SPR. For a more complete discussion of the responsibility measures, *see* the preamble to the interim final SSPs at 49 FR 2693–94.

2. General Sales Procedures

Under the interim final SSPs, the SPR sales process starts with the issuance of a Notice of Sale. The Notice of Sale announcing the sale of SPR petroleum would indicate the amount, characteristics and location of the petroleum being sold, the delivery dates and the procedures for submitting offers, as well as providing other information pertinent to a particular sale; in addition, it would specify what contractual provisions and performance and financial responsibility measures were applicable. In the event that an SPR sale does occur before these proposed revisions are formally adopted, the Notice of Sale could adopt some or all of these revisions for use.

Over the course of an SPR drawdown, a number of Notices of Sale may be issued, each covering a sales period of 1 to 2 months. Initially, Notices of Sale issued during SPR drawdown could allow an extremely short lead time for offers and deliveries. Under the interim final SSPs, it was contemplated that offerors might be given as little as 7 days from the issuance of the Notice of Sale until offers were due, and as little as 30 days from the time of such issuance until oil delivery started, with a less compressed schedule becoming more feasible after the initial stages of drawdown. Because of the possible short lead time, the interim final SSPs provided for the establishment of a list of prospective offerors, to whom the Government would furnish copies of all Notices of Sale.

The next step in the sales process is the preparation by prospective purchasers of their offers, which must be submitted before a time specified in the Notice of Sale. The interim final SSPs require that the offeror: Unconditionally accept all terms and conditions made applicable to that sale by the Notice of Sale; include an offer guarantee; and offer at least the minimum price, if any, specified in the Notice of Sale.

Following the receipt of offers, the Government would evaluate the offers to select the "apparently successful" offerors. The evaluation process was structured so that the highest offerors could select the method by which the SPR petroleum was to be transported, up to the limits of the SPR distribution systems. Specific delivery arrangements were to be negotiated later.

Under the interim final SSPs, all apparently successful offerors would have been required, within as little as 5 days, to provide a letter of credit or a cash deposit as a guarantee of performance and of payment of amounts due under the contract. Upon timely receipt of the guarantee, and upon a final determination by the Contracting Officer that the offer was responsive and the offeror responsible, the Government would issue the Notice of Award.

The only other bases in the interim final SSPs upon which the Contracting Officer could make a finding of nonresponsibility, other than nonperforming purchasers that had been excluded from SPR sales under the procedures established by the sales rule, were: (i) The offeror is on either DOE's or the Federal Government's list of debarred, ineligible, and suspended bidders; (ii) evidence of an offeror's conduct or activity which represents a violation of law or regulation, or Executive Order having the force and effect of law; or (iii) evidence which shows a lack of integrity (including actions inimical to the welfare of the United States) or willingness to perform, and which would substantially diminish the Contracting Officer's confidence in the offeror's performance.

II. The Revised Standard Sales Provisions

A. Major Revisions

The interim final SSPs are now being revised in accordance with the SPR sales rule in response to a number of events, including public comments on the interim final SSPs, the results of internal DOE exercises, the addition of the ARCO Terminal as a new distribution point for SPR petroleum, the National Petroleum Council (NPC) report to the Secretary of Energy, *The Strategic Petroleum Reserve, A Report on the Capability to Distribute SPR Oil* (December 1984), and the results of the SPR test sale held by DOE from November 1985 to January 1986.

Although the revised SSPs do not reflect any major changes to the basic elements of the interim final SSPs as described earlier, there nonetheless are substantial revisions. The delivery line items have changed significantly because of changes to the SPR distribution systems. Delivery line items for the Seaway and Texoma pipelines have been dropped due to the conversion of these pipelines to natural gas carriers. Delivery line items reflecting the connection of the SPR's Bryan Mound site with the ARCO Terminal in Texas City, Texas, have been added. Delivery line items for barges have also been added for those crude oil streams distributed from Sun Terminal.

The SSPs concerning the evaluation of bids have been revised to clearly state that the Contracting Officer may reject any offer if it is determined that the prices offered are not reasonable.

In the past, a major area of concern for many commenters has been the requirement that SPR oil could only be delivered by U.S.-flag vessels qualified for coastwise trade under the "Jones Act." A provision describing procedures developed in cooperation with the Maritime Administration and the U.S. Customs Service for expedited case-by-case "Jones Act" and Construction Differential Subsidy vessel waivers has been added.

A second major area of commenter concern has been the provisions relating to nonperformance by either the purchaser or DOE. These provisions also have been revised. Purchasers will no longer be held liable for liquidated or other damages arising from contract nonperformance due to the actions of their nonaffiliated transportation subcontractors if such actions were beyond the purchaser's control and without their fault, and if the services could not be obtained from another source in a timely fashion. Further, regardless of the cause of any delay, an additional two-day grace period has been added before liquidated damages are assessed. Finally, a provision covering payment of demurrage by the Government has been added.

Several commenters questioned whether, under the interim final SSPs, the Government ever would incur liability for terminating a sales contract. In fact, both the interim final SSPs and the revised SSPs provide that if the Government terminates any contract for its convenience, DOE is liable for the contractor's costs in preparing to perform the contract, unless such termination arises from causes beyond the Government's control, such as the

purchaser's failure to perform, or a sovereign decision of the United States, such as a Presidential decision to terminate the drawdown. The latter seems likely to occur only if the supply interruption has improved suddenly, making supplies readily available to the terminated SPR purchasers, possibly at lower prices than their SPR sales contract.

A third major area of commenter concern has been payment terms. The payment terms have been revised to provide a specific date, consistent with industry terms for purchasers of foreign oil, for payment by FEDWIRE 10 days after completion of delivery. The letter of credit has been revised to permit drafts to be transmitted to the issuing bank by a number of means in addition to FEDWIRE. The requirement for evidence that the person signing the letter of credit was authorized to do so has been deleted, although the revised SSPs reserve the right to request such evidence. However, DOE will continue to require payment by either commercial letter of credit or advance payment.

The Exhibits also have been substantially revised. New forms for use in making offers have been included. A worksheet to assist in the calculation of the offer guarantee has also been added. The Exhibits now include more detailed assays of the SPR crude oil streams and the information on SPR terminals has been expanded.

In addition to these substantive changes, a number of provisions have been revised to clarify meaning, and to delete redundant or extraneous materials. The order of the provisions has been changed to group related provisions together. There follows a provision-by-provision discussion of noteworthy changes in the interim final SSPs.

B. Revised Provisions

SSP No. A.1 List of Acronyms

The acronyms "ASO" for "Apparently Successful Offeror" and "SPRCODR" for "SPR Crude Oil Delivery Report" were added.

SSP No. A.2 Definitions

1. Definitions for "Affiliate" and "Head of the Contracting Activity" have been added.

2. The definitions for "Notice of Acceptance," "Project Management Office" and "Vessel" have been expanded and clarified.

3. Several definitions have been deleted as no longer relevant.

SSP No. A.3 Standard Sales Provisions

Interim final SSP No. A.4, "Application of the Standard Sales Provisions," was deleted and its contents incorporated here.

SSP No. A.5 Potential Offerors List for Sales of Petroleum (Formerly SSP No. A.6)

Potential offerors wanting to be on the mailing list have been asked to provide a street address, as DOE may use express mail which cannot be delivered to a P.O. Box. In addition, as required by Federal debt collection procedures, offerors must provide their taxpayer identification numbers.

SSP No. B.2 Certification of Independent Price Determination (Formerly SSP No. C.1)

This provision has been changed, consistent with the revision of the Federal Acquisition Regulation independent price determination clause.

SSP No. B.3 Requirements for Vessel—Caution to Offerors (Formerly SSP No. B.2)

1. A caution has been added that vessels receiving Operating Differential Subsidies would require separate permission from the Secretary of Transportation to carry SPR oil.

2. The provision now provides that the Notice of Sale will advise offerors of any general waivers allowing use of non-coastwise qualified vessels to transport SPR oil. Procedures for individual waiver requests are also provided in new SSP No. C.7, but purchasers remain obligated to perform under the contract regardless of the outcome of that waiver process.

3. A new caution has been added concerning the availability at SPR marine terminals of reception facilities for vessel sludge and oily bilge water wastes, and the lack of oily ballast reception facilities.

4. The provision now provides that by submitting an offer, the offeror certifies that it will comply with the laws and regulations cited in this provision.

SSP No. B.4 "Superfund" tax on SPR Petroleum—Caution to Offerors (Formerly SSP No. B.3)

This provision has been revised to reflect the latest amendments to the "Superfund" legislation, and now provides that the Notice of Sale will advise purchasers of their tax liability.

SSP No. B.5 Export Limitations and Licensing—Caution to Offerors (Formerly SSP No. B.4)

The provision now states that by submission of an offer, the offeror certifies that it will comply with any applicable U.S. export control laws.

SSP No. B.7 Submission of Offers and Modification of Previously Submitted Offers (formerly SSP No. B.6)

1. The requirement has been added that envelopes containing modified offers or supplemental offer material must be plainly marked as such.

2. In addition to the posting of the offer abstract, after opening, copies of the offers may be seen at the SPR/PMO by contacting the Contracting Officer.

SSP No. B.10 Offer Guarantee (formerly SSP No. B.9)

1. This provision has been changed to clarify that each offer submitted by an offeror must have an offer guarantee.

2. Calculation of the offer guarantee amount has been explained in more detail and an optional worksheet has been provided as an exhibit.

3. The offer bond, Standard Form 24, has been eliminated as an acceptable offer guarantee.

SSP No. B.15 SPR Crude Oil Streams and Delivery Points (formerly SSP No. B.14)

ARCO Terminal and ARCO docks at Texas City, Texas have been added as delivery points for SPR Bryan Mound Sweet and Sour crude oil streams.

SSP No. B.16 Notice of Sale Line Item Schedule—Petroleum Quantity, Quality, and Delivery Method (formerly SSP No. B.15)

1. The discussion of delivery line items has been revised to reflect changes in the available delivery line items due to the closure of two major interstate pipelines connected to SPR terminals, the addition of barge delivery line items at one terminal, and the connection of the Bryan Mound site to the ARCO Terminal.

2. The provision has been revised to make it clear that the Contracting Officer may reduce the quantities available for sale if he determines that offered prices are unreasonable.

3. DOE is concerned that if a local pipeline delivery line item were offered for sale under circumstances where there appeared likely to be only one or two offerors, the local pipeline owners may have an unfair competitive advantage. The provision now states that where this situation is thought to exist, a pipeline delivery line item may not be offered; however, those offerors wishing pipeline delivery may bid against the vessel delivery line items and, if successful, may request a

contract modification changing the delivery mode.

SSP No. B.17 Line Item Information To Be Provided in the Offer (formerly SSP No. B.16)

1. The substance of interim final SSP No. B.15, Notice of Sale line item schedule, paragraphs (j), (k), and (m), has been moved to this provision as they relate more to the information to be provided in the offer than to the Notice of Sale.

2. The provision now makes clear that if an offeror submits more than one offer, each will be evaluated independently.

3. The method for specifying the offeror's minimum quantity has been changed. It should be noted that the only situations in which DOE would award less than the quantity sought by an otherwise successful offer are when the acceptance of the offer would result in the sale of (1) more petroleum than DOE offered for sale on a master line item or (2) more than DOE estimates can be delivered on a delivery line item. Under the interim SSPs, the offer could state the minimum amount of petroleum that the offeror would accept in that circumstance. Under the revised SSPs in the offer, the offeror must choose between not accepting the quantity remaining if it is less than the offer's desired quantity, or accepting any quantity remaining, provided that it meets DOE's minimum contract quantity. An offer which fails to indicate a choice will be evaluated as though any quantity not less than DOE's minimum contract quantity is acceptable.

SSP B.18 Mistake in Offer (formerly SSP No. B.17)

1. This provision was revised to clarify that the Contracting Officer is not required to contact the offeror or make further administrative determinations before correcting an offer if there is a price discrepancy or a quantity discrepancy indicated by conflicting numbers on the offer.

2. The procedures for making administrative determinations concerning mistaken bids have been revised for the purpose of clarification.

SSP No. B.20 Procedures for Evaluation of Offers

1. The procedures now specifically provide that the Contracting Officer may award less than the offered quantities if he determines that prices offered are unreasonable.

2. The tie-breaking procedure has been revised to clarify how the remaining crude or delivery capacity is to be shared among the tied offers and to reflect the change in the specification of the offeror's minimum quantity, as discussed above. The procedures also now provide that if an offeror's proportionate share is less than the offer's minimum quantity, the Contracting Officer may, at his discretion, increase the quantity available for award, allow the offeror to make alternative delivery arrangements (either combining the quantity with another quantity awarded or take delivery by a method with a lower minimum contract size), not award the quantity remaining or allocate it among the remaining tied offers.

SSP No. B.21 Financial Statements and Other Information

1. This provision has been changed to clarify that DOE does not intend to ask every offeror for financial information. However, the right to ask for financial statements is reserved.

2. Specific deadlines for provision of such information have been left to the Contracting Officer's discretion.

SSP No. B.22 Resolicitation Procedures on Unsold Petroleum

This provision has been revised to permit petroleum which becomes available for resale after priced offers have expired, to be offered to the highest successful offerors for that master line item, who may accept or reject the additional quantities at the price originally offered by the offeror.

SSP No. B.23 Offeror's Certification of Acceptance Period

This provision has been revised to require that an offeror keep his priced offer valid for 30 days after the initial 10-day acceptance period if he is notified within that 10 days that he is an apparently successful offeror.

SSP No. B.24 Notification of Apparently Successful Offeror (formerly SSP No. B.24, renamed)

This provision now provides that the notification will include a provisional contract number.

SSP No. C.1 Delivery of SPR Petroleum

1. This provision combines former SSP No. C.7, paragraph (a) and former SSP No. C.33.

2. Additional purchasers' responsibilities now include terminal demurrage charges, charges for ballast and oily waste disposal services if not provided by DOE, and mooring and line handling services.

SSP No. C.4 Environmental Compliance (formerly SSP No. C.5)

This provision now makes clear that barges need not be party to the Tanker Owners Voluntary Agreement Concerning Liability for Oil Pollution (TOVALOP) or carry equivalent liability coverage, although barges must continue to comply with Federal environmental laws which impose other standards of financial responsibility.

SSP No. C.5 Delivery and Transportation Scheduling (formerly SSP No. C.6)

1. The period of time for handling requests for delivery windows on the basis of highest prices offer first, has been reduced from 7 to 5 days after the issuance of the notifications of Apparently Successful Offerors.

2. After that time, requests will be handled on a first-come, first-served basis, except for conflicting requests received on the same calendar day, where the highest priced offer will be handled first.

3. The provision now provides that requests for delivery commencing before the contractual delivery period will be honored, unless substantial costs or other schedule disruptions would be incurred. This means that successful offerors can request that deliveries commence as soon as they provide the payment and performance guarantee.

SSP No. C.7 Application Procedures for "Jones Act" Waivers

This is a new provision advising purchasers of the procedures for seeking waivers to use a foreign-flag vessel, a vessel built with a Construction Differential Subsidy, or one operated with an Operating Differential Subsidy.

SSP No. C.8 Vessel Loading Procedures (formerly SSP No. C.7)

1. The provision now requires that vessel nominations shall be made no later than 7 days before the beginning of the 3-day delivery window (formerly 10 days). Vessel substitutions may be made up to 3 days before the beginning of the delivery window (formerly 4 days).

2. The provision now requires that a firm date of arrival be established 72 hours prior to the beginning of the scheduled 3-day window for the purposes of laytime and demurrage.

3. The provision now provides that DOE will advise the purchaser of the acceptance or rejection of its nominated vessel within 24 hours.

14. The provision now makes clear that a purchaser must provide the required information for all such vessels to be used for loading.

5. The provision clarifies when the Notice of Readiness shall be tendered.

6. The provision now states that purchasers must make their own arrangements for line handling, deballasting, tug boat and pilot services.

7. The paragraph on berth time now covers barge berth time. The start and finish of berth time have been changed to when the vessel has the first line ashore and when the last line is off, respectively. Tide and weather permitting, no vessel shall remain at berth more than 6 hours after completion of cargo loading.

8. The causes which may result in increased allowable berth time have been expanded, consistent with the other provisions.

SSP No. C.9 Vessel Laytime and Demurrage

1. This new provision establishes procedures for payment of vessel demurrage by DOE.

2. The demurrage rate payable by DOE for tankships shall be the vessel's charter rate or the applicable United States/World Scale Average Freight Rate Assessment rate, whichever is lower. Barges will be paid the charter rate or a rate determined as fair by DOE.

3. If more than one vessel is to be loaded within the scheduled 3-day window, DOE's liability for demurrage is only for the first vessel.

SSP No. C.11 Pipeline Delivery Procedures

This new provision covers pipeline delivery procedures formerly covered in SSP No. C.7.

SSP No. C.12 Title and Risk of Loss (formerly SSP No. C.9)

This provision now sets the title transfer point for pipeline shipments via the LOCAP and ARCO Terminals at the terminals' meter banks.

SSP No. C.13 Acceptance of Crude oil (formerly SSP No. C.10)

The provision now establishes the maximum sulfur and minimum gravity characteristics for SPR crude. If both of these characteristics are not within the specified limits, the purchaser may request renegotiation of the contract price.

SSP No. C.14 Price Adjustments for Quality Differentials for Crude oil (formerly SSP No. C.11)

1. The provision now states that the contract price per barrel will be adjusted only for variances in API gravity greater than plus or minus one-half degree (+/−0.5°API) from the API gravity of the crude oil contracted for; there will be no sulfur adjustment.

2. The adjustments for SPR crude oil streams will be similar to one or more commercial crude oil differential postings for equivalent quality crude oil.

SSP No. C.15 Determination of Quality of Petroleum (formerly SSP No. 13)

This provision has been reorganized to specify primary and alternative methods for the determination of sediment and water, sulfur content and API gravity. In case of a dispute over quality characteristics, the primary methods are binding.

SSP No. C.16 Determination of Quantity of Petroleum (formerly SSP No. 12)

This provision has been revised to permit the samples to be taken either from delivery tanks, or from pipelines by certified in-line samplers.

SSP No. C.17 Delivery Documentation (formerly SSP No. C.14)

1. The Department of Defense delivery forms (DD 250s) have been replaced by a single SPR Crude Oil Delivery Report which must be signed by the purchaser or his agent to certify receipt of SPR crude oil.

2. For vessel deliveries, the vessel's master must also sign to certify his agreement with the time statement on the Delivery Report.

SSP No. C.19–26 Payment Procedures

1. These procedures were formerly found in interim final SSP Nos. C.17–25. Those procedures have been reorganized and rewritten for clarity and to more closely reflect the likely chronology of events.

2. Provision No. C.19 now provides that payment under the letter of credit shall be due no later than 10 days after completion of delivery, unless the draft is not received until the 10th day or later in which case payment is due the next business day.

3. Provision No. C.20 has been revised to delete the requirement for evidence that the bank official signing the letter of credit is authorized to do so, although DOE has reserved the right to request appropriate evidence of validity of the letter of credit.

4. Provision No. C.21 now provides that the draft against a letter of credit may be transmitted by telex or express mail in addition to the previous method of transmission over the FEDWIRE system.

SSP. No. C.27 Termination (formerly SSP No. C.26)

1. Subparagraph (b)(2) was revised to make the list of causes which would excuse the nonperformance consistent with the list in SSP No. C.32, Limitation of Government liability.

2. Subparagraph (b)(3) has been revised to excuse purchasers for nonperformance by transportation subcontractors hired to transport the crude oil by vessel or pipeline if the subcontractor is not an affiliate of the purchaser, such nonperformance was beyond the control and without fault of the purchaser, the services could not be obtained from other sources in a timely fashion, and the purchaser employed best efforts to avoid the default. This change recognizes that purchasers may exercise very little effective control over common carrier pipelines and vessel masters.

SSP No. C.28 Other Government Remedies (formerly SSP No. C.27)

Recognizing that some delay in performance may occur despite the good faith efforts of the purchaser, liquidated damages will not commence for vessel loadings until 11:59 p.m. on the second day following the last day of the 3-day delivery window; under the interim final SSPs, liquidated damages started after 11:59 p.m. of the last day of the loading window.

SSP No. C.30 Failure to Perform Under SPR Contracts (formerly SSP No. C.29

The procedures for making purchasers that fail to perform in accordance with the contract terms ineligible for future contracts have been incorporated by reference to the Code of Federal Regulations rather than quoting them in full.

SSP No. 34 Disputes (formerly SSP No. C.36)

The citations to the Federal Procurement Regulation have been updated to cite the Federal Acquisition Regulation.

Exhibit A SPR Sales Offer Form

This form replaces the "Schedule Line Items" and incorporates the changes to the SSPs. It now includes a statement to be signed by the offeror certifying intended compliance with the SSP's. Revised instructions are also included. The Notice of Sale may require this form for submission of offers.

Exhibit B Sample Notice of Sale

This exhibit has been slightly revised to be more illustrative of the SSPs as now written.

Exhibit C Solicitation, Offer and Award Standard Form 33

This new exhibit is a standard Government form which must be included as part of a valid offer.

Exhibit D SPR Crude Oil Stream Characteristics

The information in this exhibit has been expanded substantially from the information provided in former Exhibit D. The information now also includes a Gas Chromatographic Analysis for each SPR crude oil stream. The data provided is current as of September 1986.

Exhibit E SPR Delivery Point Data

This is former Exhibit F, with expanded information for each SPR distribution terminal, including information on the ARCO terminal and docks in Texas City, Texas.

Exhibit F Reserved

Exhibit G Offer Guarantee—Letter of Credit

This is former Exhibit H.

Exhibit H Payment and Performance Guarantee—Letter of Credit

This is former Exhibit I, revised to be consistent with the changes to the payment procedures concerning when payment is due and the method for transmitting the draft to the issuing bank.

Exhibit I Instruction Guide for funds transfer

This is former Exhibit J.

Exhibit J SPR Crude Oil Delivery Report, SPRPMO–F–6110.2–14

This exhibit is the single new form which replaces the Department of Defense forms for vessel and pipeline deliveries.

Exhibit K Offer Guarantee Calculation Worksheet

This new exhibit is provided to assist an offeror in calculating maximum potential contract amount for determining the correct amount of his offer guarantee. Submission of the worksheet with the offer is not desired.

III. Procedural Matters

A. Comment Procedures

You are invited to participate in this proceeding by submitting information, views, or arguments with respect to these draft revised Standard Sales Provisions. Comments should be submitted no later than August 17, 1987, to the address indicated in the "**ADDRESSES**" section of this preamble and should be identified on the outside envelope and on the document with the designation: "Sales Provisions for Strategic Petroleum Reserve Petroleum." Ten copies should be submitted. All comments received will be available for public inspection in the DOE Reading Room, Room 1E–190, James Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Any information or data submitted which you consider to be confidential must be so identified and submitted in writing, one copy only. We reserve the right to determine the confidential status of such information or data and to treat it according to our determination.

DOE does not intend to hold a hearing in connection with its inquiry on these matters. After consideration of the comments received, DOE will republish the SSPs in their entirety, along with DOE's responses to the comments received. As provided by the SPR sales rule, DOE will continue to review the SSPs periodically and issue revisions as needed.

B. Paperwork Reduction Act

The forms used in the sale of the SPR petroleum have been cleared by the Office of Management and Budget in accordance with the Paperwork Reduction Act under control number 1910–1400.

List of Subjects in 10 CFR Part 625

Administrative practice and procedure, Oil and gas reserves, Strategic and critical materials, Strategic Petroleum Reserve

Issued in Washington, DC, May 29, 1987.

Berton J. Roth,

Director, Procurement and Assistance Management Directorate.

PART 625—[AMENDED]

1. The authority citation for Part 625 is revised to read as follows:

Authority: 15 U.S.C. 761; 42 U.S.C. 7101; 42 U.S.C. 6201.

2. Appendix A to 10 CFR Part 625 is proposed to be revised to read as follows:

Appendix A to Part 625—Standard Sales Provisions

Index

Section A–General Pre-Sale Information

A.1 List of acronyms:

(a) *ASO:* Apparently Successful Offer.
(b) *DLI:* Delivery Line Item.
(c) *DOE:* U.S. Department of Energy.
(d) *MLI:* Master Line Item.
(e) *NA:* Notice of Acceptance.
(f) *NS:* Notice of Sale.
(g) *SSPs:* Standard Sales Provisions.
(h) *SPR:* Strategic Petroleum Reserve.
(i) *SPRCODR:* SPR Crude Oil Delivery Report (Exhibit J).
(j) *SPR/PMO:* Strategic Petroleum Reserve/Project Management Office.

A.2 Definitions:

(a) *Affiliate.* The term "affiliate" means associated business concerns or individuals if, directly or indirectly, (1) either one controls or can control the other, or (2) a third party controls or can control both.

(b) *Business Day.* The term "business day" means any day except Saturday, Sunday or a U.S. Government holiday.

(c) *Contract.* The term "contract" means the contract under which DOE sells SPR petroleum. It is composed of the NS, the NA, the successful offer, and the SSPs incorporated by reference.

(d) *Contracting Officer.* The term "Contracting Officer" means the person executing sales contracts on behalf of the Government, and any other Government employee properly designated as Contracting Officer. The term includes the authorized representative of a Contracting Officer acting within the limits of his authority.

(e) *Government.* The term "Government", unless otherwise indicated in the text, means the United States Government.

(f) *Head of the Contracting Activity.* The term "Head of the Contracting Activity" means the Manager, Oak Ridge Operations Office, DOE.

(g) *Notice of Acceptance (NA).* The term "Notice of Acceptance" means the document which is sent by DOE to accept the purchaser's offer to create a contract.

(h) *Notification of Apparently Successful Offeror (ASO).* The term "notification of apparently successful offeror" means the notice, written or oral, by the Contracting Officer to an offeror that it will be awarded a contract if it is determined to be responsible.

(i) *Notice of Sale (NS).* The term "Notice of Sale" means the document announcing the sale of SPR petroleum, the amount, characteristics and location of the petroleum being sold, the delivery period and the procedures for submitting offers. The NS will specify what contractual provisions and financial and performance responsibility measures are applicable to that particular sale of petroleum and provide other pertinent information. (See Exhibit B, Sample Notice of Sale)

(j) *Offeror.* The term "offeror" means any person or entity (including a government agency) which submits an offer in response to a NS.

(k) *Petroleum.* The term "petroleum" means crude oil, residual fuel oil, or any refined product (including any natural gas liquid, and any natural gas liquid product) owned or contracted for by DOE and in storage in any permanent SPR facility, temporarily stored in other storage facilities, or in transit to such facilities (including petroleum under contract but not yet delivered to a loading terminal).

(l) *Project Management Office (SPR/PMO).* The term "Project Management Office" means the DOE personnel and DOE contractors located in Louisiana and Texas responsible for the operation of the SPR.

(m) *Purchaser.* The term "purchaser" means any person or entity (including a government agency) which enters into a contract with DOE to purchase SPR petroleum.

(n) *Standard Sales Provisions (SSPs).* The term "Standard Sales Provisions" means this set of terms and conditions of sale applicable to price competitive sales of SPR petroleum. These SSPs constitute the "standard sales agreement" referenced in the Strategic Petroleum Reserve "Drawdown" (Distribution) Plan, Amendment No. 4 (December 1, 1982, DOE/EP 0073) to the SPR Plan.

(o) *Strategic Petroleum Reserve (SPR).* The term "Strategic Petroleum Reserve" means that DOE Program established by Title I, Part B of the Energy Policy and Conservation Act, 42 U.S.C. Section 6201, *et seq.*

(p) *Vessel.* The term "vessel" means a tankship, an integrated tug barge (ITB) system, a self-propelled barge, or other barge.

A3. Standard Sales Provisions:

(a) These SSPs contain pre-sale information, sales solicitation provisions, and sales contract clauses setting forth terms and conditions of sale, including purchaser financial and performance responsibility measures, or descriptions thereof, which may be applicable to price competitive sales of petroleum from the SPR in accordance with the SPR Sales Rule, 10 CFR Part 625. The NS will specify which of these provisions shall apply to a particular sale of such petroleum, and it may specify any revisions therein and any additional provisions which shall be applicable to that sale. (See Exhibit B, Sample Notice of Sale)

(b) *All offerors must,* as part of their offers for SPR petroleum in response to a NS, *agree without exception to all provisions of the SSPs which the NS makes applicable to the particular sale.* Offerors shall indicate their agreement by signing the Sales Offer Form (Exhibit A). The Government will not award a contract to an offeror which has failed to so agree.

A.4 Periodic revisions of the Standard Sales Provisions:

DOE will review the SSPs periodically and republish them in the **Federal Register**, with any revisions. When a NS is issued, it will cite the **Federal Register** and the Code of Federal Regulations (if any) in which the latest version of the SSPs was published. Offerors are cautioned that the Code of Federal Regulations may not contain the latest version of the SSPs published in the **Federal Register.** Interested persons may obtain a copy of the current SSPs by writing to the address set forth in Provision No. A.5.

A.5 Potential offerors list for sales of petroleum:

(a) The SPR/PMO will maintain a list of those potential offerors which wish to receive a NS whenever such a document is issued. In order to assure that prospective offerors will receive the NS or offer forms in timely fashion, all potential offerors are encouraged to submit the information in (d) as soon as possible. *A NS may be issued with a week or less allowed for the receipt of offers.* While DOE will use its best efforts to timely supply copies of the NS to persons not on the list who request the NS at the time an SPR petroleum sale is announced, this may not always be feasible in light of the short amount of time available before offers must be received.

(b) Any firm or individual may send a written request to be on the list to the following address: U.S. Department of Energy, Strategic Petroleum Reserve, Project Management Office, Procurement and Sales Division, Mail Stop PR–651, 900 Commerce Road East, New Orleans, Louisiana 70123, Telephone Number (504) 734–4226.

The envelope should be marked "SPR Sales Mailing List."

(c) Copies of the SSPs and the NS, when one is issued, may also be obtained from this address.

(d) A request to be placed on the mailing list should be in writing and should include the following information:

Name of firm
Mailing address (Street and P.O. Box)
City, State, Zip Code
Name of authorized agent and alternate authorized agent
Telephone numbers for agent and alternate including area code
Agent address, if different from firm represented
TWX number/code
Telecopier brand name and model number
Whether telecopier is automatic or operator controlled
Telephone number for telecopier transmission, including area code
Telephone number for verification of message receipt, including area code
Taxpayer identification number
Dunn's number

As DOE may use expedited delivery service which cannot be delivered to a Post Office Box, failure to provide a street address could result in untimely receipt of the NS and will be at the offeror's risk.

A.6 Publicizing the Notice of Sale:

(a) The NS will be sent to names on the list of potential offerors referenced in Provision No. A.5. Interested persons may send a representative to the address in Provision No. A.5 to obtain a copy of the NS.

(b) In addition to those on the list of potential offerors, the NS will also be sent to anyone requesting it when a sale is announced. Firms may request the NS by telephone or in writing to the telephone number or address in Provision No. A.5 above.

(c) A DOE press release, which will include the salient features of the NS, will be made available to all news agencies.

(d) At the option of the Contracting Officer, advertisements may be placed in publications likely to reach interested parties. The advertisements will contain the salient features of the NS and a name and telephone number at the SPR/PMO to call for further information.

A.7 Penalty for false statements in offers to buy SPR petroleum. A penalty for making false statements is imposed in the False Statements Act, 18 U.S.C. 1001, which provides:

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than 5 years, or both.

Section B—Sales Solicitation Provisions

B. 1 Requirements for a valid offer—caution to offerors:

A valid offer to purchase SPR petroleum must meet the following conditions:

(a) The offer guarantee (See Provision No. B. 10) must be received no later than the time set for the receipt of offers;

(b) The offer must include a complete Sales Offer Form (Exhibit A) and signed Standard Form 33 (Exhibit C) or other forms as specified in the NS;

(c) The offer must be received no later than the time set for receipt of offers;

(d) Any amendments to the NS which explicitly require acknowledgment of receipt must be properly acknowledged; and

(e) The offeror must agree without exception to all provisions of the SSPs which the NS makes applicable to a particular sale, as well as to all provisions in the NS.

B.2 Certification of independent price determination:

(a) The offeror certifies that:

(1) The prices in this offer have been arrived at independently, without, for the purposes of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to: (i) Those prices; (ii) the intention to submit an offer; or (iii) the methods or factors used to calculate the prices offered.

(2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or to any competitor before the time set for receipt of offers, unless otherwise required by law; and

(3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the prupose of restricting competition.

(b) Each signature on the offer is considered to be a certification by the signatory that the signatory:

(1) Is the person within the offeror's organization responsible for determining the prices being offered, and that the signatory has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above; or

(2) Has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above; (ii) as their agent does hereby so certify; and (iii) as their agent has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above.

(c) An offer will not be considered for award where (a)(1), (a)(3), or (b) above has been deleted or modified. If the offeror deletes or modifies (a)(2) above, the offeror must furnish with the offer a signed statement setting forth in detail the circumstances of the disclosure.

B. 3 Requirements for vessels—caution to offerors:

(a) The "Jones Act", 46 U.S.C. 883, prohibits the transportation of any merchandise, including SPR petroleum, by water or land and water, on penalty of forfeiture thereof, between points within the United States (including Puerto Rico, but excluding the Virgin islands) in vessels other than vessels built in and documented under laws of the United States, and owned by United States citizens, unless the prohibition has been waived by the Secretary of Treasury. Further, certain U.S.-flag vessels built with Construction Differential Subsidies (CDS) are purchased by section 506 of the Merchant Marine Act of 1936 (46 U.S.C. 1156) from participating in U.S. coastwise trade, unless such prohibition has been waived by the Secretary of Transportation, the waiver being limtied to a maximum of 6 months in any given year. CDS vessels may also receive Operating Differential Subsidies, requiring separate permission from the Secretary of Transportation for domestic operation, under section 805(a) of the same statute. The NS will advise offerors of any general waivers allowing use of non-coastwise qualified vessels or vessels built with Construction Differential Subsidies for a particular sale of SPR petroleum. If there is no general waiver, purchasers may request waivers in accordance with Provision No. C.7, but remain obligated to complete performance under this contract regardless of the outcome of that waiver process.

(b) The Department of Transportation's interim rule concerning *Reception Facility Requirements for Waste Materials Retained on Board* (33 CFR Parts 151 and 158) implements the reception facility requirements of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the 1978 Protocol relating thereto (MARPOL 73/78). This rule prohibit any oceangoing tankship, required to retain oil or oily mixtures on-board while at sea, from entering any port or terminal unless the port or terminal has a valid Certificate of Adequacy as to its oily waste reception facilities. SPR marine terminals (see Exhibit E, SPR Delivery Point Data) have Certificates of Adequacy and reception facilities for vessel sludge and oily bilge water wastes; however, the terminals may not have reception facilities for oily ballast. Accordingly, tankships without segregated ballast systems will be required to make arrangements for appropriate disposal of such ballast, or they will be denied permission to load SPR petroleum at terminals which lack reception facilities for oily ballast.

(c) By submission of this offer, the offeror certifies that it will comply with the "Jones Act" and all applicable ballast disposal requirements.

B.4 "Superfund" tax on SPR petroleum—caution to offerors:

(a) Sections 4611 and 4612 of the Internal Revenue Code which imposed a tax on domestic and imported petroleum to support the Hazardous Substance Response Fund (the "Superfund") have been revised by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99–499, and the Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99–509. As amended, these sections impose taxes to finance the Hazardous Substance Superfund and the Oil Spill Liability Trust Fund as of January 1, 1987 and February 1, 1987, respectively.

(b) Section 4611 imposes a tax of 8.2 cents a barrel for domestic crude oil and 11.7 cents a barrel for foreign crude oil to support the "Superfund" plus a tax of 1.3 cents a barrel

for both foreign and domestic oil to support the oil spill fund on (1) crude oil received at a United States refinery and (2) petroleum products (including crude oil) entered into the United States for consumption, use or warehousing. Section 4612 provides that no tax is imposed if it is established that a prior tax imposed by Section 4611 has already been paid with respect to a barrel of oil.

(c) DOE has already paid the applicable taxes on some of the oil imported and stored in the SPR. However, no tax has been paid on imported oil stored prior to the effective dates of these Acts or on domestic oil stored in the SPR. Because domestic and imported crude oil for which no tax has been paid and imported crude oils for which taxes have been paid at different rates have been commingled in the SPR, upon drawdown of the SPR, the NS will advise purchasers of the tax liability.

B.5 Export limitations and licensing—caution to offerors:

(a) Offerors for SPR petroleum are put on notice that SPR crude oils subject to different export control laws have been commingled in storage. Export of SPR crude oil is subject to U.S. export control laws, the provisions of which differ depending on the source and destination of the crude oil proposed to be exported. For example, imported crude oil stored in the SPR may be exported pursuant to applicable Department of Commerce "Short Supply Controls," 15 CFR Part 377, if: The export is part of a transaction resulting in the importation of refined products of a quantity and quality not less than would be derived from domestic refining; the products are to be sold at prices no higher than the lowest prices at which they could have been sold by the nearest capable U.S. refinery; and for compelling economic or technological reasons beyond the exporter's control, the crude oil cannot reasonably be processed in the U.S. (15 CFR 377.6(d)(1)(vii)). However, there are somewhat more stringent, independent statutory tests to be met as preconditions to the export of certain other crude oils stored in the SPR, including Alaskan North Slope (ANS) and Naval Petroleum Reserves (NPR) oil. *See* section 7(d) of the Export Administration Act of 1979, 50 U.S.C. App. 2406(d) (ANS oil) and 10 U.S.C. 7430(e) (NPR oil); *see also* 30 U.S.C. 185(u) (oil shipped across a Mineral Lands Leasing Act Section 28(u) right-of-way) and 43 U.S.C. 1354(a) (OCS oil).

(b) By submission of this offer, the offeror certifies that it will comply with any applicable U.S. export control laws.

B.6 Issuance of the Notice of Sale:

In the event petroleum is sold from the SPR, DOE will issue a NS containing all of the pertinent information necessary for the offeror to prepare a price offer. *A NS may be issued with a week or less allowed for the receipt of offers.* Offerors are expected to examine the complete NS document, and to become familiar with the SSPs cited therein. Failure to do so will be at the offeror's risk.

B.7 Submission of offers and modification of previously submitted offers:

(a) Unless otherwise provided in the NS, offers must be submitted to the SPR/PMO in New Orleans, Louisiana, by mail or hand-delivery. Direct cash deposits as offer guarantees will be sent by wire in accordance with Provision No. C.24.

(b) Unless otherwise provided in the NS, offers may be modified or withdrawn by hand delivery, mail, telegram, or telex, provided that the mail, telegram, or telex is received at the designated office prior to the time specified for receipt of offers.

(c) Envelopes containing offers and any material related to offers shall be plainly marked on the outside: "RE: SALE OF PETROLEUM FROM STRATEGIC PETROLEUM RESERVE. OFFERS ARE DUE (insert time of opening), LOCAL NEW ORLEANS, LA TIME ON (insert date of opening). MAIL ROOM MUST MARK DATE AND TIME OF RECEIPT ON FACE OF THE ENVELOPE." Envelopes containing modified offers or any material related to supplements or modifications of offers, shall be plainly marked on the outside: "RE: SALE OF PETROLEUM FROM STRATEGIC PETROLEUM RESERVE. OFFER MODIFICATION. MAIL ROOM MUST MARK DATE AND TIME OF RECEIPT ON FACE OF THE ENVELOPE."

(d) The envelope shall be marked with the full name and return address of the offeror.

(e) Offers being sent by mail and modifications being sent by mail, telegram, or telex must be received at the address specified in the NS.

(f) Handcarried offers brought during normal business hours on the day set for receipt of offers, or any day prior to that day, shall be taken by the offeror to the place specified in the NS. This includes mail being delivered by a delivery service. At all other times, handcarried offers shall be placed in the bid box, located as specified in the NS.

(g) Public opening of offers is not anticipated unless otherwise indicated in the NS. An abstract of offers will be prepared and posted in a prominent place at the SPR/PMO in New Orleans, Louisiana, for public viewing no later than 48 hours after the specified time and date for the receipt of offers. Persons wishing to see copies of the offers may contact the Contracting Officer to arrange to view the copies at the SPR/PMO.

B.8 Acknowledgment of amendments to a Notice of Sale:

When an amendment to a NS requires acknowledgment of receipt, receipt by an offeror must be acknowledged by singing and returning the amendment, or by letter, telegram, or telex sent to the address specified in the NS. Such acknowledgment must be received prior to the time specified for receipt of offers.

B.9 Late offers, modifications of offers, and withdrawal of offers:

(a) Any offer received at the office designated in the NS after the time specified for receipt will be considered only if it is received before award is made and only under the following conditions:

(1) It was sent by registered or certified mail not later than the fifth calendar day prior to the date specified for the receipt of offers (e.g., an offer submitted in response to a NS requiring receipt of offers by the 20th of the month must have been mailed by the 15th or earlier); or,

(2) It was sent by mail, telegram or telex if authorized, and it is determined by the Contracting Officer that the late receipt was due solely to mishandling by the SPR/PMO after receipt at the address specified in the NS.

(b) Any modification or withdrawal of an offer is subject to the same conditions as in (a) above, except that it shall be mailed not less than the third calendar day prior to the date specified for receipt of offers. An offer may also be withdrawn in person by an offeror or its authorized representative, provided the representative's identity is made known and the representative signs a receipt for the offer, but only if the withdrawal is made prior to the time set for receipt of offers.

(c) The only acceptable evidence to establish: (1) The date of mailing of a late offer, modification, or withdrawal sent either by registered or certified mail is the U.S. Postal Service postmark on either (i) the envelope or wrapper, or (ii) the original receipt from the U.S. Postal Service. If neither postmark shows a legible date, the offer, modification or withdrawal shall be deemed to have been mailed late. Postmark means a printed, stamped, or otherwise placed impression, exclusive of a postage meter machine impression, that is readily identifiable without further action as having been supplied and affixed on the date of mailing by employees of the U.S. Postal Service. Therefore, offerors should request the postal clerk to place a hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

(2) The time of receipt at the address specified in the NS is the time/date stamp at such address on the offer's wrapper or other documentary evidence of receipt maintained at the place of receipt.

(d) Notwithstanding (a) and (b) of this provision, a late modification of an otherwise successful offer which makes its terms more favorable to the Government will be considered at any time it is received, and may be accepted.

B.10 Offer guarantee:

(a) Each offeror must submit an acceptable offer guarantee for each offer submitted. Each offer guarantee must be received at the place specified for receipt of offers no later than the time and date set for receipt of offers.

(b) An offeror's failure to submit a timely, acceptable guarantee will result in rejection of its offer.

(c) The amount of each offer guarantee is $10 million dollars or 5 percent of the maximum potential contract amount, whichever is less. The maximum potential contract amount is the sum of the products determined by multiplying the offer's maximum purchase quantity for each master line item, times the highest offer prices that the offeror would have to pay for that master line item if the offer were to be successful. To assist in this calculation, instructions and a worksheet are available at Exhibit K. Submission of the worksheet is not desired.

(d) Each offeror must submit one of the following types of offer guarantees with each offer:

(1) A certified or cashier's check payable to the U.S. Department of Energy, drawn on a U.S. Bank;

(2) A wire cash deposit to the account of the U.S. Treasury in accordance with Provision No. C.24, all wire deposit costs to be borne by the offeror; or

(3) A letter of credit from a U.S. depository institution conforming without exception to the contents required by Exhibit G, Offer Guarantee—Letter of Credit, all letter of credit costs to be borne by the offeror.

(e) If the offeror or bank forwards the offer guarantee separately from the offer, the envelope shall clearly say "OFFER GUARANTEE OF (Name of Company)" and shall be clearly marked in accordance with provisions No. B.7(c).

(f) The offeror shall be liable for any amount lost by DOE due to the difference between the offer and the resale price, and for any additional resale costs incurred by DOE in the event that the offeror:

(1) Withdraws its offer within 10 days following the time set for receipt of offers;

(2) Withdraws its offer after having agreed to extend its acceptance period; or

(3) Having received a notification of ASO, fails to furnish an acceptable payment and performance guarantee within the time limit specified by the Contracting Officer.

The offer guarantee shall be used toward offsetting such price difference of additional resale costs. Use of the offer guarantee for such recovery shall not preclude recovery by DOE of damages in excess of the amount of the offer guarantee cause by such failure of the offeror.

(g) Letters of credit furnished as offer guarantees must be valid for at least 21 calendar days after the date set for the receipt of offers.

(h) Offer guarantees (except letters of credit) will be returned to an unsuccessful offeror 5 business days after expiration of the offeror's acceptance period of 3 business days after award of contracts for delivery line items on which the offeror submitted a price, whichever, is first, except as provided in (i) below, and to a successful offeror upon receipt of a satisfactory performance and payment guarantee. Letters of credit will be returned only upon request. Where the offer guarantee was a wire cash deposit, a cashier's check or a certified check, the offeror may apply it toward advance payment.

(i) If an offeror defaults on its offer, DOE will hold the offer guarantee so that damages can be assessed against it.

B.11 Explanation requests from offerors:

Offerors may request explanations regarding meaning or interpretation of the NS from the individual and telephone number indicated in the NS. On complex and/or significant questions, DOE reserves the right to have the offeror put the question in writing; explanation or instructions regarding these questions will be given as an amendment to the NS.

B.12 Currency for offers:

Price shall be stated and invoices shall be paid in U.S. dollars.

B.13 Language of offers and contracts:

All offers in response to the NS and all modifications of offers shall be in English. All correspondence between offerors or purchasers and DOE shall be in English.

B.14 Proprietary data:

If any information submitted in connection with a sale is considered proprietary, that information should be so marked, and an explanation provided as to the reason such data should be considered proprietary. Any final decisions as to whether the material so marked is proprietary will be made by DOE. DOE's Freedom of Information Act regulations governing the release of proprietary data shall apply.

B.15 SPR crude oil streams and delivery points:

(a) The geographical locations of the terminals and docks interconnected with permanent SPR storage locations, the SPR crude oil streams available at each location and the delivery points for those streams are as follows (See also Exhibit D, SPR Crude Oil Stream Characteristics, and Exhibit E, SPR Delivery Point Data):

Georgraphical location	Delivery points	Crude oil Streams
Freeport, Texas	Phillips Terminal, or Phillips Terminal No. 2 Docks.	SPR Bryan Mound Sweet. SPR Bryan Mound Sour. SPR Bryan Mound Maya.
Texas City, Texas	ARCO Terminal, or ARCO Docks.	SPR Bryan Mound Sweet. SPR Bryan Mound Sour.
Nederland, Texas	Sun Terminal, or Sun Docks.	SPR West Hackberry Sweet. SPR West Hackberry Sour.
St. James, Louisiana.	LOCAP Terminal, or DOE St. James Terminal Docks.	SPR Weeks Island Sour SPR Bayou Choctaw Sweet. SPR Bayou Choctaw Sour.

(b) The NS may change delivery points and it may also include additional terminals, temporary storage facilities of systems utilized in connection with petroleum in transit to the SPR. Alternatively, DOE or its contractor may provide the transportation to the purchaser's facility, for example when the petroleum is in transit to the SPR at time of sale.

(c) The NS may contain additional information supplementing Exhibit E, SPR Delivery Point Date.

B. 16 Notice of Sale line item schedule—petroleum quantity, quality, and delivery method:

(a) Unless the NS provides otherwise, the possible master line items (MLI) and delivery line items (DLI) which may be offered are as provided in Exhibit A, SPR Sales Offer Form. Currently, there are eight MLIs in Exhibit A, one for each of the eight crude oil streams that the SPR has in storage. The NS may offer fewer than the eight possible MLIs.

(b) Each MLI contains several DLIs, each of which specifies an available delivery method and the nominal delivery period. Offerors are cautioned that the NS may alter the period of time covered by each DLI if the period of sale does not correspond to a calendar month. This is most likely to occur in the first sales period of a drawdown.

(1) DLI–A covers petroleum to be transported by pipeline, either common carrier or local. the nominal delivery period is one month.

(2) DLI–B, DLI–C and DLI–D cover petroleum to be transported by tankships: DLI–B, covering tankships to be loaded from the 1st through the 10th of the month; DLI–C, tankships to be loaded from the 11th through the 20th; and DLI–D, tankships to be loaded from the 21st through the last day of the month.

(3) DLI–E, DLI–F and DLI–G cover petroleum to be transported by barges (Caution: These DLIs are currently only applicable to deliveries of West Hackberry Sweet and Sour crude oil streams from Sun Docks): DLI–E, covering barges to be loaded from the 1st through the 10th of the month; DLI–F, barges to be loaded from the 11th through the 20th; and DLI–G, barges to be loaded from the 21st through the last day of the month.

(4) Where the storage site is connected to more than one terminal or pipeline (presently this only occurs at Bryan Mound) additional DLIs will be offered. The additional DLIs will include DLI–H, covering petroleum to be transported by pipeline over the period of a month; DLI–I, covering tankships to be loaded from the 1st through the 10th; DLI–J, tankships to be loaded from the 11th through the 20th; and DLI–K, tankships to be loaded from the 21st through the last day of the month. The Notice of Sale will specify which DLIs are offered on each MLI.

(c) The NS will state the total estimated number of barrels to be sold on each MLI. An offeror may offer to buy all or part of the petroleum offered on an MLI. In making awards, the Contracting Officer shall attempt to achieve award of the exact quantities offered by the NS, but may vary the estimated MLI quantities by +/−10 percent in order to match the DLI offers received. In addition, the Contracting Officer may reduce the MLI quantity available for award by any amount and reject otherwise acceptable offers, if he determines, in his sole discretion after consideration of the offers received on all of the MLIs, that award of those quantities is not in the best interest of the Government because the prices offered from them are not reasonable.

(d) The NS will specify a minimum contract quantity for each DLI. To be responsive, an offer on a DLI must be for at least that quantity.

(e) The NS will specify the maximum quantity which could be sold on each of the DLIs. The maximum quantity is not an indication of the amount of petroleum that, in fact, will be sold on that DLI. Rather, it represents DOE's best estimate of the

maximum amount of the particular SPR crude oil stream that can be moved by that tansportation system over the delivery period. The total DOE estimated DLI maximums may exceed the total number of barrels to be sold on that MLI, as the NS DLI estimates represents estimated transportation capacity, not the amount of petroleum offered for sale. Where necessary to avoid an unfair competitive advantage for local pipeline owners, e.g., where there are only one or two likely offerors, the NS may omit a pipeline DLI. Where this occurs, those offerors may bid against vessel DLIs and, if successful, request a contract modification under Provision No. C.6, to permit delivery of the awarded oil to a pipeline.

(f) The NS will not specify what portion of the petroleum which DOE offers on a MLI will, in fact, be sold on any given DLI. Rather, the highest priced offers received on the MLI will determine the DLIs against which the offered petroleum is sold.

(g) DOE will not sell petroleum on a DLI in excess of the DLI maximum; however, DOE reserves the right to revise its estimates at any time and to award or modify contracts in accordance with its revised estimates. Offerors are cautioned that: DOE cannot guarantee that such transportation capacity is available; offerors should undertake their own analyses of available transportation capacity; and each purchaser is wholly responsible for arranging all transportation other than terminal arrangements at the terminals listed in Provision No. B.15, which shall be made in accordance with Provision No. C.5 A purchaser against one DLI cannot change a transportation mode without prior written permission from DOE, although such permission will be given whenever possible, in accordance with Provision No. C.6.

(h) Exhibit D, SPR Crude Oil Stream Characteristic, contains nominal characteristics for each SPR crude oil stream. Prospective offerors are cautioned that these data will likely change as more crude oil is stored in the SPR. The NS will provide, to the maximum extent practicable, the latest data on each stream offered.

B. 17 Line item information to be provided in the offer:

(a) Each offeror, if determined in be an ASO on a DLI, agrees to enter into a contract for the purchase of the quantity of petroleum in the offer and to take delivery of that petroleum (plus or minus 10 percent as provided for in Provision No. C.18) in accordance with the items of that contract.

(b) An offer may be for more than one MLI. However, offerors are cautioned that alternate offers on different MLIs are not permitted. For example, an offeror may offer to purchase 1,000,000 barrels of SPR West Hackberry Sweet and 1,000,000 barrels of SPR West Hackberry Sour, but may not offer to purchase, in the alternative, either 1,000,000 barrels of Sweet or 1,000,000 barrels of sour.

(c) An may offeror submit more than one offer. However, separate forms must be prepared and each offer will be evaluated on an individual basis.

(d) The following information will be provided to DOE by the offeror on the form in Exhibit A or other forms as required by the NS:

(1) MLI quantity. ("MAXQ" on the Exhibit A offer form) The offeror shall state the maximum quantity of each crude oil stream that the offeror is willing to buy.

(2) DLI quantity. ("DESQ") The offer shall state the number of barrel's which the offeror will accept on each DLI, i.e., by the delivery mode and during the delivery period specified. The quantity stated on a single DLI shall not exceed the maximum quantity for the MLI. The offeror shall designate a quantity on at least one DLI for the MLI, but may designate quantities on more than one DLI. If the offeror is willing to accept alternate DLIs, the total of its designated DLI quantities would exceed its maximum MLI quantity; otherwise, the total of its designated DLI quantities should equal its maximum MLI quantity.

(3) DLI unit price ("UP$$") and total price. The offer shall state the price per barrel for each DLI for which the offeror has designated a desired quantity, as well as the total price (quantity times price). Where offers have indicated quantities on more than one DLI with a different price on each, DOE will award the highest priced DLI first. If the offeror has the same price for two or more DLIs, it may indicate its first choice, second choice, etc., for award of those items; if the offeror does not indicate a preference, DOE may select the DLIs to be awarded at its discretion. Prices may be stated in hundredths of a cent ($0.0001). DOE shall drop from the offer and not consider any numbers of less than one one-hundredth of a cent.

(4) Minimum DLI quantity acceptable. ("MINQ") The offeror must choose whether to accept only the stated DLI quantity (DESQ) or, in the alternative, to accept any quantity awarded between the offer's stated DLI quantity and the minimum contract quantity for the DLI (indicated by the "N" and "Y" blocks respectively under "MINQ" on the offer form). However, DOE will award less than the DESQ only if the quantity available to be awarded is less than the DESQ. If the offer fails to indicate the offeror's choice, the offer will be evaluated as though the offeror has indicated willingness to accept the minimum contract quantity.

(5) Any other data required by the NS.

B.18 Mistake in offer:

(a) After opening and recording offers, the Contracting Officer shall examine all offers for mistakes. If the Contracting Officer discovers any price discrepancies or quantity discrepancies, he may obtain from the offeror oral or written verification of the offer actually intended, but in any event, he shall proceed with offer evaluation applying the following procedures:

(1) Price discrepancy: An offer for a DLI must contain the unit price per barrel being offered, the desired quantity of barrels to which the unit price applies, and an extension price which is the total of the quantity desired multiplied by the unit price offered. If there is a discrepancy between the unit price and the extension price, the unit price will govern and be recorded as the offer, unless it is clearly apparent on the face of the offer that there has been a clerical error, in which case the Contracting Officer may correct the offer.

(2) Quantity discrepancy: In case of conflict between the maximum MLI quantity and the stated DLI quantities (for example, where a single stated DLI quantity exceeds the corresponding maximum MLI quantity), the lesser quantity will govern in the evaluation of the offer. In the event that the offer fails to specify a maximum MLI quantity, the offer will be evaluated as though the largest stated DLI quantity was the offer's maximum MLI quantity.

(b) In cases where the Contracting Officer has reason to believe a mistake not covered by the procedures set forth in (a) may have been made, he shall request from the offeror a verification of the offer, calling attention to the suspected mistake. The Contracting Officer may telephone the offeror and confirm the request by telex. The Contracting Officer may set a limit of as little as 6 hours for telephone response, with any required written documentation to be received within as little as 2 business days. If no response is received, the Contracting Officer may determine that no error exists and proceed with offer evaluation.

(c) The Head of the Contracting Activity will make administrative determinations described in (1) and (2) below if an offeror alleges a mistake after opening of offers and before award.

(1) The Head of the Contracting Activity may refuse to permit the offeror to withdraw an offer, but permit correction of the offer if clear and convincing evidence establishes both the existence of a mistake and the offer actually intended. However, if such correction would result in displacing one or more higher acceptable offers, the Head of the Contracting Activity shall not so determine unless the existence of the mistake and the offer actually intended are ascertainable substantially from the NS and offer itself.

(2) The Head of the Contracting Activity may determine that an offeror shall be permitted to withdraw an offer in whole, or in part if only part of the offer is affected, without penalty under the offer guarantee, where the offeror requests permission to do so and clear and convincing evidence establishes the existence of a mistake, but not the offer actually intended.

(d) In all cases where the offeror is allowed to make verbal corrections to the original offer, confirmation of these corrections must be received in writing within the time set by the Contracting Officer or the original offer will stand as submitted.

B. 19 Evaluation of offers:

(a) The Contracting Officer will be the determining official as to whether an offer is responsive the SSPs and the NS. DOE reserves the right to reject any or all offers and to waive minor informalities or irregularities in offers received.

(b) A minor informality or irregularity in an offer is an inconsequential defect the waiver or correction of which would not be prejudicial to other offerors. Such a defect or variation from the strict requirements of the

NS is inconsequential when its significance as to price, quantity, quality or delivery is negligible.

B. 20 Procedures for evaluation of offers

(a) Award on each DLI will be made to the highest responsible offerors which submit offers responsive to the SSPs and the NS and which have provided the required payment and performance guarantee as required by Provision No. C.19.

(b) DOE will array all price offers on an MLI from highest to lowest for award evaluation regardless of DLI. However, DOE will award against the DLIs and will not award a greater quantity on a DLI than DOE's estimate (which is subject to change at any time) of the maximum quantity that can be moved by the delivery method. Selection of the apparently successful offer involves the following steps:

(1) Any offers below the minimum acceptable price, if any minimum price has been established for the sale, will be rejected as nonresponsive.

(2) All offers on each MLI will be arrayed from highest price to lowest price.

(3) The highest offers will be reviewed for responsiveness to the NS.

(4) In the event the highest offer does not take all the crude oil available on the MLI, sequentially, the next highest offer will be selected until all of the petroleum offered on the MLI is awarded or there are no more acceptable offers. In the event that acceptance of an offer against an MLI or a DLI would result in the sale of more petroleum on an MLI than DOE has offered or the sale of more petroleum on a DLI than DOE estimates can be delivered by the specified delivery method, DOE will not award the full amount of the offer, but rather the remaining MLI quantity or DLI capacity, provided such portion exceeds DOE's minimum contract quantity. In the event that the quantity remaining is less than the offeror is willing to accept, but more than DOE's minimum contract quantity, the Contracting Officer shall proceed to the next highest offer.

(5) In the event of tied offers and an insufficient quantity available on the MLI or insufficient capacity on the DLI to fully award all tied offers, the available MLI quantity or DLI capacity remaining will be allotted pro rata among the tied offers using the following formula:

$$\frac{\text{The amount the offeror is willing to purchase at the tied price}}{\text{The sum of all the amounts the tied offerors are willing to purchase at the tied price}} \times \text{the quantity or capacity remaining to be allotted}$$

If after application of this formula, the pro rata share of any offeror is less than 90 percent of the quantity which the offeror is willing to accept (as indicated in the offer), the Contracting Officer in his sole discretion may do one or more of the following: (i) Make additional quantity or capacity available and increase the offeror's share to its minimum acceptable quantity; (ii) contact the offeror to determine whether alternative delivery arrangements can be made, permitting the offeror to accept his prorata share; (iii) eliminate the offer and recalculate the shares of all remaining offerors; or (iv) not award that offeror's prorata share. If any quantities remain after this process, the Contracting Officer may elect not to award those quantities, or to award those quantities in accordance with Provision No. B.22.

(6) The Contracting Officer may reduce the MLI quantity available for award by any amount and reject otherwise acceptable offers, if in his sole discretion he determines, after consideration of the offers received on all of the MLIs, that award of those quantities is not in the best interest of the Government because the prices offered for them are not reasonable.

(7) Determinations of ASO responsibility will be made by the Contracting Officer before each award. All ASOs will be notified by telephone and advised to provide to the Contracting Officer, within five business days or such other longer time as the Contracting Officer shall determine, a letter of credit (See Exhibit H, Payment and Performance Guarantee—Letter of Credit) or advance payment as specified in Provision No. C.19. Compliance with required payment and performance guarantees will effectively assure a finding of responsibility of offerors, except where: (i) An offeror is on either DOE's or the Federal Government's list of debarred, ineligible and suspended bidders; or (ii) evidence, with respect to an offeror, comes to the attention of the Contracting Officer of conduct or activity which represents a violation of law or regulation (including an Executive Order having the force and effect of law); or (iii) evidence is brought to the attention of the Contracting Officer of past activity or conduct of an offeror which shows a lack of integrity (including actions inimical to the welfare of the United States) or willingness to perform, so as to substantially diminish the Contracting Officer's confidence in the offeror's performance under the proposed contract.

B.21 Financial statements and other information:

(a) As indicated in Provision No. B.20(b)(7) above, compliance with the required payment and performance guarantee will in most instances effectively assure a finding of responsibility. Therefore, DOE does not intend to ask for financial information from all offerors. However, after receipt of offers, but prior to making award, DOE reserves the right to ask for the audited financial statements for an offeror's most recent fiscal year and unaudited financial statements for any subsequent quarters. These financial statements must include a balance sheet and profit and loss statement for each period covered thereby. A certification by a principal accounting officer that there have been no material changes in financial condition since the date of the audited statements, and that these present the true financial condition as of the date of the offer, shall accompany the statements. If there has been a change, the amount and nature of the change must be specified and explained in unaudited statements and a principal accounting officer shall certify that they are accurate. The Contracting Officer shall set a deadline for receipt of this information.

(b) DOE also reserves the right to require information from the offeror regarding its plans for use of the petroleum, the status of requests for export licenses, plans for complying with the Jones Act, etc. The contracting officer shall set a deadline for receipt of this information.

B.22 Resolicitation procedures on unsold petroleum:

(a) In the event that petroleum offered on an MLI remains unsold after evaluation of all offers, the Contracting Officer may issue an amendment to the NS, resoliciting offers from all interested parties. DOE reserves the right to alter the MLIs and/or offer different MLIs in the resolicitation.

(b) In the event that for any reason petroleum which has been awarded becomes available to DOE for resale, the Contracting Officer may use the following procedures:

(1) If priced offers remain valid in accordance with Provision No. B.23, the petroleum will go to the next highest ranked offer.

(2) If offers have expired in accordance with Provision No. B.23, the Contracting Officer at his option may offer the petroleum to the highest offeror for that MLI. The pertinent offeror may, at its option, accept or reject that petroleum at the price originally offered. If that offeror rejects the petroleum, it may be offered to the next highest offeror, etc.

(3) If the petroleum is not then resold, the Contracting Officer may at his option proceed to amend the NS to resolicit offers for that petroleum or add the petroleum to the next sales cycle.

B.23 Offeror's certification of acceptance period:

(a) By submission of an offer, the offeror certifies that its priced offer will remain valid for 10 calendar days after the date set for the receipt of offers, and further that its offer will remain valid for an additional 30 calendar days should it receive a notification of ASO either by telephone or in writing during the initial 10-day period.

(b) By mutual agreement of DOE and the offeror, an individual offeror's acceptance period may be extended for a longer period.

B.24 Notification of Apparently Successful Offeror:

The following information will be provided to the offeror by DOE in the notification of ASO:

(a) Identification of SPR crude oil streams to be awarded;
(b) Total quantity to be awarded on each MLI and on each DLI;
(c) Price in U.S. dollars per barrel;
(d) Extended total price offer for each DLI;
(e) Provisional contract number;
(f) Any other data necessary.

B.25 Contract documents:

If an offeror is successful, DOE will make award using a NA signed by the Contracting Officer. The NA will identify the items, quantities, prices and delivery method which DOE is accepting. Attached to the NA will be the NS and the successful offer. Provisions of the SSPs will be made applicable through incorporation by reference in the NS. The Contracting Officer also shall provide the purchaser with an information copy of the then-current SSPs as published in the **Federal Register**. If time constraints require it, DOE may accept the offeror's offer by an electronic notice, such as telegram or telex, and the contract award shall be effective upon issuance of such notice. The electronic notice will be followed by a mailing of full documentation as described above.

B.26 Purchaser's representative:

As part of its offer, each offeror shall designate an agent as a point of contact for any telephone calls or correspondence from the Contracting Officer. Any such agent shall have a U.S. address and telephone number and must be conversant in English.

B.27 Procedures for selling to other U.S. Government agencies:

(a) If a U.S. Government agency submits an offer for petroleum in a price competitive sale, that offer will be arrayed for award consideration in accordance with Provision No. B.20. If a U.S. Government agency is an ASO, award and payment will be made exclusively in accordance with statutory and regulatory requirements governing transactions between agencies, and the U.S. Government agency will be responsible for complying with these requirements within the time limits set by the Contracting Officer.

(b) U.S. Government agencies are exempt from all guarantee requirements, but must complete all transportation arrangements for moving the petroleum. Failure by a U.S. Government agency to comply with any of the requirements of these SSPs shall not provide a basis for challenging a contract award to that agency.

Section C Sales Contract Provisions

C.1 Delivery of SPR petroleum:

(a) The purchaser, at its expense, shall make all necessary arrangements to accept delivery of and transport the SPR petroleum, except for terminal arrangements which shall be coordinated with the SPR/PMO. The DOE will deliver and the purchaser will accept the petroleum at delivery points listed in the NS. The purchaser also shall be responsible for meeting and delivery requirements imposed at those points including complying with the rules, regulations, and procedures contained in applicable port/terminal manuals, pipeline tariffs or other applicable documents.

(b) For petroleum in the SPR's permanent storage sites, DOE shall provide, at no cost to the purchaser, transportation by pipeline from the SPR to the supporting SPR distribution terminal facility specified for the MLI and, for vessel loadings a safe berth and loading facilities sufficient to deliver petroleum to the vessel's permanent hose connection. The purchaser agrees to assume responsibility for, to pay for, and to indemnify and hold DOE harmless for any other costs associated with terminal, port, vessel and pipeline services necessary to receive and transport the petroleum, including but not limited to demurrage charges assessed by the terminal, ballast and oily waste reception services other than those provided by DOE of its agent, mooring and line-handling services, tank storage charges and port charges incurred in the delivery of SPR petroleum to the purchaser. The purchaser also agrees to assume responsibility for, to pay for and to indemnify and hold DOE harmless for any liability, including consequential or other damages, incurred or occasioned by the purchaser, its agent, subcontractor at any tier, assignee or any subsequent purchaser, in connection with movement of petroleum sold under a contract incorporating this provision.

C2 Compliance with the "Jones Act" and the U.S. export control laws:

Failure to comply with the "Jones Act," 46 U.S.C. 883, regarding use of U.S.-flag vessels in the transportation of oil between points within the United States, and with any applicable U.S. export control laws affecting the export of SPR petroleum will be considered to be a failure to comply with the terms of any contract containing these SSPs and may result in termination of default in accordance with Provision No. C.27. Purchasers who have failed to comply with the "Jones Act" or the export control laws in SPR sales may be found to be non-responsible in the evaluation of offers under Provision No. B.20 of the SSPs. Those purchasers may also be subject to proceedings to make them ineligible for future awards in accordance with 10 CFR Part 625

C.3 Storage of SPR petroleum:

Continued storage of purchasers' oil in the SPR facilities after the end of the contract delivery periods is not permitted, unless specifically authorized by the Secretary of Energy and provided for in the NS. Allowing petroleum to remain in storage as the result of failure to complete delivery arrangements may result in assessment of liquidated damages under Provision Nos. C.27 through C.29 unless such failure is excused by those provisions.

C.4 Environmental compliance:

(a) Vessels to be used for the transportation of petroleum purchased from the SPR will comply with all applicable rules and regulations, including The Ports and Waterways Safety Act, The Federal Water Pollution Control Act of 1972, The Oil Pollution Control Act of 1961, and other applicable statutes, rules and regulations, including the following: Parts 151, 153, 157, 158 and 159 of Title 33, and Parts 30–36 and 542 of Title 46 of the Code of Federal Regulations.

(b) In the event tankships are used in the performance of this contract, the purchaser will employ only tankships whose owners are parties to the Tanker Owners Voluntary Agreement Concerning Liability of Oil Pollution (TOVALOP) or who carry equivalent, as determined by the Contracting Officer, liability coverage.

(c) All crude oil transfer operations in performance of the contract will be in accordance with the guidelines detailed in the International Oil Tanker Safety Guide, U.S. Coast Guard Regulations, and the "Ship to Ship Transfer Guide" of the International Chamber of Shipping Oil Companies International Marine Forum.

(d) Failure of the purchaser or the purchaser's subcontractors to comply with all applicable rules and regulations in the transportation of SPR petroleum will be considered a failure to comply with the terms of any contract containing these SSPs, and may result in termination for default, unless, in accordance with Provision No. C.27, such failure was beyond the control and without the fault or negligence of the purchaser, its affiliates, or subcontractors.

C.5 Delivery and transportation scheduling

(a) After notification of the ASOs, but at least 10 days prior to the start of the one-third of a month delivery period for all deliveries to be moved by vessel, or at least 10 days prior to the start of the 30-day delivery period for pipeline deliveries, each ASO or purchaser shall contact the SPR/PMO for the purpose of determining the delivery schedule within the delivery periods during which the purchaser is to take the petroleum. Requests for firm delivery windows for vessels or delivery dates for pipelines received by the SPR/PMO within 5 business days after issuance of the notification of ASOs shall be handled in descending order, highest-priced offer first. Such requests received after that tme shall be handled on a first-come, first-served basis. In the event conflicting requests are received on the same calendar day, preference shall be given to such requests in descending order, highest priced offer first. If purchasers do not make timely acceptable arrangements for firm vessel delivery windows, they will be assigned by the SPR/PMO 7 days prior to the start of the delivery period. If arrangements have not been made for pipeline deliveries in accordance with Provision No. C.11 prior to the last day of the month preceding the month of delivery, liquidated damages will be assessed under Provision No. C.29. The SPR/PMO point of contact is: Crude Oil Logistics Branch, PR–622.2, Strategic Petroleum Reserve, Project Management Office, Department of Energy, 900 Commerce Road East, New Orleans, LA 70123, Phone: (504) 734–4371, (504) 734–4780, (504) 734–4733.

(b) Notwithstanding paragraph (a) above, ASOs and purchasers may request delivery commencing prior to the contractual delivery period. DOE will honor such requests, unless unacceptable costs might be incurred or SPR schedules might be adversely affected. Requests accepted by DOE will be handled on a first-come, first-served basis, except that where conflicting requests are received on

the same day, the highest-priced offer will be given precedence. Requests that include both a change in delivery method and an early delivery date may also be accommodated subject to Provision No. C.6.

C.6 Contract modification—alternate delivery line items:

A purchaser may request a change in delivery method after the issuance of the NA. Such requests may be made either orally (to be confirmed in writing within 24 hours) or in writing, but will require written modification of the contract by the Contracting Officer. Such modification will be permitted by DOE if in the sole judgment of DOE the change would not interfere with the delivery plans of other purchasers, and further provided that the purchaser agrees to pay all increased costs incurred by DOE because of such modification. The NS shall establish per barrel rates for such increased costs.

C.7 Application procedures for "Jones Act" waivers:

(a) Unless otherwise specified, an ASO or purchaser seeking a waiver of the "Jones Act" should submit a request by letter, telegram or telex to: U.S. Customs Service, Director, Carriers, Drawback and Bonds Division, 1301 Constitution Avenue, NW., Room 2414, Washington, DC 20229, Telephone No. (202) 566–5732, Telex (710) 822–9525.

Copies of the request should also be sent to:

(1) Assistant Secretary of Defense (Acquisition and Logistics), Department of Defense, Washington, DC 20301–8000;

(2) Associate Administrator for Marketing and Domestic Enterprise, Maritime Administration, Department of Transportation, Mail stop MAR–800, Washington, DC 20590, Telex (710) 822–9426;

(3) Department of Energy, ATTN: Deputy Assistant Secretary for Petroleum Reserves/ Deputy Assistant Secretary for Energy Emergencies, Mail Stop FE–40, Washington, DC 20585, Telex (710) 882–0176.

(b) The request for waiver should include the following information:

(1) Name, address and telephone number of requestor;

(2) Purpose for which waiver is sought, e.g., to take delivery of so many barrels of SPR crude oil, with reference to the SPR NS number and the provisional or assigned contract number;

(3) Name and flag of registry of vessel for which waiver is sought, if known at the time of waiver request, and either the scheduled 3-day delivery window(s), if available, or 10-day delivery period applicable to the contract;

(4) The intended number of voyages, including the ports for loading and discharging;

(5) Estimated period of time for which vessel will be employed and

(6) Reason for not using qualified U.S.-flag vessel, including documentary evidence of good faith effort to obtain suitable U.S.-flag vessel and responses received from that effort. Such evidence would include copies of correspondence, telexes, telegrams, and telephone conversation summaries. Use of commercial brokers and the Transportation News Ticker (TNT) is suggested for maximum market coverage. Requests for waivers by telegram or telex may reference such documentary evidence, with copies to be provided by mail, postmarked no more than one business day after transmittal of the telegram or telex requesting the waiver.

(c) A purchaser seeking a waive to use a vessel built with a Contstruction Differential Subsidy (and, if applicable, operated with Operating Differential Subsidy) should have the owner of that vessel submit a request by letter, telegram, or telex for such waiver(s) to: Maritime Administrator, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590, Telex (710) 882–9426. Copies of the request shall be sent to:

(1) U.S. Department of Energy, ATTN: Deputy Assistant Secretary for Petroleum Reserves/Deputy Assistant Secretary for Energy Emergencies, Mail Stop FE–40, Washington, DC 20585, Telex (710) 882–0176.

(2) Director, Carriers, Drawback, and Bonds Division, U.S. Customs Service, Department of the Treasury, Washington, DC 20229, Telex (710) 882–9525.

For speed and brevity, the request may incorporate by reference appropriate contents of any earlier "Jones Act" waiver request by the purchaser. However, the request must contain a specific agreement for Construction Differential Subsidies payback pursuant to section 506 and must be signed by an official of the vessel owner authorized to make a payback commitment.

If there are shown to be "Jones Act" vessels available and in a position to meet the loading dates required, no section 805(a) waivers may be approved. Section 805(a) requires a hearing for an intervenor, and a waiver may not be approved if it will result in unfair competition to any person, firm or corporation operating exclusively in the coastwise or intercoastal service.

(d) The names of any vessel(s) to be employed under a "Jones Act" waiver must be provided to the U.S. Customs Service no later than 3 days prior to the beginning of the 3-day loading window schedule in accordance with Provision No. C.5.

C.8 Vessel loading procedures.

(a) After notification of ASO, each ASO shall arrange with the SPR/PMO a schedule of vessel loading windows in accordance with Provision No. C.5.

(b) The length of the scheduled loading window shall be 3 days. The average quantity to be lifted during a loading window will be no less than DOE's minimum contract quantity.

(c) Tankships, ITBs, and self-propelled barges shall have a minimum average load rate of 20,000 barrels per hour (BPH). Barges with a load rate of not less than 5,000 BPH shall be permitted at the Sun Terminal barge docks. With the consent of the SPR/PMO, lower loading rates and the use of barges at the Sun and Phillips Terminals' suitably equipped tankship docks may be permitted if such do not interfere with DOE's obligations to other parties.

(d) At least 7 days in advance of the beginning of the scheduled loading window, the purchaser shall furnish the SPR/PMO with vessel nominations specifying: (i) Name and size of vessel or advice that the vessel is To Be Nominated at a later date (such date to be no later than 3 days before commencement of the loading window); (ii) estimated date of arrival (to be narrowed to a firm date not later than 72 hours prior to the first day of the vessel's 3-day window, as provided in paragraph (f) below); (iii) quantity to be loaded and contract number; and (iv) other relevant information requested by the SPR/PMO. DOE will advise the purchaser, in writing, of the acceptance or rejection of the nominated vessel within 24 hours of such nomination. If no advice is furnished within 24 hours, the nomination will be firm. Once established, changes in such nomination details may be made by only mutual agreement of the parties, to be confirmed by DOE in writing. The purchaser shall be entitled to substitute another vessel of similar size for any vessel so nominated, subject to DOE's approval. DOE must be given at least 3 days notice prior to the first day of the 3-day loading window of any such substitution. DOE shall make a reasonable effort to accept any nomination for which notice has not been given in strict accordance with the above provisions.

(e) In the event the purchaser intends to use more than one vessel to take delivery of the contract quantity scheduled to be delivered during a loading window, the information in (d) above and (f) below shall be provided for each vessel.

(f) The vessel shall notify the SPR/PMO of the expected day of arrival 72 hours before the beginning of his scheduled 3-day loading window. This notice establishes the firm agreed-upon date of arrival which is the 1-day window for the purposes of vessel demurrage (see Provision No. C.9). In addition, the vessel shall notify the SPR/PMO of the expected hour of arrival 72, 48 and 24 hours in advance of arrival, and after the first notice, to advise of any variation of more than 4 hours. With the first notification of the hour of arrival, the Master shall advise the SPR/PMO: (i) Quantity of oily bilge wastes or sludge requiring discharge ashore; (ii) cargo loading rate requested; (iii) number, size, and material of vessel's manifold connections; and (iv) defects in vessel or equipment affecting performance or maneuverability.

(g) When the vessel has arrived at customary anchorage and/or is capable of being moored alongside berth within 6 hours, whichever is later, and is ready to load, a Notice of Readiness shall be tendered by the vessel Master and promptly confirmed in writing to the SPR/PMO and the terminal responsible for coordination of crude oil loading operations. Such notice shall be effective only if given during customary port operating hours. If notice is given after customary business hours of the port, it shall be effective as of the beginning of customary business hours on the next business day.

(h) DOE shall use its best efforts to berth the purchaser's vessel as soon as possible after receipt of the Notice of Readiness.

(i) Standard hose and fittings (American Standard Association standard connections) for loading shall be provided by DOE.

Purchasers must arrange for line handling, deballasting, tug boat and pilot services, both for arrival and departure, through the terminal or ship's agent.

(j) Tankships, ITBs, and self-propelled barges shall be allowed berth time of 36 hours and barges shall be allowed berth time of 24 hours, as defined below, except that, conditions below excepted, the vessel shall not remain at berth more than 6 hours after completion of cargo loading unless hampered by tide or weather.

(1) Berth time shall commence with the vessel's first line ashore and shall continue until loading of the vessel, or vessels in case more than one vessel is loaded, is completed and the last line is off. In addition, allowable berth time will be increased by the amount of any delay occurring subsequent to the commencement of berth time and resulting from causes due to adverse weather, labor disputes, force majeure and the like, decisions made by port authorities affecting loading operations, actions of DOE, its contractors and agents resulting in delay of loading operations (providing this action does not arise through the fault of the purchaser or purchaser's agent), and customs and immigration clearance. The time required by the vessel to discharge oily wastes or to moor multiple vessels sequentially into berth shall count as used berth time.

(2) For all hours of berth time in excess of allowable berth time provided for above, the purchaser shall be liable for dock demurrage and also shall be subject to the conditions of Provision No. C.10.

C.9 Vessel laytime and demurrage:

(a) The laytime allowed DOE for handling of the purchaser's vessel shall be 36 running hours. For vessels with cargo quantities in excess of 500,000 barrels, laytime shall be 36 running hours plus 1 hour for each 20,000 barrels of cargo to be loaded in exess of 500,000 barrels. Vessel laytime shall commence when the vessel is moored alongside or 6 hours after receipt of a Notice of Readiness, whichever occurs first. It shall continue 24 hours per day, seven days per week without interruption from its commencement until loading of the vessel is completed and cargo hoses or loading arms are disconnected. Any delay to the vessel in reaching berth caused by the fault or negligence of the vessel or purchaser, delay due to breakdown or inability of the vessel's facilities to load, decisions made by vessel owners or operators or by port authorities affecting loading operations, discharge of ballast or slops, customs and immigration clearance, weather, labor disputes, force majeure and the like shall not count as used laytime. In addition, movement in roads shall not count as used laytime if such movement takes place subsequent to the tendering of the Notice of Readiness.

(b) If the vessel is tendered for loading on a date earlier than the firm agreed-upon arrival date, established in accordance with Provision No. C.8, and other vessels are loading or have already been scheduled for loading prior to the purchaser's vessel, the purchaser's vessel shall await its turn and vessel laytime shall not commence until the vessel moors alongside, or at 0600 hours local time on the firm agreed-upon date of arrival, whichever occurs first. If the vessel is tendered for loading later than 2400 hours on the firm agreed-upon date of arrival, DOE will use its best efforts to have the vessel loaded as soon as possible in its proper turn with other scheduled vessels, under the circumstances prevailing at the time. In such instances, vessel laytime shall commence when the vessel moors alongside.

(c) For all hours or any part thereof of vessel laytime which elapse in exesss of the allowed vessel laytime for loading provided for above, demurrage shall be paid by DOE at the lesser of the demurrage rate in the Charter, if a chartered tankship, or the appropriate United States/World Scale Average Freight Rate Assessment (US/WS AFRA) rate applicable to tankships of the type being loaded under market conditions prevailing on the date(s) the tankship is being loaded. The demurrage rate for barges will be the hourly rate contained in the charter of a chartered barge, or if it is not a chartered barge, at a rate determined by DOE as a fair rate under prevailing conditions. If demurrage is incurred because of breakdown of machinery or equipment of DOE or its contractors (other than the purchaser), the rate of demurrage shall be reduced to one-half the rate stipulated herein per running hour and pro rata of such reduced rate for part of an hour for demurrage so incurred. Demurrage payable by DOE, however, shall in no event exceed the actual expense incurred by the purchaser as the result of the delay.

(d) In the event the purchaser is using more than one vessel to load the contract quantity scheduled to be delivered during a single loading window, the terms of this provision and the Government's liability for demurrage apply only to the first vessel presenting its Notice of Readiness in accordance with (a) above.

(e) The primary source document and official record for demurrage calculations is the SPRCODR (see Provision No. C.17).

C.10 Purchaser liability for excessive berth time:

The Government reserves the right to direct a vessel loading SPR petroleum at a delivery point specified in the NS, to vacate its SPR berth, and absorb all costs associated with this movement, should such vessel, through its operational inability to receive oil at the average rates provided for in Provision No. C.8, cause the berth to be unavailable for an already scheduled follow-on vessel. Furthermore, should a breakdown of the vessel's propulsion system prevent its getting under way on its own power, the Government may cause the vessel to be removed from the berth with all costs to be borne by the purchaser.

C.11 Pipeline delivery procedures:

(a) Prior to the last day of the month preceding the month of delivery, the purchaser shall furnish the SPR/PMO with the following information: (i) Confirmation of the pipeline's acceptance of the amount of the petroleum proposed to be delivered in the delivery month; (ii) an estimated schedule (consistent with the terms of the contract) for delivery of the petroleum to the pipeline; and (iii) the name and telephone number of the pipeline point of contact with whom the SPR/PMO should coordinate the petroleum delivery.

(b) Once established, the pipeline delivery schedule can only be changed with DOE's prior written consent.

C.12 Title and risk of loss:

Unless otherwise provided in the NS, title to and risk of loss for SPR petroleum will pass to the purchaser at the delivery point as follows:

(a) For vessel shipment—when the petroleum passes from the dock loading equipment connections to the vessel's permanent hose connection.

(b) For pipeline shipment—when the petroleum passes the permanent flange connecting the SPR's distribution terminal to the commercially-owned pipeline, except for shipments via the LOCAP and ARCO Terminals where title and risk of loss pass when the petroleum enters the LOCAP or ARCO Terminal meter bank.

(c) For in-transit shipments—when the petroleum passes the permanent flange of the discharging vessel manifold upon discharge into the purchaser's designated marine terminal facility or vessel.

C.13 Acceptance of crude oil:

(a) When practical, the NS shall update the SPR crude oil stream characteristics shown in Exhibit D, SPR Crude Oil Stream Characteristics. However, the purchaser shall accept the crude oil delivered regardless of characteristics. Except as provided below, DOE assumes no responsibility for deviations in quality.

(b) In the event that the crude oil streams delivered both has a total sulfur content (by weight) in excess of 3.5 percent if Bryan Mound Maya, 2.0 percent if any other sour crude oil stream, or 0.50 percent if a sweet crude oil stream, *and, in addition,* has an API gravity less than 20°API if Bryan Mound Maya, 26°API if any other sour crude oil stream, or 32°API if a sweet crude oil stream, the purchaser shall accept the crude oil delivered and either pay the contract price adjusted in accordance with Provision No. C.14, or request negotiation of the contract price. Unless the purchaser submit a written request for negotiation of the contract price to the Contracting Officer within 10 days from the date of delivery, the purchaser shall be deemed to have accepted the adjustment of the price in accordance with Provision No. C.14. Should the purchaser request a negotiation of the price and the parties be unable to agree as to that price, the dispute shall be settled in accordance with Provision No. C.34.

C.14 Price adjustments for quality differentials for crude oil:

(a) The NS will specify quality price adjustments applicable to the crude oil streams offered for sale. Unless otherwise specified by the NS, price adjustments will be made solely for variations between the API gravity of the crude oil delivered and the API gravity of the crude oil stream contracted for as published in the NS. Price adjustments for

SPR crude oil streams are expected to be similar to one or more commercial crude oil differential postings for equivalent quality crude oil.

(b) Price adjustments will be applied only to the amount of variation by which the API of the crude oil delivered differs by more than plus or minus five-tenths of one degree API (+/−0.5°API) from the API gravity of the crude oil stream contracted for as published in the NS. The contract price per barrel shall be increased by that amount if the API gravity of the crude oil delivered exceeds the published API gravity by more than 0.5°API and decreased by that amount if the crude oil delivered falls below the published API gravity by more than 0.5°API.

C.15 Determination of quality of petroleum:

(a) The quality of the crude oil delivered to the purchaser will be determined from a composite of all-levels samples taken from the delivery tanks or from the composite sample collected by a certified in-line sampler. Tests to be performed by DOE or its authorized contractor are:

(1) Sediment and Water

Primary methods: API *Manual of Petroleum Measurement Standards*, Chapter 10.1, *Determination of Sediment in Crude Oils and Fuel Oils by the Extraction Method*, first edition, April 1981 (ASTM D473) (IP53), or latest edition; and API *Manual of Petroleum Measurement Standards*, Chapter 10.2, *Determination of Water in Crude Oil by Distillation*, first edition, April 1981 (ASTM D4006) (IP358), or latest edition.

Alternate methods: API *Manual of Petroleum Measurement Standards*, Chapter 10.3, *Determination of Water and Sediment in Crude Oil by the Centrifuge Method (Laboratory Procedure)*, first edition, April 1981 (ASTM D4007) (IP 359), or latest edition; or API *Manual of Petroleum Measurement Standards*, Chapter 10.4, *Standard Methods of Test for Water and Sediment in Crude Oils*, (API Pub. 2542), October 1970 (ASTM D96).

(2) Sulfur

Primary method: ASTM D1552, *Sulfur in Petroleum Products (High Temperature Method)*, latest edition.

Alternate methods: ASTM D2622, *Sulfur in Petroleum Products (X-ray Spectographic Method), latest edition; or ASTM D4294, Sulfur in Petroleum Products by Non-Dispersive X-ray Fluorescence Spectrometry*, latest edition.

(3) API Gravity

API *Manual of Petroleum Measurement Standards*, Chapter 9.1, Hydrometer Test Method for Density, Relative Density (Specific Gravity), or *API Gravity of Crude Petroleum and Liquid Petroleum Products*, first edition, June 1981 (ASTM D1298), or latest edition.

To the maximum extent practicable, the primary methods will be used for determination of SPR crude oil quality characteristics. However, because of conditions prevailing at the time of delivery, it may be necessary to use alternate methods of test for one or more of the quality characteristics. The primary methods are binding in any dispute over quality characteristics of SPR crude oil.

(b) The purchaser may arrange for additional services to witness and verify testing simultaneously with the Government Quality Assurance Representatives. Such services, however, will be for the account of the purchaser. Any disputes will be settled in accordance with Provision No. C.34. Should the purchaser opt not to provide such additional services, then the Government findings will be binding on the purchaser.

C.16 Determination of quantity of petroleum.

(a) The quantity of crude oil delivered to the purchaser will be determined from certified opening and closing DOE tank gauge reports or delivery meter reports. All volumetric measurements will be converted to Net Standard Volume in barrels at 60°F, using the API *Manual of Petroleum Measurement Standards*, Chapter 11.1, Volume 1, *Volume Correction Factors*, August 1980, (ASTM D1250) (IP 200); Table 5A–*Generalized Crude Oils, Correction of Observed, API Gravity to API Gravity at 60°F*; Table 6A-*Generalized Crude Oils, Correction of Volume to 60°F Against API Gravity at 60°F*, or latest edition, and by deducting the tanks' free water, and the entrained sediment and water as determined by the testing of composite all-levels samples taken from the delivery tanks; or by deducting the sediment and water as determined by testing a composite sample collected by a certified in-line sampler.

(b) The quantity determination shall be made and certified by the DOE contractor responsible for loading operations, and witnessed by the Government Quality Assurance Representative at the delivery point. The purchaser shall have the right to have representatives present at the gauging/metering, sampling, and testing. Should the purchaser arrange for additional inspection services, such services will be for the account of the purchaser. Any disputes shall be settled in accordance with Provision No. C.34. Should the purchaser not arrange for additional services, then DOE's findings shall be binding on the purchaser.

C.17 Delivery documentation:

The quantity and quality determination shall be documented on the SPR/PMO Crude Oil Delivery Report (SPRCODR), SPRPMO–F–6110.2–14 (see Exhibit J for copy of this form). The SPRCODR will be signed by the purchaser's agent to acknowledge receipt of the quantity and quality of crude oil indicated. In addition, for vessel deliveries, the time statement on the SPRCODR will be signed by the vessel's Master when loading is complete. Copies of the completed SPRCODR, with applicable supporting documentation (i.e., metering or tank gauging tickets and appropriate calculation worksheets), will be furnished to the purchaser and/or the purchasers authorized representative after completion of delivery. They will serve as the basis for invoicing and/or reconciliation invoicing for the sale of petroleum as well as for any associated services that may be provided.

C.18 Contract amounts for crude oil:

The contract quantities and dollar value stated in the NA is an estimate. The per barrel unit price is subject to adjustment due to variation in the API gravity from the published characteristics. In addition, due to conditions of loading and shipping, the quantity actually delivered may vary by +/−10 percent for each DLI. However, a purchaser is not required to engage additional vessels if sufficient vessels to take delivery of at least 90 percent of the contract quantity have been engaged.

C.19 Payment:

(a) Payment for oil delivered shall be due no later than 10 days after the date of delivery.

(b) Payment shall be made by the payment and performance guarantee which must be either:

(1) A letter of credit conforming without exception to requirements of Provision No. C.20, and Exhibit H, Payment and Performance Guarantee—Letter of Credit and equal to 100 percent of the contract amount; or

(2) An advance payment by cash wire deposit, made in accordance with the wire transfer instruction in Provision No. C.24 and equal to 110 percent of the contract amount.

(c) The purchaser must furnish an acceptable payment and performance guarantee before DOE will execute the NA. The Contracting Officer will inform the ASO by telephone that the guarantee is due within a period which may be as short as 5 business days. The contracting Officer may, at his discretion, send a conforming telegram of the notification, but the timeliness of receipt for the guarantee is determined by the date of the telephone call.

(d) All wire deposit and letter of credit costs will be borne by the purchaser.

(e) The Contracting Officer (who may act through the SPR/PMO Planning and Financial Management Division) may draw against this payment and performance guarantee at any time after the first delivery of any monies due under the contract for petroleum delivered and at any time for any other monies owing to DOE under the contract, no matter how the debt arose.

C.20 Payment and performance letters of credit—general requirements:

(a) Each letter of credit must conform without exception to the standard letter of credit provided as Exhibit H.

(b) DOE does not require information concerning the issuing bank's agreement with its customer. *Any* language in the letter of credit in addition to that specified in Exhibit H shall make the letter of credit unacceptable and shall be cause for rejection of the offer.

(c) As set forth in Exhibit H, the letter of credit provides for payment to DOE by wire transfer of funds over FEDWIRE. If a letter of credit is from a single depository institution, including a branch or an agency of a foreign bank, (hereinafter referred to as "bank") that bank must maintain an account with any Federal Reserve Bank or Branch (Fed) and be a participant in the Fed's FEDWIRE funds transfer system. If the letter of credit is issued

by a syndicate of banks, only the institution acting as agent for the syndicate and responsible for honoring the drafts drawn under the letter of credit must maintain a Fed account and be a participant in FEDWIRE.

(d) DOE reserves the right to request evidence that the bank official signing the letter of credit is authorized to do so, such as a confirming telex, telephone call, or letter from another official, or other appropriate evidence as determined by the Contracting Officer.

C.21 Billing and payment—with purchaser's letter of credit:

(a) After delivery of the SPR petroleum and completion of the delivery documentation, the Contracting Officer shall prepare an invoice in accordance with the contract and the delivery documentation.

(b) Upon completion of the invoice, the SPR/PMO Planning and Financial Management Division shall prepare a draft requesting a wire transafer of funds in accordacne with the letter of credit and transmit that message to the bank issuing the letter of credit by U.S. Express Mail or telex, or via the FEDWIRE system. On the date specified in the draft, nominally 10 days after completion of the delivery of petroluem, the bank shall use the wire transfer procedures specified in the letter of credit to transfer the invoiced funds to the account of the U.S. Treasury. If the draft is not transmitted within 10 days of completion of delivery of the petroleum, the due date shall be the next business day after recipt of the draft.

(c) The SPR/PMO shall provide copies of the invoices to the purchaser and the bank by U.S. Mail

(d) In the event that the bank refuses to honor the draft against the letter of credit, the purchaser shall be responsible for paying any interest due (see Provision No. C.25) from the due date specified in the draft.

(e) Within 30 calendar days after final payment under the contract, the Contracting Officer shall authorize the cancellation of the letter of credit and shall return it to the purchaser.

C.22 Billing and payment—with purchaser's advance payment:

(a) If the offeror elects to pay in advance, delivery documentation will be provided to the purchaser after each delivery. After the last delivery under the contract, a reconciliation billing will be made. If money is due from the purchaser to DOE, an invoice will be issued to the purchaser (see paragraph (b) below). If money is due the purchaser, a Treasury check will be issued in accordance with the Treasury Fiscal Requirement Manual.

(b) In accordance with the delivery documentation and the contract, the Contracting Officer shall determine the amount of any reconcilation invoice and transmit it to the purchaser by U.S. Express Mail, U.S. Mail or telex. A purchaser is deemed to have received mailed invoices on the second day after their dispatch and telex invoices on the day after dispatch. Reconciliation invoices must be paid in accordance with Provision No. C.24 10 business days after the purchaser is deemed to have received them

C.23 Replacement of funds in the payment and performance guarantee:

(a) Payment and performance guarantees must be maintained in full force and effect to the Contracting Officer's satisfaction at the following minimum levels until final payment under the contract:

(1) Letter of credit at 100 percent of the contract price of petroleum remaining to be paid for; and

(2) Advance payment at 110 percent of the contract price of the petroleum remaining to be delivered.

(b) If the Contracting Officer draws against the letter of credit, or makes charges against the advance payment, for monies owed DOE for oil delivered, for liquidated damages or for other funds due DOE, the purchaser shall be notified within 24 hours by U.S. Express Mail, U.S. Mail or telex of the fact of such withdrawal or charge and the amount thereof. Purchaser is deemed to have received a mailed notice on the second day after its dispatch and a telex notice the day after its dispatch.

(c) In the event that a draw against the payment and performance guarantee causes its amount to fall below the levels specified in (a) above, the purchaser shall, within 5 business days after it is deemed to have received notification in (b) above, replenish the payment and performance guarantee to those levels. Such replenishment shall be made either by the wire transfer of funds in accordance with Provision No. C.24, or by the provision of a new letter of credit or amendment of the old letter of credit. If such replenishment is not made within 5 business days, the Contracting Officer may, on the 6th business day, without prior notice to the purchaser withhold deliveries under the contract and/or terminate the contract in whole or in part for default under Provision No. C.27.

C.24 Method of payments—general:

(a) Notwithstanding any other contract provision, DOE may invoice the purchaser at any time for payment of monies due under the contract. These would include but not be limited to, interest, liquidated damages, amounts owing for any services provided for under the contract, and the difference between the contract price and price received on the resale of undeliverd petroleum as defined in Provision No. C.27. If the invoice is for delinquent payments, interest shall accrue from the date of the delinquency and not from the invoice's deemed date of receipt by purchaser.

(b) All amounts payable by the purchaser in excess of $1,000.00 shall be by wire transfer as a deposit to the account of the U.S. Treasury through FEDWIRE. Information which must be included on each wire transfer is specified in Exhibit I, Instruction Guide for Funds Transfer.

(c) Payments in amounts less than $1,000.00 shall be by check made out to "U.S. Department of Energy." Such payments will be sent with documentation to identify the payer and purpose of the payment to: U.S. Department of Energy, Strategic Petroleum Reserve, Project Management Office, Crude Oil Sales, Planning and Financial Management Division, Mail Stop PR–652, 900 Commerce Road East, New Orleans, Louisiana 70123.

(d) DOE may designate another place, different timing, or another method of payment after reasonable written notice to the purchaser.

(e) No payment due DOE hereunder shall be subject to reduction or set-off for any claim of any kind against the United States arising independently of the contract.

(f) If a purchaser disagrees with the amounts invoiced by DOE, the purchaser immediately shall pay the amount invoiced, and notify the Contrating Officer of the basis for its disagreement. The Contracting Officer will receive and act upon any such objection asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be in dispute, and purchaser shall file a claim promptly in accordance with Provision No. C.34.

C.25 Interest:

Amounts due and payable by the purchaser or its bank which are not paid in accordance with the provisions governing such payments shall bear interest from the date due until the date payment is received by the Government.

Interest shall be computed on a daily basis. The interest rate shall be in accordance with the Current Value of Funds rate as established by the Department of the Treasury in accordance with the Debt Collection Act of 1982 and published periodically in Bulletins to the Treasury Fiscal Requirements Manual and in the **Federal Register**.

C.26 Government options if payment is not received:

(a) If any amount owed to DOE is not paid within the time deadlines specified by the applicable provisions, the Contracting Officer may, at his discretion, take the following actions either simultaneously or in any sequence he deems appropriate, with or without prior notice to the purchaser:

(1) Invoice the purchaser for the amount on which payment is delinquent or provide written notice that payment is delinquent;

(2) Draw against the letter of credit for all amounts due and delinquent;

(3) Apply any advance payment received against the amount due and delinquent;

(4) Withhold all or any part of future deliveries under the contract; and/or

(5) Terminate the contract, in whole or in part, for purchaser default, in accordance with Provision No. C.27.

(b) Any disputes will be settled by the Contracting Officer in accordance with Provision No. C.34.

C.27 Termination:

(a) Immediate termination.

(1) The Contracting Officer may terminate this contract in whole or in part, without liability of DOE, by written notice to the purchaser effective upon its being deposited in the U.S. Postal System addressed to the purchaser as provided in Provision No. C.33 in the event that the purchaser either notifies the Contracting Officer that it will not be able to accept, or fails to accept, any delivery line item in accordance with the terms of the contract. Such notice shall invite the

purchaser to submit information to the Contracting Officer as to the reasons for the failure to accept the delivery line item in accordance with the terms of the contract.

(2) Within 10 business days after the issuance of the notice of termination, the Contracting Officer may determine that such termination was a termination for default under subparagraph (b)(1)(ii) of this provision. In the absence of information which persuades the Contracting Officer that the purchaser's failure to accept the delivery line item was excusable, the fact of such failure may be the basis for the Contracting Officer determining the purchaser to be in default, without first determining under subparagraphs (b)(2) and (b)(3) whether such failure was excusable under the terms of the contract. The Contracting Officer shall promptly give the purchaser written notice of such determination.

(3) Any immediate termination other than one determined to be a termination for default in accordance with subparagraph (a)(2) and paragraph (b) of this provision shall be a termination for the convenience of DOE without liability of the Government.

(b) Termination for default

(1) Subject to the provisions of subparagraphs (b)(2) and (b)(3), the Contracting Officer may terminate the contract in whole or in part for purchaser default, without liability of DOE, by written notice to the purchaser, effective upon its being deposited in the U.S. Postal System, addressed to the purchaser as provided in Provision No. C.33 in the event that:

(i) The Government does not receive payment in accordance with any payment provision of the contract;

(ii) The purchaser fails to accept delivery of petroleum in accordance with the terms of the contract; or

(iii) The purchaser fails to comply with any other term or condition of the contract within 5 business days after the purchaser is deemed to have received written notice of such failure from the Contracting Officer.

(2) Except with respect to defaults of subcontractors, the purchaser shall not be determined to be in default or be charged with any liability to DOE under circumstances which prevent the purchaser's acceptance of delivery hereunder due to causes beyond the control and without the fault or negligence of the purchaser as determined by the Contracting Officer. Such causes shall include but are not limited to:

(i) Acts of God or the public enemy;

(ii) Acts of the Government acting in its sovereign or contractual capacity;

(iii) Fires, floods, earthquakes, explosions, unusually severe weather, or other catastrophes; or

(iv) Strikes.

(3) If the failure to perform is caused by the default of a subcontractor, the purchaser shall not be determined to be in default or to be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the purchaser to meet the delivery schedule, if:

(i) Such default arises out of causes beyond the control of the purchaser and its subcontractor, and without the fault or negligence of either of them; or

(ii) Such default arises out of causes within the control of a transportation subcontractor, not an affiliate of the purchaser, hired to transport the purchaser's petroleum by vessel or pipeline, and such causes are beyond the purchaser's control, without the fault or negligence of the purchaser, and notwithstanding the best efforts of the purchaser to avoid default.

(4) In the event that the contract is terminated in whole or in part for default, the purchaser shall be liable to DOE for:

(i) The difference between the contract price on the contract termination date and any lesser price the Contracting Officer obtained upon resale of the petroleum; and

(ii) Liquidated damages as specified in Provision No. C.29 as fixed, agreed, liquidated damages for each day of delay until the petroleum is delivered to a purchaser under either a resolicitation for the sale of the quantities of oil defaulted on, or a NS issued after the date of default which specifies that it is for the sale of quantities of oil defaulted on. In no event shall liquidated damages be assessed for more than 30 days.

(5) In the event that the Government exercises its right of termination for default, and it is later determined that the purchaser's failure to perform was excused in accordance with subparagraphs (2) and (3), the rights and obligation of the parties shall be the same as if such termination was a termination for convenience without liability of the Government under paragraphs (c).

(c) Termination for convenience.

(1) In addition to any other right or remedy provided for in the contract, the Government may terminate this contract at any time in whole or in part whenever the Contracting Officer shall determine that such termination is in the best interest of the Government. Such termination shall be without liability of the Government if such termination arises out of causes specified in (a)(1) or (b)(1) above, acts of the Government in its sovereign capacity, or causes beyond the control and without the fault or negligence of the Government, its contractors (other than the purchaser of SPR crude oil under this contract) and agents. For any other termination for convenience, the Government shall be liable for such reasonable costs incurred by the purchaser in preparing to perform the contract, but under no circumstances shall the Government be liable for consequential damages or lost profits as the result of such termination.

(2) The purchaser will be given immediate written notice of any decrease of petroleum deliveries greater than 10 percent, or of termination, under this paragraph (c). The termination or reduction shall be effective upon its notice being deposited in the U.S. Postal System unless otherwise specified in the notice. The purchaser is deemed to have received a mailed notice on the second day after its dispatch and a telex on the day after dispatch.

(3) Termination for the convenience of the Government shall not excuse the purchaser from liquidated damages accruing prior to the effectiveness date of the termination.

(d) Nothing herein contained shall limit the Government in the enforcement of any legal or equitable remedy which it might otherwise have, and a waiver of any particular cause for termination shall not prevent termination for the same cause occurring at any other time or for any other cause.

(e) In the event that the Government exercises its right of termination, as provided in paragraphs (a), (b), or (c)(1) above, the Contracting Officer may sell any undelivered petroleum under such terms and conditions as he deems appropriate.

(f) DOE's ability to deliver petroleum on the date on which the defaulted purchaser was scheduled to accept delivery, under another contract awarded prior to the date of the contractor's default, shall not excuse a purchaser that has been terminated for default from either liquidated damages or the difference between the contract price and any lesser price obtained on resale.

(g) Any disagreement with respect to the amount due the Government for either resale costs or liquidated damages shall be deemed to be a dispute and will be decided by the Contracting Officer pursuant to Provision No. C.34.

(h) The term "subcontractor" or "subcontractors" includes subcontractors at any tier.

C.28 Other Government remedies:

(a) The Government's rights under this provision are in addition to any other right or remedy available to it by law or by virtue of this contract.

(b) The Government may, without liability on its part, withhold deliveries of petroleum under this contract or any other contract the purchaser may have with DOE if payment is not made in accordance with this contract.

(c) If the purchaser fails to take delivery of petroleum in accordance with the delivery schedule developed under the terms of the contract, and such tardiness is not excused under the terms of Provision No. C.27, but the Government does not elect to terminate that item for default, the purchaser nonetheless shall be liable to the Government for liquidated damages in the amount established by Provision No. C.29 for each calendar day of delay or fraction thereof until such time as it accepts delivery of the petroleum. In no event shall such damages be assessed for longer than 30 days. No purchaser that fails to perform in accordance with the terms of the contract shall be excused from liability for liquidated damages by virtue of the fact that DOE is able to deliver petroleum on the date on which the non-performing purchaser was scheduled to accept delivery, under another contract awarded prior to the date of default.

C.29 Liquidated damages:

(a) In case of failure on the part of the purchaser to perform within the time fixed in the contract or any extension thereof, the purchaser shall pay to the Government liquidated damages in the amount of 1 percent of the contract price of the undelivered petroleum per calendar day of delay or fraction thereof in accordance with paragraph (b) of Provision No. C.27 and paragraph (c) of Provision No. C.28.

(b) As provided in (a) above, liquidated damages will be assessed for each day or

fraction thereof a purchaser is late in accepting delivery of petroleum in accordance with this contract, unless such tardiness is excused under Provision No. C.27. For petroleum to be lifted by vessel, damages will be assessed in the event that the vessel has not commenced loading by 11:59 p.m. on the second day following the last day of the 3-day delivery window established under Provision No. C.5, unless the vessel has arrived in roads and its Master has presented a notice of readiness to the Government or its agents. Liquidated damages shall continue until the vessel presents its notice of readiness. For petroleum to be moved by pipeline, if delivery arrangements have not been made by the last day of the month prior to delivery, liquidated damages shall commence on the 3rd day of the delivery month until such delivery arrangements are completed; if delivery arrangements have been made, then liquidated damages shall begin on the 3rd day after the scheduled delivery date if delivery is not commenced and shall continue until delivery is commenced.

(c) Any disagreement with respect to the amount of liquidated damages due the Government will be deemed to be a dispute and will be decided by the Contracting Officer pursuant to Provision No. C.34.

C.30 Failure to perform under SPR contracts:

In addition to the usual debarment procedures, 10 CFR 625.3 provides procedures to make purchasers that fail to perform in accordance with these provisions ineligible for future contracts.

C.31 Government options in case of impossibility of performance:

(a) In the event that DOE is unable to deliver petroleum contracted for to the purchaser due either to events beyond the control of the Government, including actions of the purchaser, or to acts of the Government, its agents, its contractors or subcontractors at any tier, the Government at its option may do either of the following:

(1) Terminate for the convenience of the Government under Provision No. C.27; or

(2) Offer different SPR crude oil streams or delivery times to the purchaser in substitution for those specified in the contract.

(b) In the event that a different SPR crude oil stream than originally contracted for is offered to the purchaser, the contract price will be negotiated between the parties. In no event shall the negotiated price be less than the minimum acceptable price, if established for the same or similar crude oil streams in the most recent NS or determined after the opening of offers.

(c) DOE's obligation in such circumstances is to use its best efforts, the DOE under no circumstances shall be liable to the purchaser for damages arising from DOE's failure to offer alternate SPR crude oil streams or delivery times.

(d) If the parties are unable to reach agreement as to price, crude oil streams or delivery times, DOE may terminate the contract for the convenience of the Government under Provision No. 27.

C. 32 Limitation of Government liability:

DOE's obligation under these SSPs and any resultant contract is to use its best efforts to perform in accordance therewith. The Government under no circumstances shall be liable thereunder to the purchaser for the conduct of the Government's contractors or subcontractors or for indirect, consequential, or special damages arising from its conduct, except as provided herein; neither shall the Government be liable thereunder to the purchaser for any damages due in whole or in part to causes beyond the control and without the fault or negligence of the Government, including but not restricted to, acts of God or public enemy, acts of the Government acting in its sovereign capacity, fires, floods, earthquakes, explosions, unusually severe weather, other catastrophes, or strikes.

C. 33 Notices:

(a) Any notices required to be given by one party to the contract to the other *in writing* shall be forwarded to the addressee, prepaid, by U.S. registered, return receipt requested, mail, telegram, or TWX. Parties shall give each other written notice of address changes.

(b) Notices to the purchaser shall be forwarded to the purchaser's address as it appears in the offer and in the contract.

(c) Notices to the Contracting Officer shall be forwarded to the following address: U.S. Department of Energy, Strategic Petroleum Reserve, Project Management Office, Procurement and Sales Division, Mail Stop PR–651, 900 Commerce Road East, New Orleans, Louisiana 70123.

C.34 Disputes:

(a) This contract is subject to the Contract Disputes Act of 1978 (41 U.S.C. 601 *et seq.*). If a dispute arises relating to the contract, the purchaser may submit a claim to the Contracting Officer, who shall issue a written decision on the dispute in the manner specified in 48 CFR 1–33.211.

(b) "Claim" means:

(1) A written request submitted to the Contracting Officer;

(2) For payment of money, adjustment of contract terms, or other relief;

(3) Which is in dispute or remains unresolved after a reasonable time for its review and disposition by the Government; and

(4) For which a Contracting Officer's decision is demanded.

(c) In the case of dispute requests or amendment to such requests for payment exceeding $50,000, the purchaser shall certify at the time of submission as a claim, as follows:

I certify that the claim is made in good faith, that the supporting data are current, accurate and complete to the best of my knowledge and belief and that the amount requested accurately reflects the contract adjustment for which the purchaser believes the Government is liable.

Purchaser's name _____

Signature _____

Title _____

(d) The Government shall pay to the purchaser, interest on the amount found due to the purchaser on claims submitted under this provision at the rate established by the Department of the Treasury from the date the amount is due until the Government makes payment. The Contract Disputes Act of 1978 and the Prompt Payment Act adopt the interest rate established by the Secretary of the Treasury under the Renegotiation Act as the basis for computing interest on money owed by the Government. This rate is published semi-annually in the **Federal Register**.

(e) The purchaser shall pay to DOE, interest on the amount found due to the Government and unpaid on claims submitted under this provision at the rate specified in Provision No. C. 25 from the date the amount is due until the purchaser makes payment.

(f) The decision of the Contracting Officer shall be final and conclusive and shall not be subject to review by any forum, tribunal, or Government agency unless an appeal or action is commenced within the times specified by the Contract Disputes Act of 1978.

(g) The purchaser shall comply with any decision of the Contracting Officer and at the direction of the Contracting Officer shall proceed diligently with performance of this contract pending final resolution of any request for relief, claim, appeal, or action related to this contract.

C.35 Assignment:

The purchaser shall not make or attempt to make any assignment of a contract which incorporates these SSPs or any interest therein contrary to the provisions of Federal law, including the Anti-Assignment Act (41 U.S.C. 15), which provides:

No contract or order, or any interest therein, shall be transferred by the party to whom such contract or order is given to any other party, and any such transfer shall cause the annulment of the contract or order transferred, so far as the United States are concerned. All rights of action, however, for any breach of such contract by the contracting parties, are reserved to the United States.

C.36 Order of precedence:

In the event of an inconsistency between the terms of the various parts of this contract, the inconsistency shall be resolved by giving precedence in the following order:

(a) The NA and written modifications thereto:

(b) The NS;

(c) Those provisions of the SSPs (as published in the **Federal Register**), made applicable to the contract by the NS;

(d) The instructions to Exhibit A, SPR Sales Offer Form; and

(e) The successor offer.

C.37 Gratuities:

(a) The Government, by written notice to the purchaser, may terminate the right of the purchaser to proceed under this contract if it is found, after notice and hearing, by the Secretary of Energy or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered by or given by the purchaser, or any agent or representative of the purchaser, to any officer or employee of the Government,

with a view toward securing a contract or securing favorable treatment with respect to the awarding, amending, or making of any determinations with respect to the performing of such contract; *provided,* that the existence of the facts upon which the Secretary of Energy or his duly authorized representative makes such findings shall be in issue and may be reviewed in any competent court.

(b) In the event that this contract is terminated as provided in paragraph (a) hereof, the Government shall be entitled (1) to pursue the same remedies against the purchaser as it could pursue in the event of a breach of the contract by purchaser, and (2) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Secretary of Energy or his duly authorized representative) which shall not be less than three nor more than 10 times the cost incurred by the purchaser in providing any such gratuities to any such officer or employee.

(c) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

C.38 Officials not to benefit:

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

BILLING CODE 6450-01-M

EXHIBIT A

FOR DOE USE ONLY

STRATEGIC PETROLEUM RESERVE
SALES OFFER FORM

SALES CYCLE

OFFEROR INFORMATION

NAME

TAXPAYER ID

ADDRESS

CITY

STATE

ZIP CODE

COUNTRY

TELEPHONE

BOND (Instruction 9)

$

AGENT INFORMATION

NAME

ADDRESS

CITY

STATE

ZIP CODE

COUNTRY

U S A

TELEPHONE

INSTRUCTIONS

1. **Master Line Item (MLI)**

Offerors may bid on one or more MLIs, but may not make alternate bids on separate master line items (i.e., the offer may not state 1,000,000 barrels from either MLI 001, or MLI 002).

2. **Maximum MLI Quantity (MAXQ)**

For each MLI offered against, offers shall state here, in thousands of barrels, the number of barrels which the offeror seeks to purchase on the MLI, regardless of delivery method. The maximum MLI quantity shall be not less than the DOE's minimum quantity as stated in the Notice of Sale (NS).

3. **Delivery Line Items (DLI)**

Applicable DLI delivery methods are as follows:

DLI A	Pipeline delivery from first terminal
DLI B,C,D	Tanker delivery from first terminal
DLI E,F,G	Barge delivery from first terminal
DLI H	Pipeline delivery from second terminal
DLI I,J,K	Tanker delivery from second terminal

DLI A and H nominally have a 30-day delivery period. Vessel DLIs B,E and I have ten day delivery periods nominally from the 1st to the 10th; C, F and J cover the 11th to the 20th; and D, G and K cover the 21st to the last day of the period of sale. Not all DLIs may be available on a particular MLI. For example, barges are allowed only at the Sun Terminal barge docks (with certain limited exceptions, see SSP No. C.8). Therefore, only MLI 004 and MLI 005 have DLIs E, F and G. Buyers are cautioned to read the NS carefully as it may alter the period of time covered by each DLI if the period of sale does not correspond to a calendar month. This is most likely to occur in the first sales cycle of a drawdown. For example, the NS may alter DLIs B, C, D, E, F, G, I, J and K to cover approximately 15 days instead of 10, or if the period of sale runs from the middle of one month to the middle of the next, DLIs B, E and I may be designated as covering the 15th to 25th of the first month, etc.

4. **Unit Price (UP$$)**

The offer shall state the offered price per barrel on each DLI for which the offer indicates a desired DLI quantity. The offer may state either the same unit price for different DLIs or different unit prices. DOE will award the highest price first. Prices may be stated to one-hundredths of a cent ($0.0001), but in no smaller fraction thereof.

5. **Delivery Preference (P)**

Where the offer has the same unit price for two or more DLIs, the offer may indicate the offeror's order of preference for delivery method and period (1st, 2nd, 3rd, etc.). If the offer does not indicate a preference, DOE will select the DLI(s) to be awarded at its discretion.

6. **Desired DLI Quantity (DESQ)**

Offers must indicate at least one desired DLI, stating(in thousands of barrels) the number of barrels which the offeror will accept by the delivery method and during the delivery period established for that DLI. An offeror may indicate a willingness to accept alternate delivery methods or delivery periods. An offeror may request all, part or none of the offer's maximum MLI quantity on any particular DLI. A total of all the offeror's desired DLI quantities should total at least the maximum MLI quantity, but could exceed the maximum MLI quantity if the offeror is willing to accept alternate delivery methods or periods. For example, the offer could state:

MLI: 001
Maximum MLI Quantity: 1,000
Desired DLI Quantities:
DLI 001B: 1,000
DLI 001C: 1,000
DLI 001D: 1,000

This would indicate the offeror would be willing to accept one million barrels of Bryan Mound sweet to be delivered to its vessels either from the 1st through the 10th, the 11th through the 20th, or 21st through the end of the month.

7. **Minimum Contract Quantity (MINQ)**

For each DLI on which an offer is made, the offeror should indicate his willingness to accept as little as DOE's specified minimum contract quantity for that DLI by marking the 'Y' block, or unwillingness to accept less than the DESQ for that DLI by marking the 'N' block. If neither 'Y' or 'N' is indicated, the offer will be evaluated as though the offeror had indicated a 'Y'. DOE only will award less than the offeror's desired DLI quantity if an offer is otherwise successful, but the quantity which DOE has available for award is less than said desired DLI quantity or award of the desired quantity would cause the offeror's MAXQ on the MLI to be exceeded.

8. **Total Price**

The offer shall calculate the total price (desired DLI quantity times unit price) for each DLI on which an offer is made. The offeror is reminded that DESQ is stated in thousands of barrels.

9. **Offer Guarantee**

The amount of the offer guarantee is $10 million dollars or 5 percent of the maximum potential contract amount, whichever is less. The maximum potential contract amount is the sum of the products determined by multiplying the offer's maximum purchase quantity for each MLI times the highest offer prices that the offeror would have to pay for that MLI if the offer is successful. To assist in this calculation, instructions and a worksheet are available at Exhibit K. Submission of the worksheet is not mandatory.

FOR DOE USE ONLY

OFFER

MLI = MASTER LINE ITEM NUMBER (INSTRUCTION 1)
DLI = DELIVERY LINE ITEM (INSTRUCTIONS 3 AND 6)
UP$$ = UNIT PRICE (U.S. $)/BBL (INSTRUCTION 4)
P = PREFERENCE (INSTRUCTION 5)

MAXQ = MAXIMUM MLI QUANTITY (1000 BBL) (INSTRUCTION 2)
DESQ = DESIRED DLI QUANTITY (1000 BBL) (INSTRUCTION 6)
MINQ = MINIMUM CONTRACT QUANTITY (INSTRUCTION 7)

MLI 001 BRYAN MOUND SWEET

MAXQ

DLI	P	UP$$	DESQ	MINQ Y	MINQ N	TOTAL PRICE (UP$$xDESQ)
A						$
B						$
C						$
D						$
H						$
I						$
J						$
K						$

MLI 002 BRYAN MOUND SOUR

MAXQ

DLI	P	UP$$	DESQ	MINQ Y	MINQ N	TOTAL PRICE (UP$$xDESQ)
A						$
B						$
C						$
D						$
H						$
I						$
J						$
K						$

MLI 003 BRYAN MOUND MAYA

MAXQ

DLI	P	UP$$	DESQ	MINQ Y	MINQ N	TOTAL PRICE (UP$$xDESQ)
A						$
B						$
C						$
D						$

MLI 004 WEST HACKBERRY SWEET

MAXQ

DLI	P	UP$$	DESQ	MINQ Y	MINQ N	TOTAL PRICE (UP$$xDESQ)
A						$
B						$
C						$
D						$
E						$
F						$
G						$

FOR DOE USE ONLY

OFFER

MLI = MASTER LINE ITEM NUMBER (INSTRUCTION 1)
DLI = DELIVERY LINE ITEM (INSTRUCTIONS 3 AND 6)
UP$$ = UNIT PRICE (U.S. $)/BBL (INSTRUCTION 4)
P = PREFERENCE (INSTRUCTION 5)

MAXQ = MAXIMUM MLI QUANTITY (1000 BBL) (INSTRUCTION 2)
DESQ = DESIRED DLI QUANTITY (1000 BBL) (INSTRUCTION 6)
MINQ = MINIMUM CONTRACT QUANTITY (INSTRUCTION 7)

MLI 005 WEST HACKBERRY SOUR

MAXQ

DLI	P	UP$$	DESQ	MINQ Y N	TOTAL PRICE (UP$$xDESQ)
A					$
B					$
C					$
D					$
E					$
F					$
G					$

MLI 007 BAYOU CHOCTAW SWEET

MAXQ

DLI	P	UP$$	DESQ	MINQ Y N	TOTAL PRICE (UP$$xDESQ)
A					$
B					$
C					$
D					$

MLI 006 WEEKS ISLAND SOUR

MAXQ

DLI	P	UP$$	DESQ	MINQ Y N	TOTAL PRICE (UP$$xDESQ)
A					$
B					$
C					$
D					$

MLI 008 BAYOU CHOCTAW SOUR

MAXQ

DLI	P	UP$$	DESQ	MINQ Y N	TOTAL PRICE (UP$$xDESQ)
A					$
B					$
C					$
D					$

By signing below the offeror certifies agreement without exception to all terms and conditions applicable to this sale and that the maximum potential contract amount (Instruction 9) is $_____.

_____ SIGNATURE: OFFEROR or AGENT

_____ COMPANY NAME

BILLING CODE 6450-01-C

Exhibit B—Sample Notice of Sale (NS)

1. NS No. DE–NS–96–84P010001 is issued (date) for sale of Strategic Petroleum Reserve (SPR) crude oil. All references to "Provision No." refer to the Standard Sales Provisions (SSPs) published in the Federal Register (date). All provisions are applicable to this sale except that provision No(s). (give number or numbers) are changed to read: (give changes). Additional provisions are hereby added (give new numbers which do not duplicate others in SSPs) which read: (give text).

Note.—Should the SSPs be extensively changed, the Notice of Sale (NS) may include, for information purposes only, a complete text of the SSPs as modified for the sale. Offerors are cautioned, however, that these complete text SSPs have *no* contractual status and that in the event of any inconsistencies, the published SSPs and the NS shall establish the terms and conditions for the sale.

2. Offers and offer guarantees must be received by 1:00 p.m. local time on (date) at addresses for mailed and handcarried offers given in SSPs.

3. Offerors must give names, addresses and telephone numbers, including area codes, for authorized representative of the offeror with whom the Government may conduct any necessary discussions.

4. Direct questions regarding NS to (name of individual), telephone (504) 734–4226. Collect calls will not be accepted.

5. Master Line Item (MLI) numbers given herein refer to those schedules attached as Exhibit A of the SSPs. The quantities for each MLI offered for sale are as follows: MLI 001: _____ bbls; MLI 002 not offered this sale; MLI 003: _____ bbls; MLI 004 :_____ bbls; MLI 005 not offered this sale; MLI 006: not offered this sale; MLI 007: _____ bbls; MLI 008: _____ bbls.

6. Offered delivery line items (DLI) and their maximums, i.e., offered DLIs and the Department of Energy's best estimates of the maximum amount of petroleum that can be moved by each delivery line item transportation system over the delivery period, are as follows (see provision No. B.16 of the SSPs):

7. Minimum quantities which will be awarded for each delivery line item (DLI) are as follows:

8. Delivery line item A, for pipeline delivery, is not offered under MLI 001. Offerors wishing to take delivery of MLI 001 by pipeline should offer to purchase quantities under delivery line items B, C, and D. If successful, purchasers may modify delivery method under Provision No. C.6.

9. Consideration to be paid for alteration of contract delivery modes in accordance with provision No. C.6 is as follows:

10. Applicable quality differentials are plus or minus _____ ¢ per degree API gravity, or part thereof, for sweet crude oil streams, and plus or minus _____ ¢ per one-tenth degree API gravity for sour crude oil streams.

11. Refinery recipients' "Superfund" tax liability is as follows:

BILLING CODE 6450-01-M

EXHIBIT C

OMB Approved No. 9000-0008

SOLICITATION, OFFER AND AWARD	1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 350) ▶	RATING	PAGE OF PAGES

2. CONTRACT NO.	3. SOLICITATION NO.	4. TYPE OF SOLICITATION ☐ SEALED BID (IFB) ☐ NEGOTIATED (RFP)	5. DATE ISSUED	6. REQUISITION/PURCHASE NO.

7. ISSUED BY	CODE	8. ADDRESS OFFER TO *(If other than Item 7)*

NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder".

SOLICITATION

9. Sealed offers in original and _____ copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if handcarried, in the depository located in _____ until _____ *(Hour)* local time _____ *(Date)*

CAUTION – LATE Submissions, Modifications, and Withdrawals: See Section L, Provision No. 52.214-7 or 52.215-10. All offers are subject to all terms and conditions contained in this solicitation.

10. FOR INFORMATION CALL: ▶	A. NAME	B. TELEPHONE NO. *(Include area code)* *(NO COLLECT CALLS)*

11. TABLE OF CONTENTS

(V)	SEC.	DESCRIPTION	PAGE(S)	(V)	SEC.	DESCRIPTION	PAGE(S)
		PART I – THE SCHEDULE				PART II – CONTRACT CLAUSES	
	A	SOLICITATION/CONTRACT FORM			I	CONTRACT CLAUSES	
	B	SUPPLIES OR SERVICES AND PRICES/COSTS				PART III – LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.	
	C	DESCRIPTION/SPECS./WORK STATEMENT			J	LIST OF ATTACHMENTS	
	D	PACKAGING AND MARKING				PART IV – REPRESENTATIONS AND INSTRUCTIONS	
	E	INSPECTION AND ACCEPTANCE			K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS	
	F	DELIVERIES OR PERFORMANCE			L	INSTRS., CONDS., AND NOTICES TO OFFERORS	
	G	CONTRACT ADMINISTRATION DATA			M	EVALUATION FACTORS FOR AWARD	
	H	SPECIAL CONTRACT REQUIREMENTS					

OFFER *(Must be fully completed by offeror)*

NOTE: Item 12 does not apply if the solicitation includes the provisions at 52.214-16, Minimum Bid Acceptance Period.

12. In compliance with the above, the undersigned agrees, if this offer is accepted within _____ calendar days *(60 calendar days unless a different period is inserted by the offeror)* from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.

13. DISCOUNT FOR PROMPT PAYMENT *(See Section I, Clause No. 52-232-8)* ▶	10 CALENDAR DAYS %	20 CALENDAR DAYS %	30 CALENDAR DAYS %	CALENDAR DAYS %

14. ACKNOWLEDGMENT OF AMENDMENTS *(The offeror acknowledges receipt of amendments to the SOLICITATION for offerors and related documents numbered and dated:*	AMENDMENT NO.	DATE	AMENDMENT NO.	DATE

15A. NAME AND ADDRESS OF OFFEROR	CODE	FACILITY	16. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER *(Type or print)*

15B. TELEPHONE NO. *(Include area code)*	15C. ☐ CHECK IF REMITTANCE ADDRESS IS DIFFERENT FROM ABOVE - ENTER SUCH ADDRESS IN SCHEDULE.	17. SIGNATURE	18. OFFER DATE

AWARD *(To be completed by Government)*

19. ACCEPTED AS TO ITEMS NUMBERED	20. AMOUNT	21. ACCOUNTING AND APPROPRIATION

22. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION:

☐ 10 U.S.C. 2304(c)( ) ☐ 41 U.S.C. 253(c)( )

23. SUBMIT INVOICES TO ADDRESS SHOWN IN ▶ *(4 copies unless otherwise specified)* ITEM

24. ADMINISTERED BY *(If other than Item 7)*	CODE	25. PAYMENT WILL BE MADE BY	CODE

26. NAME OF CONTRACTING OFFICER *(Type or print)*	27. UNITED STATES OF AMERICA *(Signature of Contracting Officer)*	28. AWARD DATE

IMPORTANT – Award will be made on this Form, or on Standard Form 26, or by other authorized official written notice.

NSN 7540-01-152-8064
PREVIOUS EDITION NOT USABLE

33-134

STANDARD FORM 33 (REV. 4-85)
Prescribed by GSA
FAR (48 CFR) 53.214(c)

☆ GPO : 1985 O - 491-249 (20232)

Exhibit D

U.S. DEPARTMENT OF ENERGY, STRATEGIC PETROLEUM RESERVE

CRUDE OIL ANALYSIS

Stream SPR Bryan Mound Sweet

Terminals Phillips Terminal, Freeport, TX

ARCO Terminal, Texas City, TX

Crude

Specific Gravity	0.8449	Ni, ppm	5.1(5.3)*	ERVP, psia @ 100° F	5.60
API Gravity	36.0	V, ppm	2.4(3.2)*	Neutralization No.	0.06
Sulfur, Wt. %	0.32	Fe, ppm	4.3(4.1)*	H_2S, ppm (c)*	8.4
Nitrogen, Wt. %	0.122	Org. Cl, ppm (c)*	0.7	Mercaptans, ppm (c)*	0.4
Con. Car. Res., Wt. % (c)*	2.20	O.D. Color	11,450	Viscosity: 77° F	7.93 cSt 51.7 SUS
Pour Point, °F	40	UOP "K"	12.00	100° F	4.89 cSt 42.0 SUS

Fraction		1	2	3	4	5	6	7
Cut Temp.	C_2-C_4	C5-175° F	175°-250° F	250°-375° F	375°-530° F	530°-650° F	650°-1035 °F	Residuum
Vol. - mls	106.2	159.2	291.0	452.7	586.6	455.5	1020.1	416.2
Vol. %	3.0	4.6	8.3	13.0	16.8	13.0	29.2	11.9
Vol. Sum %	3.0	7.6	15.9	28.9	45.7	58.7	87.9	99.8
Wt. - grams	63.7	108.8	214.2	350.9	484.0	389.0	927.4	412.0
Wt. %	2.2	3.7	7.3	11.9	16.4	13.2	31.4	14.0
Specific Gravity	0.6	0.6635	0.7362	0.7752	0.8251	0.8540	0.9091	0.990
API Gravity		75.5	60.7	51.0	40.0	34.2	24.1	11.4
Sulfur, Wt. %		0.003	0.002	0.016	0.08	0.26	0.54	1.02
Mercaptans, ppm		9.9	<1	<1	<1			
H_2S, ppm		<1	10.6	27.1	26.9			
Organic Cl, ppm		2.2	3.8	3.2				
Aniline Point, °F				127.4	145.4	166.4	192.9	
Neutralization No.					0.04	0.09		
Cetane Index					47.09	52.72		
Naphthalenes, vol. %					4.51	8.74		
Smoke point					16.8	14.7		
Nitrogen, Wt. %					0.0004	0.007	0.142	0.668
Viscosity:								
cSt (SUS) 77° F					7.40(50.0)			
100° F					1.85(32.1)	4.93(42.2)		
130° F						3.37(37.3)	25.07(119.9)	
180° F							10.03(59.3)	
210° F								884.6(4126)
250° F								247.3(1156)
Freezing Point, °F					-31.0			
Cloud Point, °F						26	118	
Pour Point, °F						25	100	
Ni, ppm							Not Detectable	37.6
V, ppm							Not Detectable	23.0
Fe, ppm							Not Detectable	28.9
Con. Car. Res., Wt. %							--	15.7

	C_5-175°F	C_5-375°F
Research Octane Number:	70.9	52.6
Motor Octane Number:	67.2	48.6

* (c), calculated from fraction results.

Whole crude lead content: 0.006 ppm.

Data current as of September 19, 1986, but subject to change.

Gas Chromatographic Analysis

SPR BRYAN MOUND SWEET

		Distillate fractions, ASTM D 2892			
		C_5-175° F Vol. %	175-250° F Vol. %	250-375° F Vol. %	375-420° F Vol. %
* Total Paraffins		43.1	23.8	26.0	30.8
Total Iso-paraffins		36.0	25.5	22.6	0.6
Total Aromatics		2.4	5.6	21.7	33.8
Total Naphthenes		18.5	45.1	25.9	2.1
Total Olefins		0.0	0.0	0.0	0.0
Total Unknowns		0.0	0.0	3.7	32.6
Paraffins:	C1	0.0	0.0	0.0	0.0
	C2	0.0	0.0	0.0	0.0
	C3	0.0	0.0	0.0	0.0
	C4	1.4	0.1	0.0	0.0
	C5	18.5	0.4	0.0	0.0
	C6	22.4	4.2	0.0	0.0
	C7	0.8	14.4	0.5	0.0
	C8	0.0	4.8	6.6	0.0
	C9	0.0	0.0	8.9	0.1
	C10	0.0	0.0	7.6	1.6
	C11	0.0	0.0	2.4	12.5
	C12	0.0	0.0	0.1	16.7
Iso-paraffins:	C4	0.0	0.0	0.0	0.0
	C5	8.9	0.2	0.0	0.0
	C6	24.2	2.1	0.0	0.0
	C7	2.9	12.7	0.2	0.0
	C8	0.0	10.5	3.2	0.0
	C9	0.0	0.0	10.6	0.0
	C10	0.0	0.0	8.4	0.4
	C11	0.0	0.0	0.2	0.2
Aromatics:	C6	2.0	0.7	0.0	0.0
	C7	0.4	4.3	0.6	0.1
	C8	0.0	0.7	7.4	0.0
	C9	0.0	0.0	8.4	0.7
	C10	0.0	0.0	4.7	12.7
	C11	0.0	0.0	0.5	16.7
	C12	0.0	0.0	0.0	3.7
Naphthenes:	C5	2.1	0.1	0.0	0.0
	C6	14.3	8.2	0.1	0.0
	C7	2.1	24.7	1.6	0.0
	C8	0.0	12.0	11.5	0.0
	C9	0.0	0.0	7.1	0.1
	C10	0.0	0.0	5.5	1.8
	C11	0.0	0.0	0.1	0.1
	C12	0.0	0.0	0.0	0.0
Olefins:	C4	0.0	0.0	0.0	0.0
	C5	0.0	0.0	0.0	0.0
	C6	0.0	0.0	0.0	0.0
	C7	0.0	0.0	0.0	0.0
	C8	0.0	0.0	0.0	0.0

Debutanization Fraction	
Component	Vol. %
Methane	0.0
Ethane	0.0
Propane	13.8
i-Butane	11.9
n-Butane	39.4
i-Pentane	18.0
n-Pentane	15.1
C_6+	1.8

Whole Crude B-T-X

Component	Vol. %
Benzene	0.150
Toluene	0.375
Ethylbenzene	0.020
Xylenes	0.034

* The gas chromatographic PIANO method used provides for elution and identification of components up to a nominal n-C_{12} (420° F).

U.S. DEPARTMENT OF ENERGY, STRATEGIC PETROLEUM RESERVE

CRUDE OIL ANALYSIS

Stream SPR Bryan Mound Sour

Terminals Phillips Terminal, Freeport, TX
ARCO Terminal, Texas City, TX

Crude

Specific Gravity	0.8683	Ni, ppm	11.3(15.4)*	ERVP, psia @ 100° F	3.40
API Gravity	31.5	V, ppm	50.9(60.6)*	Neutralization No.	0.08
Sulfur, Wt. %	1.60	Fe, ppm	Not Detectable	H_2S, ppm (c)*	0.8
Nitrogen, Wt. %	0.149	Org. Cl, ppm (c)*	1.1	Mercaptans, ppm (c)*	12.1
Con. Car. Res., Wt. % (c)*	4.81	O.D. Color	25,540	Viscosity: 77° F	11.4 cSt 63.7 SUS
Pour Point, °F	0	UOP "K"	11.85	100° F	7.44 cSt 50.2 SUS

Fraction		1	2	3	4	5	6	7
Cut Temp.	C_2-C_4	C5-175° F	175°-250° F	250°-375° F	375°-530° F	530°-650° F	650°-1061 °F	Residuum
Vol. - mls	23.8	133.6	271.6	522.8	634.3	459.2	1160.7	597.4
Vol. %	0.6	3.5	7.0	13.6	16.5	11.9	30.1	15.5
Vol. Sum %	0.6	4.1	11.1	24.7	41.2	53.1	83.2	98.7
Wt. - grams	14.3	90.1	197.0	403.6	518.8	395.1	1074.0	618.9
Wt. %	0.4	2.7	5.9	12.1	15.5	11.8	32.1	18.5
Specific Gravity	0.6	0.6743	0.7254	0.7720	0.8179	0.8605	0.9253	1.036
API Gravity		78.4	63.6	51.8	41.5	32.9	21.4	5.1
Sulfur, Wt. %		0.002	0.005	0.046	0.42	1.14	2.08	3.88
Mercaptans, ppm		24.4	41.3	74.2	<1			
H_2S, ppm		2.1	2.3	5.4	10.9			
Organic Cl, ppm		1.6	4.7	6.2				
Aniline Point, °F				126.7	144.9	160.4	178.9	
Neutralization No.					0.02	0.01		
Cetane Index					49.81	50.63		
Naphthalenes, vol. %					3.95	11.02		
Smoke point					16.6	14.2		
Nitrogen, Wt. %					0.0009	0.017	0.166	0.696
Viscosity:								
cSt (SUS) 77° F					2.26(33.4)			
100° F					1.79 (<32.0)	4.80(41.8)		
130° F						3.20(37.0)	29.30(138.7)	
180° F							11.05(62.9)	
210° F								9002(41,985)
250° F								1737(8120)
Freezing Point, °F					-31.0			
Cloud Point, °F						24	112	
Pour Point, °F						20	95	
Ni, ppm							Not Detectable	83.3
V, ppm							Not Detectable	328
Fe, ppm							Not Detectable	Not Detectable
Con. Car. Res., Wt. %							--	26.0

* (c), calculated from fraction results.

	C_5-175°F	C_5-375°F
Research Octane Number:	64.6	41.8
Motor Octane Number:	60.7	40.5

Whole crude lead content: 0.002 ppm.

Data current as of September 19, 1986, but subject to change.

Gas Chromatographic Analysis

SPR BRYAN MOUND SOUR

		Distillate fractions, ASTM D 2892			
		C_5-175° F Vol. %	175-250° F Vol. %	250-375° F Vol. %	375-420° F Vol. %
* Total Paraffins		45.9	34.3	30.3	33.6
Total Iso-paraffins		39.4	31.6	25.2	0.5
Total Aromatics		2.7	7.9	24.3	36.4
Total Naphthenes		12.0	26.2	16.6	1.6
Total Olefins		0.0	0.0	0.0	0.0
Total Unknowns		0.0	0.0	3.5	27.9
Paraffins:	C1	0.0	0.0	0.0	0.0
	C2	0.0	0.0	0.0	0.0
	C3	0.0	0.0	0.0	0.0
	C4	0.3	0.0	0.0	0.0
	C5	17.2	0.4	0.0	0.0
	C6	26.9	5.8	0.1	0.0
	C7	1.4	19.5	0.9	0.0
	C8	0.0	8.6	7.2	0.0
	C9	0.0	0.0	10.5	0.1
	C10	0.0	0.0	8.8	2.1
	C11	0.0	0.0	2.8	13.7
	C12	0.0	0.0	0.1	17.8
Iso-paraffins:	C4	0.0	0.0	0.0	0.0
	C5	6.7	0.2	0.0	0.0
	C6	27.6	2.6	0.0	0.0
	C7	5.1	15.2	0.4	0.0
	C8	0.0	13.3	3.5	0.0
	C9	0.0	0.4	12.2	0.0
	C10	0.0	0.0	9.0	0.4
	C11	0.0	0.0	0.1	0.1
Aromatics:	C6	1.9	0.8	0.0	0.0
	C7	0.8	5.6	0.9	0.1
	C8	0.0	1.5	7.1	0.0
	C9	0.0	0.0	10.5	1.3
	C10	0.0	0.0	5.0	13.0
	C11	0.0	0.0	0.9	17.5
	C12	0.0	0.0	0.0	4.4
Naphthenes:	C5	2.0	0.1	0.0	0.0
	C6	8.5	4.8	0.0	0.0
	C7	1.5	13.2	1.1	0.0
	C8	0.0	8.1	6.0	0.0
	C9	0.0	0.0	4.8	0.1
	C10	0.0	0.0	4.7	1.5
	C11	0.0	0.0	0.1	0.1
	C12	0.0	0.0	0.0	0.0
Olefins:	C4	0.0	0.0	0.0	0.0
	C5	0.0	0.0	0.0	0.0
	C6	0.0	0.0	0.0	0.0
	C7	0.0	0.0	0.0	0.0
	C8	0.0	0.0	0.0	0.0

Debutanization Fraction	
Component	Vol. %
Methane	0.0
Ethane	0.0
Propane	6.8
i-Butane	7.8
n-Butane	32.7
i-Pentane	22.6
n-Pentane	24.0
C_6+	6.0

Whole Crude B-T-X

Component	Vol. %
Benzene	0.123
Toluene	0.420
Ethylbenzene	0.035
Xylenes	0.071

* The gas chromatographic PIANO method used provides for elution and identification of components up to a nominal n-C_{12} (420° F).

U.S. DEPARTMENT OF ENERGY, STRATEGIC PETROLEUM RESERVE

CRUDE OIL ANALYSIS

Stream SPR Bryan Mound Maya Terminals: Phillips Terminal, Freeport, TX

Crude

Specific Gravity	0.9166	Ni, ppm	58.4(62.4)*	ERVP, psia @ 100° F	5.15
API Gravity	22.9	V, ppm	263 (263)*	Neutralization No.	0.22
Sulfur, Wt. %	3.13	Fe, ppm	2.9 (0.9)*	H_2S, ppm (c)*	1.1
Nitrogen, Wt. %	0.356	Org. Cl, ppm (c)*	0.3	Mercaptans, ppm (c)*	17.7
Con. Car. Res., Wt. % (c)*	11.19	O.D. Color	69.450	Viscosity: 77° F	128.11 cSt 593 SUS
Pour Point, °F	0	UOP "K"	11.75	100° F	61.78 cSt 287 SUS

Fraction		1	2	3	4	5	6	7
Cut Temp.	C_2-C_4	C5-175° F	175°-250° F	250°-375° F	375°-530° F	530°-650° F	650°-1014 °F	Residuum
Vol. - mls	71.0	140.3	220.2	421.6	473.8	404.2	1104.7	1317.2
Vol. %	1.7	3.4	5.3	10.2	11.4	9.7	26.6	31.7
Vol. Sum %	1.7	5.1	10.4	20.6	32.0	41.7	68.3	100.0
Wt. - grams	42.6	94.8	159.9	325.4	390.9	351.4	1034.7	1405.5
Wt. %	1.1	2.5	4.2	8.5	10.3	9.2	27.2	36.9
Specific Gravity	0.6	0.6755	0.7263	0.7719	0.8251	0.8693	0.9366	1.067
API Gravity		78.0	63.3	51.8	40.0	31.3	19.6	1.1
Sulfur, Wt. %		0.010	0.018	0.291	0.95	2.00	2.97	5.52
Mercaptans, ppm		82.0	113.6	127.6	<1			
H_2S, ppm		2.9	2.4	5.3	5.0			
Organic Cl, ppm		1.8	1.9	1.8				
Aniline Point, °F				128.7	141.7	151.9	163.4	
Neutralization No.					0.03	0.06		
Cetane Index					47.09	48.14		
Naphthalenes, vol. %					4.16	10.98		
Smoke point					16.0	13.3		
Nitrogen, Wt. %					0.0016	0.030	0.232	0.786
Viscosity:								
cSt (SUS) 77° F					2.33(33.7)			
100° F					1.86(32.1)	4.92(42.1)		
130° F						3.32(37.1)	33.89(159.3)	
180° F							12.23(67.1)	
210° F								495874(2.31x10^6)
250° F								42772 (199962)
Freezing Point, °F					-31.9			
Cloud Point, °F						24	106	
Pour Point, °F						20	90	
Ni, ppm							Not Detectable	169
V, ppm							Not Detectable	711
Fe, ppm							Not Detectable	2.4
Con. Car. Res., Wt. %							0.45	30.0

* (c), calculated from fraction results.

	C_5-175°F	C_5-375°F
Research Octane Number:	64.4	41.5
Motor Octane Number:	60.7	41.3

Whole crude lead content: 0.008 ppm.

Data current as of September 19, 1986, but subject to change.

Gas Chromatographic Analysis

SPR BRYAN MOUND MAYA

		Distillate fractions, ASTM D 2892			
		C_5-175° F Vol. %	175-250° F Vol. %	250-375° F Vol. %	375-420° F Vol. %
* Total Paraffins		48.0	33.5	30.8	34.2
Total Iso-paraffins		37.2	31.9	22.1	0.5
Total Aromatics		3.1	7.6	25.0	36.4
Total Naphthenes		11.7	27.0	17.0	1.3
Total Olefins		0.0	0.0	0.0	0.0
Total Unknowns		0.0	0.0	5.1	27.6
Paraffins:	C1	0.0	0.0	0.0	0.0
	C2	0.0	0.0	0.0	0.0
	C3	0.1	0.0	0.0	0.0
	C4	1.1	0.0	0.0	0.0
	C5	20.2	0.7	0.0	0.0
	C6	25.4	4.5	0.1	0.0
	C7	1.3	19.0	0.9	0.0
	C8	0.0	9.1	6.2	0.0
	C9	0.0	0.1	10.2	0.1
	C10	0.0	0.0	6.7	1.5
	C11	0.0	0.0	4.5	11.1
	C12	0.0	0.0	0.2	21.4
Iso-paraffins:	C4	0.2	0.0	0.0	0.0
	C5	8.5	0.3	0.0	0.0
	C6	24.0	2.5	0.0	0.0
	C7	4.5	14.2	0.4	0.0
	C8	0.0	13.5	3.0	0.0
	C9	0.0	1.4	9.9	0.0
	C10	0.0	0.0	8.8	0.5
	C11	0.0	0.0	0.0	0.0
Aromatics:	C6	2.0	0.8	0.0	0.0
	C7	1.1	5.2	0.9	0.1
	C8	0.0	1.6	7.8	0.1
	C9	0.0	0.0	9.3	1.3
	C10	0.0	0.0	5.7	10.9
	C11	0.0	0.0	1.3	18.9
	C12	0.0	0.0	0.0	5.2
Naphthenes:	C5	2.0	0.2	0.0	0.0
	C6	8.4	4.3	0.1	0.0
	C7	1.4	13.1	1.1	0.0
	C8	0.0	9.4	6.7	0.0
	C9	0.0	0.0	4.3	0.1
	C10	0.0	0.0	4.8	1.1
	C11	0.0	0.0	0.1	0.0
	C12	0.0	0.0	0.0	0.0
Olefins:	C4	0.0	0.0	0.0	0.0
	C5	0.0	0.0	0.0	0.0
	C6	0.0	0.0	0.0	0.0
	C7	0.0	0.0	0.0	0.0
	C8	0.0	0.0	0.0	0.0

Debutanization Fraction	
Component	Vol. %
Methane	0.0
Ethane	0.1
Propane	13.0
i-Butane	8.9
n-Butane	40.8
i-Pentane	15.0
n-Pentane	16.6
C_6+	5.6

Whole Crude B-T-X

Component	Vol. %
Benzene	0.110
Toluene	0.313
Ethylbenzene	0.029
Xylenes	0.057

* The gas chromatographic PIANO method used provides for elution and identification of components up to a nominal n-C_{12} (420° F).

U.S. DEPARTMENT OF ENERGY, STRATEGIC PETROLEUM RESERVE

CRUDE OIL ANALYSIS

Stream SPR West Hackberry Sweet Terminal Sun Marine Terminal, Nederland, TX

Crude

Specific Gravity	0.8343	Ni, ppm	1.6(1.8)*	ERVP, psia @ 100° F	4.15
API Gravity	38.1	V, ppm	2.7(3.4)*	Neutralization No.	0.14
Sulfur, Wt. %	0.28	Fe, ppm	2.6(3.4)*	H_2S, ppm (c)*	0.5
Nitrogen, Wt. %	0.090	Org. Cl, ppm (c)*	0.9	Mercaptans, ppm (c)*	0.7
Con. Car. Res., Wt. % (c)*	1.81	O.D. Color	8,240	Viscosity: 77° F	4.88 cSt 41.9 SUS
Pour Point, °F	25	UOP "K"	12.00	100° F	3.60 cSt 37.9 SUS

Fraction / Cut Temp.	C_3-C_4	1 C5-175° F	2 175°-250° F	3 250°-375° F	4 375°-530° F	5 530°-650° F	6 650°-1050° F	7 Residuum
Vol. - mls	191.8	253.7	379.5	546.8	664.2	499.5	1131.5	382.1
Vol. %	4.7	6.3	9.4	13.5	16.4	12.3	27.9	9.4
Vol. Sum %	4.7	11.0	20.4	33.9	50.3	62.6	90.5	99.9
Wt. - grams	115.1	173.0	280.8	424.9	548.4	427.4	1028.5	378.7
Wt. %	3.4	5.1	8.3	12.6	16.2	12.6	30.4	11.2
Specific Gravity	0.6	0.6819	0.7400	0.7770	0.8256	0.8556	0.9090	0.991
API Gravity		76.0	59.7	50.6	39.9	33.9	24.2	11.3
Sulfur, Wt. %		0.020	0.001	0.004	0.04	0.23	0.53	1.09
Mercaptans, ppm		<1	<1	<1	4.5			
H_2S, ppm		<1	2.4	2.4	<1			
Organic Cl, ppm		1.5	4.0	4.1				
Aniline Point, °F				122.9	142.9	164.5	192.4	
Neutralization No.					0.05	0.10		
Cetane Index					46.91	52.23		
Naphthalenes, vol. %					4.96	9.52		
Smoke point					16.8	15.8		
Nitrogen, Wt. %					0.0005	0.007	0.130	0.604
Viscosity:								
cSt (SUS) 77° F					2.33(33.6)			
100° F					1.85(32.1)	4.95(42.2)		
130° F						3.37(37.3)	25.96(123.7)	
180° F							10.38(60.5)	
210° F								701.9(3274)
250° F								204.96(958)
Freezing Point, °F					-32.8			
Cloud Point, °F						22	120	
Pour Point, °F						20	100	
Ni, ppm							Not Detectable	16.2
V, ppm							Not Detectable	30.3
Fe, ppm							Not Detectable	30.4
Con. Car. Res., Wt. %							--	16.2

	C_5-175°F	C_5-375°F
Research Octane Number:	68.5	53.3
Motor Octane Number:	63.9	30.8

* (c), calculated from fraction results.

Whole crude lead content: 0.004 ppm.

Data current as of September 19, 1986, but subject to change.

Gas Chromatographic Analysis

SPR WEST HACKBERRY SWEET

		Distillate fractions, ASTM D 2892			
		C_5-175° F Vol. %	175-250° F Vol. %	250-375° F Vol. %	375-420° F Vol. %
* Total Paraffins		43.9	24.9	26.1	30.1
Total Iso-paraffins		35.1	24.4	20.7	0.7
Total Aromatics		3.6	8.9	24.2	35.1
Total Naphthenes		17.5	41.8	24.4	2.3
Total Olefins		0.0	0.0	0.0	0.0
Total Unknowns		0.0	0.0	4.6	31.7
Paraffins:	C1	0.0	0.0	0.0	0.0
	C2	0.0	0.0	0.0	0.0
	C3	0.0	0.0	0.0	0.0
	C4	1.7	0.0	0.0	0.0
	C5	20.3	0.3	0.0	0.0
	C6	21.3	4.1	0.0	0.0
	C7	0.6	14.9	0.5	0.0
	C8	0.0	5.6	6.7	0.0
	C9	0.0	0.0	8.9	0.1
	C10	0.0	0.0	7.3	2.2
	C11	0.0	0.0	2.5	11.7
	C12	0.0	0.0	0.1	16.1
Iso-paraffins:	C4	0.2	0.0	0.0	0.0
	C5	9.5	0.1	0.0	0.0
	C6	22.5	1.7	0.0	0.0
	C7	2.9	12.3	0.1	0.0
	C8	0.0	9.4	2.8	0.0
	C9	0.0	0.8	9.1	0.0
	C10	0.0	0.0	8.5	0.5
	C11	0.0	0.0	0.1	0.2
Aromatics:	C6	3.1	1.2	0.0	0.0
	C7	0.5	6.6	1.0	0.1
	C8	0.0	1.0	9.0	0.0
	C9	0.0	0.0	8.9	1.3
	C10	0.0	0.0	4.6	13.9
	C11	0.0	0.0	0.7	16.4
	C12	0.0	0.0	0.0	3.4
Naphthenes:	C5	2.9	0.1	0.0	0.0
	C6	13.1	8.8	0.1	0.0
	C7	1.5	22.8	1.6	0.0
	C8	0.0	10.0	10.4	0.0
	C9	0.0	0.0	7.4	0.2
	C10	0.0	0.0	4.9	2.1
	C11	0.0	0.0	0.1	0.1
	C12	0.0	0.0	0.0	0.0
Olefins:	C4	0.0	0.0	0.0	0.0
	C5	0.0	0.0	0.0	0.0
	C6	0.0	0.0	0.0	0.0
	C7	0.0	0.0	0.0	0.0
	C8	0.0	0.0	0.0	0.0

Debutanization Fraction	
Component	Vol. %
Methane	0.0
Ethane	0.0
Propane	9.7
i-Butane	7.8
n-Butane	35.4
i-Pentane	17.4
n-Pentane	21.5
C_6+	8.2

Whole Crude B-T-X

Component	Vol. %
Benzene	0.308
Toluene	0.652
Ethylbenzene	0.025
Xylenes	0.051

* The gas chromatographic PIANO method used provides for elution and identification of components up to a nominal n-C_{12} (420° F).

U.S. DEPARTMENT OF ENERGY, STRATEGIC PETROLEUM RESERVE

CRUDE OIL ANALYSIS

Stream SPR West Hackberry Sour Terminal Sun Marine Terminal, Nederland, TX

Crude

Specific Gravity	0.8599	Ni, ppm	6.5(6.6)*	ERVP, psia @ 100° F	4.10
API Gravity	33.1	V, ppm	25.9(24.7)*	Neutralization No.	0.12
Sulfur, Wt. %	1.40	Fe, ppm	5.8(6.1)*	H_2S, ppm (c)*	1.2
Nitrogen, Wt. %	0.140	Org. Cl, ppm (c)*	0.4	Mercaptans, ppm (c)*	23.7
Con. Car. Res., Wt. % (c)*	3.75	O.D. Color	18,300	Viscosity: 77° F	8.88 cSt 54.9 SUS
Pour Point, °F	<-5	UOP "K"	11.90	100° F	6.27 cSt 46.4 SUS

Fraction / Cut Temp.	C_2-C_4	1 C5-175° F	2 175°-250° F	3 250°-375° F	4 375°-530° F	5 530°-650° F	6 650°-1050° F	7 Residuum
Vol. - mls	128.5	192.7	324.5	591.7	709.0	523.3	1265.3	635.9
Vol. %	2.9	4.4	7.4	13.6	16.3	12.0	29.0	14.6
Vol. Sum %	2.9	7.3	14.7	28.3	44.6	56.6	85.6	100.2
Wt. - grams	77.1	130.4	235.2	455.4	579.0	449.6	1166.5	646.7
Wt. %	2.1	3.5	6.3	12.1	15.4	12.0	31.1	17.2
Specific Gravity	0.6	0.6766	0.7249	0.7696	0.8167	0.8591	0.9219	1.017
API Gravity		77.6	63.7	52.4	41.8	33.2	22.0	7.6
Sulfur, Wt. %		0.020	0.010	0.040	0.32	1.02	1.96	3.48
Mercaptans, ppm		<1	43.1	120.4	41.4			
H_2S, ppm		16.8	3.7	3.2	<1			
Organic Cl, ppm		1.9	1.6	1.7				
Aniline Point, °F				128.0	145.8	162.5	180.5	
Neutralization No.					0.04	0.07		
Cetane Index					50.36	51.11		
Naphthalenes, vol. %					3.97	11.49		
Smoke point					20.1	15.3		
Nitrogen, Wt. %					0.0005	0.013	0.146	0.558
Viscosity:								
cSt (SUS) 77° F					2.24(33.4)			
100° F					1.78 (<32.0)	4.87(42.0)		
130° F						3.32(37.1)	27.65(131.3)	
180° F							10.82(62.0)	
210° F								2210(10309)
250° F								529.6(2476)
Freezing Point, °F					-31.9			
Cloud Point, °F						22	104	
Pour Point, °F						20	90	
Ni, ppm							Not Detectable	38.2
V, ppm							Not Detectable	143
Fe, ppm							Not Detectable	35.2
Con. Car. Res., Wt. %							--	21.8

* (c), calculated from fraction results.

	C_5-175°F	C_5-375°F
Research Octane Number:	62.9	43.6
Motor Octane Number:	59.6	40.9

Whole crude lead content: 0.025 ppm.

Data current as of September 19, 1986, but subject to change.

Gas Chromatographic Analysis

SPR WEST HACKBERRY SOUR

		Distillate fractions, ASTM D 2892			
		C_5-175° F Vol. %	175-250° F Vol. %	250-375° F Vol. %	375-420° F Vol. %
* Total Paraffins		46.7	34.0	30.2	37.2
Total Iso-paraffins		39.1	32.5	23.2	0.5
Total Aromatics		2.9	7.5	25.3	36.2
Total Naphthenes		11.3	25.9	16.8	1.7
Total Olefins		0.0	0.0	0.0	0.0
Total Unknowns		0.0	0.1	4.4	24.3
Paraffins:	C1	0.0	0.0	0.0	0.0
	C2	0.0	0.0	0.0	0.0
	C3	0.0	0.0	0.0	0.0
	C4	0.5	0.0	0.0	0.0
	C5	17.2	0.3	0.0	0.0
	C6	28.0	5.4	0.0	0.0
	C7	0.9	20.5	0.7	0.0
	C8	0.0	7.8	7.4	0.0
	C9	0.0	0.0	10.4	0.1
	C10	0.0	0.0	8.4	2.6
	C11	0.0	0.0	3.2	14.1
	C12	0.0	0.0	0.1	20.3
Iso-paraffins:	C4	0.0	0.0	0.0	0.0
	C5	6.4	0.1	0.0	0.0
	C6	28.3	2.4	0.0	0.0
	C7	4.3	16.1	0.2	0.0
	C8	0.0	13.2	3.5	0.0
	C9	0.0	0.8	10.7	0.0
	C10	0.0	0.0	8.8	0.5
	C11	0.0	0.0	0.1	0.0
Aromatics:	C6	2.0	0.8	0.0	0.0
	C7	0.9	5.6	0.8	0.1
	C8	0.0	1.1	8.3	0.0
	C9	0.0	0.0	10.0	1.6
	C10	0.0	0.0	5.3	12.5
	C11	0.0	0.0	0.9	17.8
	C12	0.0	0.0	0.0	4.2
Naphthenes:	C5	2.0	0.1	0.0	0.0
	C6	8.3	4.7	0.1	0.0
	C7	1.1	13.2	0.8	0.0
	C8	0.0	7.9	6.4	0.0
	C9	0.0	0.0	4.7	0.1
	C10	0.0	0.0	4.8	1.6
	C11	0.0	0.0	0.0	0.0
	C12	0.0	0.0	0.0	0.0
Olefins:	C4	0.0	0.0	0.0	0.0
	C5	0.0	0.0	0.0	0.0
	C6	0.0	0.0	0.0	0.0
	C7	0.0	0.0	0.0	0.0
	C8	0.0	0.0	0.0	0.0

Debutanization Fraction	
Component	Vol. %
Methane	0.0
Ethane	0.2
Propane	9.0
i-Butane	7.6
n-Butane	34.6
i-Pentane	20.6
n-Pentane	24.6
C_6+	3.4

Whole Crude B-T-X

Component	Vol. %
Benzene	0.147
Toluene	0.454
Ethylbenzene	0.034
Xylenes	0.051

* The gas chromatographic PIANO method used provides for elution and identification of components up to a nominal n-C_{12} (420° F).

U.S. DEPARTMENT OF ENERGY, STRATEGIC PETROLEUM RESERVE

CRUDE OIL ANALYSIS

Stream SPR Weeks Island Sour

Terminals DOE St. James Terminal, St. James, LA
LOCAP Terminal, St. James, LA

Crude

Specific Gravity	0.8821	Ni, ppm	14.0(15.8)*	ERVP, psia @ 100° F	4.85
API Gravity	28.9	V, ppm	39.2(42.5)*	Neutralization No.	0.19
Sulfur, Wt. %	1.32	Fe, ppm	0.7 (1.5)*	H_2S, ppm (c)*	0.3
Nitrogen, Wt. %	0.216	Org. Cl, ppm (c)*	0.3	Mercaptans, ppm (c)*	6.3
Con. Car. Res., Wt. % (c)*	4.97	O.D. Color	25,150	Viscosity: 77° F	18.02 cSt 89.5 SUS
Pour Point, °F	15	UOP "K"	11.85	100° F	11.43 cSt 63.9 SUS

Fraction		1	2	3	4	5	6	7
Cut Temp.	C_2-C_4	C5-175° F	175°-250° F	250°-375° F	375°-530° F	530°-650° F	650°-1029°F	Residuum
Vol. - mls	117.7	132.0	252.0	455.6	642.3	526.7	1330.0	835.3
Vol. %	2.7	3.1	5.9	10.6	15.0	12.3	31.0	19.5
Vol. Sum %	2.7	5.8	11.7	22.3	37.3	49.6	80.6	100.1
Wt. - grams	70.6	91.3	185.7	354.3	533.0	458.2	1233.7	855.3
Wt. %	1.9	2.4	4.9	9.3	14.1	12.1	32.6	22.6
Specific Gravity	0.6	0.6918	0.7370	0.7777	0.8298	0.8699	0.9276	1.024
API Gravity		73.0	60.5	50.4	39.0	31.2	21.0	6.7
Sulfur, Wt. %		0.054	0.004	0.043	0.29	0.85	1.58	3.00
Mercaptans, ppm		10.2	17.4	41.8	9.0			
H_2S, ppm		<1	2.5	2.3	<1			
Organic Cl, ppm		2.8	2.1	1.7				
Aniline Point, °F				119.6	137.4	152.9	173.3	
Neutralization No.					0.06	0.07		
Cetane Index					45.31	47.98		
Naphthalenes, vol. %					4.75	11.77		
Smoke point					15.5	12.7		
Nitrogen, Wt. %					0.0006	0.013	0.173	0.692
Viscosity:								
cSt (SUS) 77° F					2.31(33.7)			
100° F					1.85(32.1)	5.17(42.9)		
130° F						3.48(37.6)	30.96(146.1)	
180° F							11.58(64.8)	
210° F								4201(19592)
250° F								935.8(4375)
Freezing Point, °F					-33.7			
Cloud Point, °F						20	104	
Pour Point, °F						20	90	
Ni, ppm							Not Detectable	69.8
V, ppm							Not Detectable	188
Fe, ppm							Not Detectable	6.5
Con. Car. Res., Wt. %							0.34	21.5

* (c), calculated from fraction results.

	C_5-175°F	C_5-375°F
Research Octane Number:	65.8	50.0
Motor Octane Number:	62.4	47.8

Whole crude lead content: 0.014 ppm.

Data current as of September 19, 1986, but subject to change.

Gas Chromatographic Analysis

SPR WEEKS ISLAND SOUR

		Distillate fractions, ASTM D 2892			
		C_5-175° F Vol. %	175-250° F Vol. %	250-375° F Vol. %	375-420° F Vol. %
* Total Paraffins		41.0	27.7	26.5	29.7
Total Iso-paraffins		36.6	27.5	21.7	0.6
Total Aromatics		4.4	10.0	27.3	36.5
Total Naphthenes		18.0	34.7	20.9	1.7
Total Olefins		0.0	0.0	0.0	0.0
Total Unknowns		0.0	0.0	3.5	31.5
Paraffins:	C1	0.0	0.0	0.0	0.0
	C2	0.0	0.0	0.0	0.0
	C3	0.0	0.0	0.0	0.0
	C4	0.2	0.0	0.0	0.0
	C5	14.4	0.3	0.0	0.0
	C6	25.4	4.7	0.0	0.0
	C7	1.1	16.3	0.7	0.0
	C8	0.0	6.4	6.5	0.0
	C9	0.0	0.0	9.0	0.1
	C10	0.0	0.0	7.8	1.7
	C11	0.0	0.0	2.4	12.2
	C12	0.0	0.0	0.1	15.7
Iso-paraffins:	C4	0.0	0.0	0.0	0.0
	C5	5.0	0.1	0.0	0.0
	C6	26.9	2.0	0.0	0.0
	C7	4.6	13.3	0.2	0.0
	C8	0.0	11.2	3.1	0.0
	C9	0.0	0.9	10.0	0.0
	C10	0.0	0.0	8.3	0.4
	C11	0.0	0.0	0.1	0.2
Aromatics:	C6	3.7	1.4	0.0	0.0
	C7	0.7	7.4	1.2	0.1
	C8	0.0	1.2	9.8	0.1
	C9	0.0	0.0	10.1	1.5
	C10	0.0	0.0	5.5	13.0
	C11	0.0	0.0	0.6	17.7
	C12	0.0	0.0	0.0	4.3
Naphthenes:	C5	2.9	0.1	0.0	0.0
	C6	13.1	7.3	0.1	0.0
	C7	2.0	18.8	1.5	0.0
	C8	0.0	8.5	9.2	0.0
	C9	0.0	0.0	5.7	0.2
	C10	0.0	0.0	4.2	1.5
	C11	0.0	0.0	0.1	0.1
	C12	0.0	0.0	0.0	0.0
Olefins:	C4	0.0	0.0	0.0	0.0
	C5	0.0	0.0	0.0	0.0
	C6	0.0	0.0	0.0	0.0
	C7	0.0	0.0	0.0	0.0
	C8	0.0	0.0	0.0	0.0

Debutanization Fraction	
Component	Vol. %
Methane	0.0
Ethane	0.2
Propane	13.2
i-Butane	8.0
n-Butane	32.4
i-Pentane	17.9
n-Pentane	21.6
C_6+	6.6

Whole Crude B-T-X

Component	Vol. %
Benzene	0.197
Toluene	0.458
Ethylbenzene	0.025
Xylenes	0.048

* The gas chromatographic PIANO method used provides for elution and identification of components up to a nominal n-C_{12} (420° F).

U.S. DEPARTMENT OF ENERGY, STRATEGIC PETROLEUM RESERVE

CRUDE OIL ANALYSIS

Stream SPR Bayou Choctaw Sweet

Terminals DOE St. James Terminal, St. James, LA

LOCAP Terminal, St. James, LA

Crude

Specific Gravity	0.8424	Ni, ppm	4.4(4.4)*	ERVP, psia @ 100° F	8.10
API Gravity	36.5	V, ppm	7.0(7.4)*	Neutralization No.	0.12
Sulfur, Wt. %	0.40	Fe, ppm	2.1(3.3)*	H_2S, ppm (c)*	2.2
Nitrogen, Wt. %	0.127	Org. Cl, ppm (c)*	0.4	Mercaptans, ppm (c)*	3.8
Con. Car. Res., Wt. % (c)*	2.53	O.D. Color	14,000	Viscosity: 77° F	6.86 cSt 48.2 SUS
Pour Point, °F	30	UOP "K"	12.05	100° F	4.90 cSt 42.1 SUS

Fraction		1	2	3	4	5	6	7
Cut Temp.	C_2-C_4	C5-175° F	175°-250° F	250°-375° F	375°-530° F	530°-650° F	650°-1051 °F	Residuum
Vol. - mls	259.0	236.7	403.7	600.9	755.8	565.4	1456.9	570.0
Vol. %	5.3	4.9	8.3	12.4	15.6	11.7	30.1	11.8
Vol. Sum %	5.3	10.2	18.5	30.9	46.5	58.2	88.3	100.1
Wt. - grams	155.4	161.6	298.0	466.2	622.4	482.2	1322.0	568.9
Wt. %	3.8	4.0	7.3	11.4	15.3	11.8	32.4	13.9
Specific Gravity	0.6	0.6826	0.7382	0.7759	0.8235	0.8528	0.9074	0.998
API Gravity		75.8	60.2	50.9	40.3	34.4	24.4	10.3
Sulfur, Wt. %		0.004	0.002	0.011	0.06	0.26	0.54	1.26
Mercaptans, ppm		8.0	<1	<1	23.0			
H_2S, ppm		<1	6.3	15.4	<1			
Organic Cl, ppm		2.9	1.8	1.3				
Aniline Point, °F				126.0	144.8	167.3	195.4	
Neutralization No.					0.04	0.08		
Cetane Index					47.62	53.05		
Naphthalenes, vol. %					4.40	9.12		
Smoke point					18.6	16.6		
Nitrogen, Wt. %					0.0003	0.006	0.136	0.630
Viscosity:								
cSt (SUS) 77° F					2.33(33.7)			
100° F					1.85(32.1)	4.89(42.0)		
130° F						3.33(37.1)	25.93(123.6)	
180° F							10.42(60.6)	
210° F								1227.9(5727)
250° F								326.4 (1526)
Freezing Point, °F					-31.9			
Cloud Point, °F						28	114	
Pour Point, °F						25	100	
Ni, ppm							Not Detectable	31.9
V, ppm							Not Detectable	53.3
Fe, ppm							Not Detectable	23.6
Con. Car. Res., Wt. %							--	18.2

* (c), calculated from fraction results.

	C_5-175°F	C_5-375°F
Research Octane Number:	68.4	51.7
Motor Octane Number:	64.1	48.2

Whole crude lead content: 0.006 ppm.

Data current as of September 19, 1986, but subject to change.

Gas Chromatographic Analysis

SPR BAYOU CHOCTAW SWEET

		Distillate fractions, ASTM D 2892			
		C_5-175° F Vol. %	175-250° F Vol. %	250-375° F Vol. %	375-420° F Vol. %
* Total Paraffins		41.6	25.4	27.0	30.9
Total Iso-paraffins		36.4	24.7	21.6	0.9
Total Aromatics		3.1	7.7	23.2	34.3
Total Naphthenes		18.9	42.0	24.2	2.6
Total Olefins		0.0	0.0	0.0	0.0
Total Unknowns		0.0	0.1	4.1	31.4
Paraffins:	C1	0.0	0.0	0.0	0.0
	C2	0.0	0.0	0.0	0.0
	C3	0.0	0.0	0.0	0.0
	C4	1.2	0.0	0.0	0.0
	C5	17.3	0.3	0.0	0.0
	C6	22.4	4.1	0.0	0.0
	C7	0.7	14.6	0.5	0.0
	C8	0.0	6.4	6.2	0.0
	C9	0.0	0.0	9.1	0.1
	C10	0.0	0.0	7.8	2.4
	C11	0.0	0.0	3.2	11.5
	C12	0.0	0.0	0.1	16.8
Iso-paraffins:	C4	0.1	0.0	0.0	0.0
	C5	8.1	0.1	0.0	0.0
	C6	24.5	2.0	0.0	0.0
	C7	3.6	12.2	0.2	0.0
	C8	0.0	9.4	2.7	0.0
	C9	0.0	0.9	10.1	0.1
	C10	0.0	0.0	8.5	0.6
	C11	0.0	0.0	0.1	0.2
Aromatics:	C6	2.6	0.9	0.0	0.0
	C7	0.6	5.6	0.8	0.1
	C8	0.0	1.2	7.8	0.0
	C9	0.0	0.0	8.7	1.4
	C10	0.0	0.0	4.9	13.2
	C11	0.0	0.0	0.9	16.2
	C12	0.0	0.0	0.0	3.4
Naphthenes:	C5	2.7	0.2	0.0	0.0
	C6	14.2	8.3	0.1	0.0
	C7	2.0	23.0	1.6	0.0
	C8	0.0	10.5	10.3	0.0
	C9	0.0	0.1	6.7	0.2
	C10	0.0	0.0	5.3	2.3
	C11	0.0	0.0	0.1	0.1
	C12	0.0	0.0	0.0	0.0
Olefins:	C4	0.0	0.0	0.0	0.0
	C5	0.0	0.0	0.0	0.0
	C6	0.0	0.0	0.0	0.0
	C7	0.0	0.0	0.0	0.0
	C8	0.0	0.0	0.0	0.0

Debutanization Fraction	
Component	Vol. %
Methane	0.0
Ethane	0.0
Propane	11.6
i-Butane	8.8
n-Butane	36.5
i-Pentane	18.1
n-Pentane	20.3
C_6+	4.6

Whole Crude B-T-X

Component	Vol. %
Benzene	0.202
Toluene	0.494
Ethylbenzene	0.033
Xylenes	0.064

* The gas chromatographic PIANO method used provides for elution and identification of components up to a nominal n-C_{12} (420° F).

U.S. DEPARTMENT OF ENERGY, STRATEGIC PETROLEUM RESERVE

CRUDE OIL ANALYSIS

Stream SPR Bayou Choctaw Sour

Terminals DOE St. James Terminal, St. James, LA

LOCAP Terminal, St. James, LA

Crude

Specific Gravity	0.8573	Ni, ppm	8.0(7.5)*	ERVP, psia @ 100° F	5.80
API Gravity	33.6	V, ppm	27.7(27.6)*	Neutralization No.	0.15
Sulfur, Wt. %	1.41	Fe, ppm	Not Detectable (1.5)*	H_2S, ppm (c)*	5.1
Nitrogen, Wt. %	0.144	Org. Cl, ppm (c)*	0.4	Mercaptans, ppm (c)*	4.2
Con. Car. Res., Wt. % (c)*	3.64	O.D. Color	15,900	Viscosity: 77° F	8.38 cSt 53.2 SUS
Pour Point, °F	5	UOP "K"	11.90	100° F	5.88 cSt 45.2 SUS

Fraction		1	2	3	4	5	6	7
Cut Temp.	C_2-C_4	C5-175° F	175°-250° F	250°-375° F	375°-530° F	530°-650° F	650°-1055° F	Residuum
Vol. - mls	180.5	184.6	329.3	585.5	731.4	535.9	1311.8	611.0
Vol. %	4.0	4.1	7.4	13.1	16.4	12.0	29.4	13.7
Vol. Sum %	4.0	8.1	15.5	28.6	45.0	57.0	86.4	100.1
Wt. - grams	108.3	124.8	238.9	451.5	598.6	461.0	1213.4	626.9
Wt. %	2.8	3.3	6.2	11.8	15.6	12.0	31.7	16.4
Specific Gravity	0.6	0.6761	0.7255	0.7712	0.8184	0.8603	0.9250	1.026
API Gravity		77.8	63.5	52.0	41.4	33.0	21.5	8.2
Sulfur, Wt. %		0.010	0.010	0.039	0.32	1.01	2.10	3.57
Mercaptans, ppm		<1	50.3	<1	7.1			
H_2S, ppm		31.3	3.8	32.4	<1			
Organic Cl, ppm		1.7	1.7	2.1				
Aniline Point, °F				125.8	144.3	160.5	179.4	
Neutralization No.					0.04	0.07		
Cetane Index					49.62	50.79		
Naphthalenes, vol. %					4.06	11.37		
Smoke point					19.1	14.0		
Nitrogen, Wt. %					0.0006	0.013	0.154	0.582
Viscosity:								
cSt (SUS) 77° F					2.25(33.5)			
100° F					1.79 (<32.0)	4.85(41.9)		
130° F						3.32(37.1)	29.45(139.4)	
180° F							11.30(63.7)	
210° F								2864(13359)
250° F								665.9(3113)
Freezing Point, °F					-31.9			
Cloud Point, °F						22	106	
Pour Point, °F						20	90	
Ni, ppm							Not Detectable	45.6
V, ppm							Not Detectable	168
Fe, ppm							Not Detectable	8.9
Con. Car. Res., Wt. %							--	22.2

* (c), calculated from fraction results.

	C_5-175°F	C_5-375°F
Research Octane Number:	63.5	44.6
Motor Octane Number:	59.4	42.5

Whole crude lead content: 0.022 ppm.

Data current as of September 19, 1986, but subject to change.

Gas Chromatographic Analysis

SPR BAYOU CHOCTAW SOUR

		Distillate fractions, ASTM D 2892			
		C_5-175° F Vol. %	175-250° F Vol. %	250-375° F Vol. %	375-420° F Vol. %
* Total Paraffins		45.0	33.4	29.5	36.1
Total Iso-paraffins		40.3	33.5	23.1	0.6
Total Aromatics		2.5	7.6	26.6	36.6
Total Naphthenes		12.2	25.5	16.3	1.9
Total Olefins		0.0	0.0	0.0	0.0
Total Unknowns		0.0	0.0	4.5	24.8
Paraffins:	C1	0.0	0.0	0.0	0.0
	C2	0.0	0.0	0.0	0.0
	C3	0.0	0.0	0.0	0.0
	C4	0.4	0.0	0.0	0.0
	C5	15.0	0.4	0.0	0.0
	C6	28.6	5.6	0.0	0.0
	C7	1.0	19.4	0.7	0.0
	C8	0.0	7.9	6.9	0.0
	C9	0.0	0.0	10.2	0.2
	C10	0.0	0.0	8.5	2.6
	C11	0.0	0.0	3.1	14.1
	C12	0.0	0.0	0.1	19.2
Iso-paraffins:	C4	0.0	0.0	0.0	0.0
	C5	5.7	0.1	0.0	0.0
	C6	29.8	2.7	0.0	0.0
	C7	4.8	16.0	0.3	0.0
	C8	0.0	13.7	3.4	0.0
	C9	0.0	1.1	10.9	0.0
	C10	0.0	0.0	8.4	0.6
	C11	0.0	0.0	0.1	0.0
Aromatics:	C6	2.0	0.7	0.0	0.0
	C7	0.5	5.5	0.9	0.1
	C8	0.0	1.4	8.6	0.1
	C9	0.0	0.0	10.5	1.8
	C10	0.0	0.0	5.6	12.8
	C11	0.0	0.0	1.0	17.8
	C12	0.0	0.0	0.0	4.1
Naphthenes:	C5	2.0	0.1	0.0	0.0
	C6	9.0	4.8	0.1	0.0
	C7	1.2	13.4	1.0	0.0
	C8	0.0	7.1	6.0	0.0
	C9	0.0	0.0	4.3	0.1
	C10	0.0	0.0	4.9	1.7
	C11	0.0	0.0	0.0	0.0
	C12	0.0	0.0	0.0	0.0
Olefins:	C4	0.0	0.0	0.0	0.0
	C5	0.0	0.0	0.0	0.0
	C6	0.0	0.0	0.0	0.0
	C7	0.0	0.0	0.0	0.0
	C8	0.0	0.0	0.0	0.0

Debutanization Fraction	
Component	Vol. %
Methane	0.0
Ethane	0.1
Propane	10.8
i-Butane	7.7
n-Butane	31.5
i-Pentane	19.8
n-Pentane	24.2
C_6+	5.9

Whole Crude B-T-X

Component	Vol. %
Benzene	0.134
Toluene	0.428
Ethylbenzene	0.037
Xylenes	0.064

* The gas chromatographic PIANO method used provides for elution and identification of components up to a nominal n-C_{12} (420° F).

Exhibit E—SPR Delivery Point Data

Phillips Terminal (Formerly Seaway Terminal)

(Data as of December 31, 1986)

Location: Brazoria County, Texas (three miles southwest of Freeport, Texas on the Old Brazos River, four miles from the sea buoy)
Crude Oil Streams: Bryan Mound Sweet, Bryan Mound Sour, and Bryan Mound Maya
Delivery Points: Phillips Terminal marine dock facility number 2
Marine Dock Facilities and Vessel Restrictions:
Tankship Docks: 3 Docks: Nos. 1, 2 and 3
Maximum Length Overall (LOA): 750 feet during daylight and 615 feet during hours of darkness
Maximum Beam: 107 feet
Maximum Draft: 37.5 feet; subject to change due to the weather and silting conditions
Maximum Air Draft: None
Maximum Deadweight Tons (DWT): Maximum DWT at Dock No. 1 is 50,000 DWT. Dock Nos. 2 an 3 can accommodate up to 80,000 DWT. Terminal permission is required for less than 32,000 DWT. Maximum DWT is theoretical berth handling capability; however, purchasers are cautioned that varying harbor and channel physical constraints are the controlling factors as to vessel size, and they are responsible for confirming that proposed vessels can be accommodated.
Barge Loading Capability: Dock No. 1 has the capability to load barges of a minimum 30,000-barrel capacity. Its use, however, is contingent upon the consent of the Government and non-interference with the Government's obligations to other parties.
Oily Waste Reception Facilities: Facilities are available for oily bilge water and sludge wastes. Purchasers are responsible for making arrangements with the terminal.

ARCO Pipeline Company, Texas City Terminal

(Data as of December 31, 1986)

Location: Docks 11 and 12, Texas City Harbor, Galveston County, Texas
Crude Oil Streams: Bryan Mound Sweet and Bryan Mound Sour
Delivery Points: ARCO Pipe Line Company Marine Docks (11 and 12) and connections to local commercial pipelines
Marine Dock Facilities and Vessel Restrictions:
Tankship Docks: 2 Docks; Nos. 11 and 12
Maximum Length Overall (LOA): 1,020 feet. Maximum bow to manifold centerline distance is 468 feet.
Maximum Beam: Dock 11–108 feet; Dock 12–220 feet
Maximum Draft: 39.6 feet; subject to change due to weather and silting conditions
Maximum Air Draft: None
Maximum Deadweight Tons (DWT): 150, 000 DWT each. Terminal permission is required for less than 30,000 DWT or greater than 150,000 DWT. Vessels larger than 120,000 DWT are restricted to daylight transit. Purchasers are cautioned that varying harbor and channel physical constraints are the controlling factors as to vessel size, and they are responsible for confirming that proposed vessels can be accommodated.
Barge Loading Capability: None
Oily Waste Reception Facilities: Facilities are available for oily bilge water and sludge wastes. Purchasers are responsible for making arrangements with the terminal.

Sun Terminal

(Data as of December 31, 1986)

Location: Nederland, Texas (on the Neches River at Smiths Bluff in southwest Texas, 47.6 nautical miles from the bar)
Crude Oil Streams: West Hackberry Sweet, West Hackberry Sour
Delivery Points: Sun Terminal marine dock facility and Sun Terminal connections to local commercial pipelines
Marine Dock Facilities and Vessel Restrictions:
Tankship Docks: 5 Docks: Nos. 1, 2, 3, 4 and 5
Maximum Length Overall (LOA): 1000 feet
Maximum Beam: 145 feet
Maximum Draft: 40 feet fresh water
Maximum Air Draft: 136 feet
Maximum Deadweight Tons (DWT): Maximum DWT at Dock No. 1 is 100,000 DWT. Dock Nos. 2, 3, 4 and 5 can accommodate up to 130,000 DWT. Vessels larger than 85,000 DWT are restricted to daylight transit. Maximum DWT is theoretical berth handling capability; however, purchasers are cautioned that varying harbor and channel physical constraints are the controlling factors as to vessel size, and they are responsible for confirming that proposed vessels can be accommodated.
Barge Loading Capability: 3 Barge Docks: A, B and C. Each capable of handling barges up to 25,000 barrels capacity. Tankship Dock No. 1 has barge loading capability. Its use, however, is contingent upon the consent of the Government and non-interference with the Government's obligations to other parties.
Oily Waste Reception Facilities: Facilities are available for oily bilge water and sludge wastes. Purchasers are responsible for making arrangements with the terminal.

DOE St. James Terminal

(Data as of December 31, 1986)

Location: St. James Parish, Louisiana (30 miles southwest of Baton Rouge on the west bank of the Mississippi River at mile-marker 158.3)
Crude Oil Streams: Bayou Choctaw Sweet, Bayou Choctaw Sour, Weeks Island Sour
Delivery Points: St. James Terminal marine dock facility and LOCAP Terminal (connections to Capline interstate pipeline system and local commercial pipelines)
Marine Dock Facilities and Vessel Restrictions:
Tankship Docks: 2 Docks: Nos. 1 and 2
Maximum Length Overall (LOA): 940 feet
Maximum Beam: None
Maximum Draft: 40 feet at the entrance to the Mississippi River for vessels 100,000 Deadweight Tons (DWT) or over; 41.6 feet for vessels under 100,000 DWT. Draft is 42 feet at the docks.
Maximum Air Draft: 153 feet less the river stage
Maximum DWT: 100,000 DWT. Maximum DWT is theoretical berth handling capability; however, purchasers are cautioned that varying harbor and channel physical constraints are the controlling factors as to vessel size, and they are responsible for confirming that proposed vessels can be accommodated.
Barge Loading Capability: None
Oily Waste Reception Facilities: Facilities are available for oily bilge water and sludge wastes. Purchasers are responsible for making arrangements with the terminal.

Exhibit F—[Reserved]

Exhibit G—Offer Guarantee—Letter of Credit

Procurement and Sales Division, Mail Stop PR–651, Project Management Office, Strategic Petroleum Reserve, U.S. Department of Energy, 900 Commerce Road East, New Orleans, Louisiana 70123

To the Strategic Petroleum Reserve Sales Contracting Officer:

By order of our customer

_____

(name and address of offeror)

we hereby establish in the U.S. Department of Energy's favor an irrevocable Letter of Credit, Numbered _____, for an amount not to exceed U.S. $_____, effective immediately as an offer guarantee for the offer of our customer dated _____ in response to the U.S. Department of Energy's Notice of Sale dated _____ for the sale of Strategic Petroleum Reserve petroleum. Liability under this Letter of Credit shall commence upon the date set by the Notice of Sale, including any amendments thereto, for receipt of offers and expires on the twenty-first day thereafter. We agree that our obligation shall not be impaired by any extensions of the date set for receipt of offers, notice of such extension being hereby waived; provided, that such waiver of notice shall not apply to extensions extending more than thirty (30) calendar days beyond the period originally established for receipt of offers.

Funds under this Letter of Credit are available to the U.S. Department of Energy by its draft or drafts drawn on ourselves and accompanied by a manually signed statement of a duly authorized official of the U.S. Department of Energy stating the following:

This drawing of U.S. $_____ — (U.S. dollar amount expressed in word form)

_____

against your Letter of Credit Numbered _____, dated _____ is due the U.S. Government because of the failure of

_____

(name of offeror)

to honor its offer to enter into a contract for the purchase of petroleum from the Strategic Petroleum Reserve, in accordance with the U.S. Government's Notice of Sale dated _____ and the applicable Standard Sales Provisions (10 CFR Part 625, Appendix A). Upon receipt of the U.S. Department of Energy's draft and accompanying statement, either by hand or mail, at our office located at _____, we will honor the draft and make payment by 3 p.m. Eastern Standard Time of

the next business day following receipt of the draft by wire transfer to the account of the U.S. Treasury through the Federal Reserve Communications System. Each wire transfer shall be formatted in accordance with prescribed Treasury requirements as shown in Exhibit I of the Standard Sales Provisions, 10 CFR Part 625, Appendix A.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1983 Revision, International Chamber of Commerce Publication No. 400) and except as may be inconsistent therewith, to the Uniform Commercial Code in effect on the date of issuance of this Letter of Credit in the sale in which the issuer' head office within the United States is located.

Address all communications regarding this Letter of Credit

to _____

(address and any applicable reference)

_____

_____.

Yours Truly,

_____

Authorized Signature.

Exhibit H

Payment and Performance Guarantee—Letter of Credit

Procurement and Sales Division, Mail Stop PR–651, Project Management Office, Strategic Petroleum Reserve, U.S. Department of Energy, 900 Commerce Road East, New Orleans, Louisiana 70123

To the Strategic Petroleum Reserve Sales Contracting Officer:

By order of our customer

_____

(name and address)

we hereby establish in the U.S. Department of Energy's favor an irrevocable Letter of Credit, Numbered _____, for about U.S. $_____ — _____ (the U.S. dollar amount expressed in word form) effective immediately and expiring at our office located at _____

_____

(address)

one hundred and twenty (120) days from the date of issuance of this Letter of Credit, relative to an offer by our customer dated _____, to purchase Strategic Petroleum Reserve petroleum.

Funds under this Letter of Credit are available to the U.S. Department of Energy by its draft or drafts drawn on ourselves. Such draft or drafts may be transmitted by telex or U.S. Mail and shall contain either a statement that:

This drawing is due to the U.S. Department of Energy under your letter of Credit number _____ for

_____

(customer's name). Payment of U.S. $_____ to be made by wire transfer to U.S. Department of Energy on

_____

(date)

under contract number DE–SC96–_____. SPRCODR No. _____ for delivery of _____ barrels of oil at U.S. $_____ per barrel, plus/minus $_____ per barrel gravity adjustment. The wire draft should include our FEDWIRE number and other pertinent wire information as follows: Transfer to TREAS Code 021030004 TREAS NYC/(89000201) Dept of Energy (SPRO) U.S. $_____ payment for the sale of crude oil under contract No. DE–SC96– _____. SPRCODR No. _____. Deposit Account 89X0233.91.

or a statement that:

This drawing is due the U.S. Department of Energy under your letter of Credit number _____ for

_____

(customer's name). Payment of U.S. $_____ to be made by wire transfer to U.S. Department of Energy because of failure of company to accept delivery of petroleum under contract number DE–SC96– _____ at the time specified in the contract resulting in damages due under the contract in that amount. The wire draft should include our FEDWIRE number and other pertinent wire information as follows: Transfer to TREAS Code 021030004 TREAS NYC/(89000201) DEPT OF ENERGY (SPRO) U.S. $_____ payment for damages incurred by failure to accept delivery under contract number DE–SC96– _____. Deposit Account 89X0233.91.

or both.

We also will honor drafts presented over the Federal Reserve Bank's FEDWIRE system, provided that each such draft contains either a statement that:

Third Party sender, re your LOC#

_____

(Letter of Credit No.)

for

_____

(customer name)

Third Party receiver, Transfer to TREAS Code 021030004 TREAS NYC (89000201) Dept of Energy (SPRO) $_____ payment due on

_____

(date)

for sale of oil under contract No. _____. SPRCODR No. _____ for _____ bls @ $_____/bl ± _____ degrees at $0._____ gravity adjustment and $_____ for delivery damages. Deposit Account 89X0233.91.

or a statement that:

Third Party sender, re your

LOC#

(Letter of Credit No.)

for _____

(customer name)

Third Party receiver, Transfer to TREAS Code 021030004 TREAS NYC/89000201) DEPT OF ENERGY (SPRO) $_____ payment due for damages from failure to perform in accordance with contract No. _____. Deposit Account 89X0233.91

or other wire message containing the relevant information. The wire draft should include our FEDWIRE number and other information pertinent to a request for a wire transfer of funds over FEDWIRE, as follows:

_____

For drafts presented by telex or FEDWIRE, the U.S. Government's invoice (including supporting documents) shall be forwarded to us by regular mail.

The U.S. Department of Energy may make multiple drawings totalling up to the amount of funds indicated in the first paragraph as available under this Letter of Credit.

Upon receipt of the U.S. Department of Energy's draft and accompanying statement, we will honor the draft and make payment by 3 p.m. Eastern Standard Time on the date stated in the draft (or the next business day if the stated date does not fall on a regular business day), by wire transfer of funds over FEDWIRE to account number 021030004 of the U.S. Treasury through the Federal Reserve Communications System. Each wire transfer of funds shall be formatted in accordance with prescribed U.S. Treasury requirements as shown in Exhibit I of the Standard Sales Provisions, 10 CFR Part 625, Appendix A.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1983 Revision, International Chamber of Commerce Publication No. 400) and except as may be inconsistent therewith, to the Uniform Commercial Code in effect on the date of issuance of this Letter of Credit in the state in which the issuer's head office within the United States is located.

Address all communications regarding this Letter of Credit

to _____

(address and any applicable reference)

_____

Yours truly,

_____

Authorized signature.

Exhibit I—Instruction Guide for Funds Transfer; Messages to Treasury

The following instructions provide specific information which is required so that a funds (wire) transfer message can be transmitted to the Department of Treasury. The funds transfer message format is shown in Attachment 1. A narrative description of each item on the funds transfer message follows:

Line 1

Item 1—*Priority Code*—The priority code will be provided by the sending bank. (Note: Some Federal Reserve District banks may not require this item.).

Line 2

Item 2—*Treasury Department Code*—The 9-digit identifier "021030004" is the routing symbol of the Treasury. This item is a constant and is required for all funds transfer messages sent to Treasury.

Item 3—*Type Code*—The type code will be provided by the sending bank (will be a 10 or 12).

Line 3

Item 4—*Sending Bank Code*—This 9-digit identifier will be provided by the sending bank.

Item 5—*Class*—The class field may be used at the option of the sending bank. (Note: Some Federal Reserve Districts prohibit use of this field.)

Item 6—*Reference Number*—The reference number will be inserted by the sending bank to identify the transaction.

Item 7—*Amount*—The amount must include the dollar sign and the appropriate punctuation including cents digits. This item will be inserted by the sending bank.

Line 4

Item 8—*Sending Bank Name*—The telegraphic abbreviation which corresponds to Item 4 will be provided by the sending bank.

Line 5

Items 9, 10, and 11—*Treasury Department, Name, Agency Location Code, Agency Number*—This item is of critical importance. It must appear on the funds transfer message in the precise manner as stated to allow for the automated processing and classification of funds transfer message to Treasury for credit to the Department of Energy. This item is comprised of a rigidly formatted, left justified, nonvariable sequence of characters as follows:

Item 12—*Payment Identification*—The payment identification should be furnished by the remitter in the following manner:

Lines 6 and 7

The constant "Payment for the Sale of Crude Oil Under Contract #_____. SPRCODR #_____ will be inserted.

Line 8

The constant "Deposit Account 89X0233" will be inserted.

Important Note; Line Nos. 2 and 5 are edited by the Federal Reserve Bank. If the wire transfer message is not formatted as prescribed above, the message will be rejected by the FED Bank and returned to the sending bank.

SAMPLE OF FUNDS TRANSFER MESSAGE FORMAT FOR SPR OIL SALE

02			
To	Type		
021030004	10		
From	Class	Ref	Amount
011000390		0650	$500,000.00

Ordering Bank and Related Data

FIRST BOS

TREAS NYC/(89000201) DEPT OF ENERGY (SPRO)

PAYMENT FOR THE SALE OF CRUDE OIL UNDER

CONTRACT # SPRCODR #

DEPOSIT ACCOUNT 89X0233

Attachment 1 to Exhibit I

EXHIBIT J

STRATEGIC PETROLEUM RESERVE CRUDE OIL DELIVERY REPORT

1. SALES CONTRACT NUMBER	2. TERMINAL REPORT NUMBER
3. CARGO NUMBER	4. DATE DELIVERED
5. TRANSPORTATION MODE ☐ TANKER ☐ BARGE ☐ PIPELINE	6. ACCEPTANCE POINT ☐ ORIGIN ☐ DESTINATION
7. SHIPPING SPR SITE/TERMINAL	8. PURCHASER-NAME AND ADDRESS
9. CARRIER	

10. CONTRACT LINE ITEM MLI	10. CONTRACT LINE ITEM DLI	11. DESCRIPTION OF CRUDE OIL AND GROSS BBLS	11A. API GRAVITY	11B. TOTAL SULPHUR %	12. DEL'D NET BBLS @ 60°F	13. UNIT PRICE	14. AMOUNT DUE
15. QUALITY ADJUSTMENT — INCREASE/(DECREASE)							
15A. NET GRAVITY ADJUSTMENT FROM 15B(5) ____.____°							

15B. CALCULATION OF GRAVITY ADJUSTMENT

(1) ADVERTISED API GRAVITY	
(2) DELIVERED API GRAVITY	
(3) VARIANCE - (2)minus(1) PLUS/(MINUS)	
(4) ALLOWABLE VARIANCE	
(5) NET VARIANCE-(3)minus(4) +/(−)	

16. NET AMOUNT DUE

17. THE DELIVERED NET BARRELS, UNIT PRICE, QUALITY ADJUSTMENT, AND NET AMOUNT DUE HAVE BEEN VERIFIED.

SIGNATURE: _____

INVENTORY MANAGER

18. REMARKS

19. VESSEL DATA

19A. VESSEL NAME

19B. TIME STATEMENT	DATE	TIME
NOTICE OF READINESS TO LOAD		
VESSEL ARRIVED IN ROADS		
FIRE LINE ASHORE		
MOORED ALONGSIDE		
STARTED BALLAST DISCHARGE		
FINISHED BALLAST DISCHARGE		
INSPECTED AND READY TO LOAD		
CARGO HOSES CONNECTED		
COMMENCED LOADING		
STOPPED LOADING		
RESUMED LOADING		
FINISHED LOADING		
CARGO HOSES REMOVED		
VESSEL RELEASED BY INSPECTOR		
COMMENCED BUNKERING		
FINISHED BUNKERING		
VESSEL LEFT BERTH (ACTUAL OR ESTIMATED)		

20. RECEIPT IS ACKNOWLEDGED OF THE QUANTITY AND QUALITY SHOWN HEREON:

DATE RECEIVED: _____

AGENT: _____

BY: _____

NAME TYPED/PRINTED

21. GOVERNMENT INSPECTOR'S CERTIFICATE:

I HEREBY CERTIFY THAT THE (VESSEL CARGO) (PIPELINE SHIPMENT) WAS INSPECTED, DELIVERED AND ACCEPTED AS SHOWN HEREON.

DATE _____ SIGNATURE _____

NAME TYPED/PRINTED

22. I CERTIFY THAT THE TIME STATEMENT SHOWN HEREON IS CORRECT.

SIGNATURE _____

MASTER OF VESSEL

SPRPMO-F-6110.2-14 1/87

Exhibit K.—Offer Guarantee Calculation Worksheet

MLI: ————

Column	MAXQ (thousands/ bbls) (A)	Unit price (dollars) (B)	DLI (C)	DESQ (thousands/ bbls) (D)	MINQ (thousands/ bbls) (E)	Total DLI price (thousands/ dollars) (F)	Bond factor (G)	Product (dollars) (H)
Row:								
1							x50	
2							x50	
3							x50	
4							x50	
5							x50	
6							x50	
7							x50	
Total								

1. Using separate worksheet for each MLI offered against, from the SPR Sales Offer Form, enter the MLI maximum quantity offered on (expressed in thousands of barrels) in Column (A), Row 1.

2. Starting with the highest DLI unit price offered on the MLI from the SPR Sales Offer Form (and the highest preference if the unit prices of two or more DLIs are the same) enter the unit price in Row 1, Column (B); the DLI letter in Row 1, Column (C); the DLI desired quantity is Row 1, Column (D) (in thousands of barrels) and the minimum quantity in Row 1, Column (E). (The minimum quantity is either the Government's minimum contract quantity, if the offer indicates the offeror will accept as little as that amount, or the desired quantity, if the offeror indicates he will accept no less than that amount. See instructions for the SPR Sales Offer Form.)

3. If either the desired quantity in Column (D), or the minimum quantity in Column (E) exceeds the maximum quantity in Column (A), you have made an error either on this form or the offer form and should recheck your figures.

4. Multiply the price in Row 1, Column (B) times the desired quantity in Column (D) (as expressed in thousands) and enter the total DLI price in Column (F).

5. Multiply the total DLI price in Column (F) times the factor in Column (G) and enter the product in Column (H). The factor is 5% of 1000.

6. Subtract the DLI desired quantity in Row 1, Column (D) from the maximum quantity in Row 1, Column (A). Enter the result in Row 2, Column (A). If the result is zero, go to step 11.

7. Enter the next highest unit price for the MLI from the offer form in Row 2, Column (B). Enter the DLI letter, desired quantity, and minimum quantity in their respective columns. If there is a maximum quantity remaining in Row 2, Column (A), but no more DLI offers, or the minimum quantity in Row 2, Column (E) exceeds the maximum quantity, you may have made an error and should recheck your figures as these results might arise from failing to designate sufficient quantities on the DLI to fully accommodate the offer's MAXQ.

8. Multiply the lesser of the remaining maximum quantity in Column (A), or the desired quantity in Column (D) times the unit price (even if this quantity is less than MINQ) and enter the resulting total DLI price in Column (F).

9. Multiply Column (F) times the factor in Column (G) and enter the product in Column (H).

10. Repeat steps 6–9 for the next higher unit price until maximum quantity remaining is zero, then go to step 11.

11. Sum the amounts in Column (H) and enter the total in Row 8, Column (H). Sum this amount for all the worksheets. If the sum of all the worksheets is less than $10,000,000, enter the sum in the spaces marked offer bond on the SPR Sales Offer Form. If the sum exceeds $10,000,000, then enter $10,000,000 on the offer form. Obtain an offer guarantee in the amount indicated on the offer form and submit with the offer. These worksheets need not be submitted with the offer and should be retained for your files.

[FR Doc. 87–13066 Filed 6–15–87; 8:45 am]

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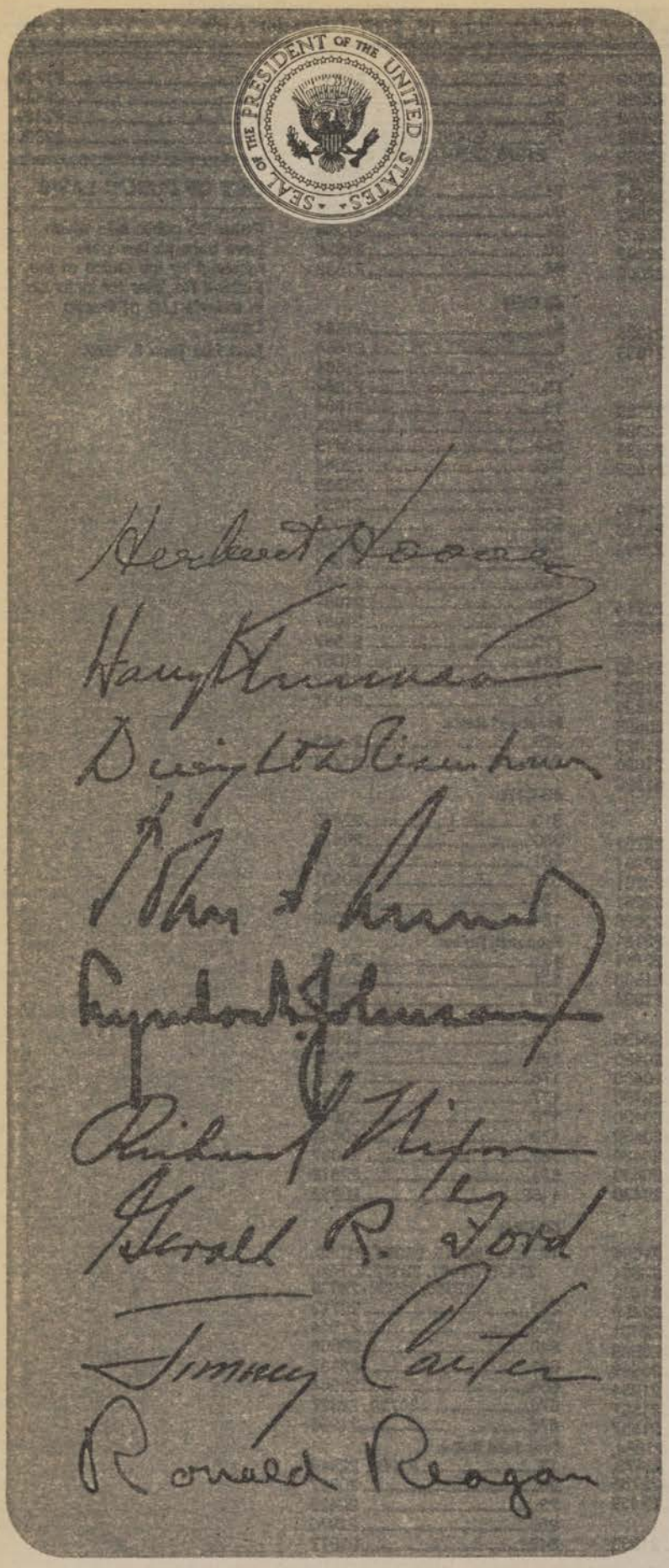

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