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Briefings on How To Use the Federal Register—
For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

WASHINGTON, DC

WHEN: September 29, at 9 a.m.
WHERE: Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC.
RESERVATIONS: Janice Booker, 202–523–5239

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Presidential Documents

Title 3—

The President

Proclamation 5686 of July 31, 1987

Helsinki Human Rights Day, 1987

By the President of the United States of America

A Proclamation

Twelve years ago, the United States, Canada, and 33 European countries signed the Helsinki Final Act of the Conference on Security and Cooperation in Europe. These nations thereby committed themselves to observe important standards of international conduct and to respect basic human rights and fundamental freedoms at home. They also pledged themselves to pursue practical steps to reduce the barriers by which the Soviet Union has divided Europe into East and West, denying the nations of Eastern Europe the right of self-determination and limiting contact between peoples.

The Helsinki Final Act embodies its signatories' agreement that freedom and human rights are the best guarantors of peace. It mandated that these freedoms, routinely enjoyed by the peoples of the West, be recognized and respected as well in the Soviet Union and Eastern Europe. After more than a decade, though there have been some limited gains, that mandate has not been fulfilled.

The Soviet Union and the Soviet-dominated governments of Eastern Europe have systematically violated many of their most fundamental Helsinki pledges. Freedoms of thought, conscience, religion, and belief are constrained. Loved ones, families, and friends are kept apart. The flow of ideas and information is restricted. The right of the individual to depart from and return to his own country is denied. Helsinki monitors and other prisoners of conscience continue to languish in prisons, labor camps, psychiatric hospitals, and internal exile, merely for expressing their political and religious beliefs. In Perm Camp 36–1, the most brutal of the labor camps in the Gulag, ten political prisoners—three of whom were Helsinki monitors—have died in the last 3 years. Harsh treatment and lack of medical care threaten the lives of those remaining in the camp.

These and other violations have exacted a fearsome and tragic human cost, and they reflect a disregard for the fundamental principle that in order for any of a nation's international agreements to be respected, all must be observed. The continuing violations of Helsinki obligations by the Soviet Union and the Soviet-dominated countries of Eastern Europe place in doubt those nations' faithful observance of their international obligations in every sphere.

The third Follow-up Meeting of the Conference on Security and Cooperation in Europe has been underway in Vienna since November 1986. The primary aim of the United States and its NATO Allies in Vienna is to secure compliance by the East with the commitments made at Helsinki, so that citizens in all the signatory states can enjoy the fundamental freedoms agreed to in the Final Act.

The Congress, by Senate Joint Resolution 151, has designated August 1, 1987, as "Helsinki Human Rights Day" and has authorized and requested the President to issue a proclamation in its observance.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim August 1, 1987, as Helsinki Human Rights Day and reaffirm the American commitment to universal observance of the values enshrined in the Final Act. These values are fundamental to our way of life and a source of inspiration to peoples around the world. In renewing our dedication with appropriate programs, ceremonies, and activities, let us call upon all signatories of the Final Act to match deeds with words and to respect in full its solemn principles and provisions.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of July, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 87-17900
Filed 8-3-87; 2:32 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5687 of July 28, 1987

Thanksgiving Day, 1987

By the President of the United States of America

A Proclamation

Thanksgiving Day is one of our most beloved holidays, an occasion set aside by Americans from earliest times to thank our Maker prayerfully and humbly for the blessings and the care He bestows on us and on our beautiful, bountiful land. Through the decades, through the centuries, in log cabins, country churches, cathedrals, homes, and halls, the American people have paused to give thanks to God, in times of peace and plenty or of danger and distress.

Acknowledgement of dependence on God's favor was, in fact, our fledgling Nation's very first order of business. When the delegates to the First Continental Congress met in Philadelphia in 1774, they overcame discord by uniting in prayer for our country. Despite the differences among them as they began their work, they found common voice in the 35th Psalm, which concludes with a verse of joyous gratitude, "And my tongue shall speak of thy righteousness and of thy praise all the day long."

This year, of course, our Thanksgiving Day celebration coincides with the Bicentennial of the Constitution. In 1789 the government established by that great charter of freedom, and "the civil and religious liberty with which we are blessed," were cited by George Washington in the first Presidential Thanksgiving Proclamation as among "the great and various favors" conferred upon us by the Lord and Ruler of Nations. As we thank the God our first President called "that great and glorious Being, who is the beneficent Author of all the good that was, that is, or that will be," we have even greater cause for gratitude than the fresh triumphs that inspired Washington's prose. We have seen the splendor of our natural resources spread across the tables of the world, and we have seen the splendor of freedom coursing with new vigor through the channels of history. The cause for which we give thanks, for which so many of our citizens through the years have given their lives, has endured 200 years—a blessing to us and a light to all mankind.

On Thanksgiving Day, 1987, let us, in this unbroken chain of observance, dedicate ourselves to honor anew the Author of Liberty and to publicly acknowledge our debt to all those who have sacrificed so much in our behalf. May our gratitude always be coupled with petitions for divine guidance and protection for our Nation and with ready help for our neighbors in time of need.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim Thursday, November 26, 1987, as a National Day of Thanksgiving, and I call upon the citizens of this great Nation to gather together in homes and places of worship on that day of thanks to affirm by their prayers and their gratitude the many blessings God has bestowed upon us.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of July, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 87-17912
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Rules and Regulations

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Changes in Property Insurance Requirements for NRC Licensed Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations requiring licensees to maintain substantial amounts of onsite property insurance to provide financial security for stabilizing and decontaminating their licensed reactors in the event of an accident. These changes will increase the amount of insurance required to $1.06 billion, impose a modified decontamination priority on any proceeds from such insurance, and require that proceeds subject to the decontamination priority shall be paid to an independent trustee. All commercial reactor licensees are subject to this rule.

EFFECTIVE DATE: October 5, 1987.

FOR FURTHER INFORMATION CONTACT: Robert S. Wood, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301/492-8413.

SUPPLEMENTARY INFORMATION:

I. Background

On November 8, 1984, a proposed rule was published in the **Federal Register** (49 FR 44645) which would increase the amount of onsite property damage insurance that commercial reactor licensees are required to carry pursuant to 10 CFR 50.54(w). Operating reactor licensees are currently required to carry both (1) the maximum amount of property insurance offered as primary coverage by either American Nuclear Insurers/Mutual Atomic Energy Reinsurance Pool (ANI/MAERP) or Nuclear Mutual Limited (NML)—currently $500 million—and (2) any excess coverage in amount no less than that offered by either ANI/MAERP—$120 million—or Nuclear Electric Insurance Limited (NEIL–II)—$610 million. Thus, the minimum currently required under the rule is $500 million primary coverage and $120 million excess coverage. By buying both excess layers, utilities are able to purchase a total of $1.23 billion in property insurance.

The proposed rule also provided for a modified decontamination priority on any proceeds from such insurance and sought comment on several related issues.

II. Summary and Analysis of Comments

The NRC received 35 comments on the proposed rule to amend its property insurance regulations. The comments may be grouped as follows:

21 Utilities
5 Counsel to Utilities
3 Insurers/Insurance Trade Groups
2 Utility/Nuclear Trade Groups
2 Individuals
1 Bar Association Committee
1 Environmental Interest Group

Because the issues considered in the rulemaking are complex and affect different utilities in different ways, the focus of the comments varied considerably. Nevertheless, the majority of utility commenters tended to endorse the positions taken by two trade groups, the Atomic Industrial Forum and the Edison Electric Institute, but chose to emphasize areas of their particular concern. The two individuals who commented tended to support the positions of those utilities with smaller plants worried about being required to carry more insurance than they believe is necessary. The set of comments from the environmental interest group supported most aspects of the NRC's proposal. The insurers provided a slightly different perspective from the utilities but made many of the same points. The Bar Association Committee comments provided the most distinct perspective on one aspect of the proposed rule, the decontamination priority.

The following is a detailed discussion and analysis of the comments received arranged according to topic. The topics are: (1) Amount of insurance; (2) method of future adjustment of insurance; (3) site-wide vs. unit coverage; (4) State prohibitions against buying certain types of insurance; (5) the decontamination priority; and (6) other issues. Of greatest concern to the commenters was item five, NRC's proposal to require insurance proceeds to be used first to decontaminate the facility when so required to protect public health and safety and so ordered by the Director of the Office of Nuclear Reactor Regulation.

1. Amount of Insurance

Summary of Comments: Most of the commenters, including most utilities and their representatives, either supported the proposed coverage limit of $1.02 billion or at least found it acceptable or non-burdensome. However, most of those who accepted the proposed limit in principle suggested that the rule be modified to reflect the potential for reductions in capacity because of changes in the insurance markets. To avoid such a situation, several commenters suggested that the rule be modified to require either $1.02 billion or, if that amount were not available, the total of the primary coverage offered by either ANI/MAERP or NML plus the total excess coverage offered by both ANI/MAERP and NEIL–II. Others suggested a modification to allow utilities which may incur property losses during a particular policy year to take reasonable steps to have their insurance reinstated so as not to be in technical violation of NRC's regulations. To avoid this, commenters suggested that the NRC clarify its position that claims made by a utility which resulted in a reduction in policy limits for that policy year would not be considered a violation of NRC regulations. Alternatively, some proposed that § 50.54(w) be amended to require a licensee to take reasonable steps to obtain reinstatement of insurance, an action keeping that licensee in compliance with § 50.54(w). Another commenter suggested that reductions in capacity could be handled by allowing a "cushion" of $50 million to $100 million between what is available and what the NRC requires. Special action should be required on reinstatement only if it affected public health and safety.

A few commenters took issue with the amount established. One suggested that

the rule is not sufficiently flexible because it would require insurance to be purchased from all insurers offering this coverage, which tends to limit a utility's options. It was alleged that this requirement might also lead to anti-competitive behavior. Another stated that the NRC should not be concerned with the full cost of restoring a reactor to service after an accident but rather with the costs associated with protecting public health and safety. This commenter suggested using decommissioning funds for cleaning up after an accident, and stated that, because of lessons learned from TMI, cleanup costs have been substantially reduced. Another commenter suggested rounding off required coverage of $1 billion because of the lack of precision in establishing a required amount. A non-utility commenter suggested that the "enormous" premiums generated for property insurance are directly removed from expenditures that would otherwise be made for nuclear safety. One commenter suggested that requiring a specific dollar amount, rather than all that is offered, would lead to the established figure being considered by utilities a maximum as well as a minimum.

Several commented on the related issue of whether special provisions should be made for licensees of smaller reactors. Most who commented on this issue supported the NRC proposal of not specifically providing for smaller reactors in the rule but rather treating them on an ad hoc basis through the exemption process. A few commenters indicated their support for special provisions for smaller reactors based on physical size, core inventory, etc. Even those against special treatment of smaller reactors suggested that existing exemptions should remain unaffected by the new rule and that the final rule should clarify that this interpretation is correct.

NRC Response: 1.a. Issue: Amend the rules to reflect reductions in available insurance through changes in insurance capacity.

Response: The NRC believes there is some merit in commenters' proposals to address in the rule the problem of reductions in capacity. To require more than what is available would be meaningless because licensees' only realistic alternative to buying insurance would be to self-insure which the NRC determined would provide no additional assurance. This is discussed under issues "4". Futher, the Commission has traditionally never required more insurance than that generally available. Surety bonds, letters of credit, and other methods of assurance may be available to certain licensees in relatively small amounts, but would probably not be generally available especially if capacity shrank substantially.

Consequently, the NRC has modified the rule to allow the lesser of the specific amount or the maximum available from insurance sources. The Commission will continue to monitor the adequacy of the amount of property insurance that is available to reactor licensees.

The NRC also believes that there is justification for amending the rule to provide reasonable time for reinstatement of insurance when a claim filed by an insured causes coverage at a facility to be reduced during the remainder of the policy year by the amount of the claim. Because a reduction would be for only the remainder of the policy year, after which the insurance would be automatically reinstated, the NRC does not believe a serious threat to public health and safety would exist. It is highly unlikely that any single utility would face two large accidents within one year at the same site. Therefore, the NRC has modified the rule to require that licensees take reasonable steps to obtain reinstatement of insurance within 60 days.

1.b. Issue: Change the amount of insurance required.

Response: Because most commenters supported the amount of coverage proposed in the rule, there was little discussion of whether that figure should be changed. A few commenters stated that coverage was higher than necessary to protect public health and safety or too imprecise to be specified to the degree done in the rule. However, in the proposed rule, the rationale for requiring $1.02 billion was not only that this was the most available at that time, but that it approximated the maximum estimated in a PNL study [1] to be necessary to clean up a reactor in its entirety after an accident. The actual maximum required was estimated to be $1.06 billion. The amount currently available is $1.23 billion. The Commission believes that $1.6 billion should be required, because at least that amount is now available and no other amount is as technically supportable.

The NRC does not believe that most utilities would have difficulty obtaining the slightly higher amount since most choose to buy the maximum available. The NRC agrees that the process of determining the actual amount needed to protect public health and safety is imprecise and that the threat to public health and safety usually decreases as cleanup progresses. Clearly, there is a sliding scale of effect on public health and safety so that after some undetermined point is passed, the contributions to public health and safety that additional amounts of insurance would make are less significant, although this problem is addressed more fully in the discussion on the decontamination priority. Thus, there currently appears to be no adequate basis for selecting any figure that would be better than the amount suggested in the PNL report. The NRC is not persuaded that there is any compelling reason to keep the $1.02 billion originally proposed, or to round off to $1 billion, or to choose some figure other than the $1.06 figure derived from the PNL report.

The NRC is also not persuaded by the argument that requiring the purchase of insurance is unduly restrictive or may lead to anti-competitive behavior by forcing the purchase of insurance from all carriers. Other carriers could conceivably enter the insurance market. In fact, by requiring a specific dollar amount rather than insurance from specific carriers, NRC has avoided a restriction which would have prohibited others from offering the insurance. Similarly, NRC does not accept the argument that the $2–3 million spent per reactor on insurance premiums each year represent a drain on a licensee's expenditures on safety. These premiums represent only small percent of a licensee's annual expenditures on operating the reactor safely. NRC also notes that the utilities did not state that they had been prevented from receiving ratepayer revenues to cover the insurance premium expenses.

The argument that a specified dollar amount will be considered a maximum as well as a minimum is beside the point. The Commission has based its amount on what the PNL study determined would be needed for decontamination and cleanup following an accident. Any amount above that has

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[1] *Technology, Safety and Costs of Decommissioning Reference Light Water Reactors Following Postulated Accidents*, (NUREG/CR-2601), Pacific Northwest Laboratory, November 1982. (See especially pages 2–26 to 2–28. The PNL study estimated that accident cleanup costs at a reference PWR following a scenario 3 accident would be approximately $404 million. However, additional costs that can appropriately be ascribed to such an accident include:

Base operations and maintenance	$124M
Design differences (when comparing to TMI-2)	$84M
Cost escalation during cleanup	$209M
Additional decontamination of the containment building	$100M
Net Stabilization cost	$139M

When these costs are added to the $404 million basic cleanup cost estimate, a total of $1.06 billion is derived.) This report is available for purchase from the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082.

not been shown to be significant in protecting health and safety, but represents the economic replacement of the facility itself. If a utility decides not to insure for the replacement value of its plant, that is its decision to make.

1.c. Issue: Clarify that exemptions already granted will not be affected by new rulemaking.

Response: The NRC agrees that the reasons for exemptions from the current rule have not been changed by the final rule. Exemptions have been granted to four licensees of small reactors from carrying the full amount of insurance currently required by 10 CFR 50.54(w). These exemptions were based on case-by-case analysis of accident costs at the specific plants. Increasing the required amount of insurance based on general technical studies in no way negates the continued validity of the specific studies upon which the existing exemptions were based. Thus, the exemptions for amounts of property insurance required should remain in effect. Licensees currently exempt from full requirements of 10 CFR 50.54(w) will not be required to reapply for an exemption.

2. Method of Future Adjustment of Insurance

Summary of Comments: Almost all who commented on this issue suggested that future changes should be effected by rulemaking based on a periodic assessment of need. Some suggested updating the PNL report. Commenters generally argued that relying on some formula tied to measures of inflation or increasing insurance based on availability would not be appropriate. They believe that an inflation-based formula probably would not reflect the actual needs for insurance necessary to protect public health and safety because decontamination cost changes could not be measured accurately by any existing cost index. Additionally, changes in an index might lead to property insurance requirements that would outstrip the availability of insurance. Similarly, requirements based simply on the capacity available would not necessarily equal the amount necessary for decontamination. Insurance capacity tends to increase based on the demand for it. This demand is not only comprised of funds necessary for decontamination and debris removal, but also reflects the needs of insureds and their owners for compensation to replace the facility, a concern beyond the province of the NRC.

One commenter suggested that insurers determine the future amount to be required, which presumably is akin to requiring whatever capacity is available.

NRC Response: The NRC basically accepts the reasoning propounded by most commenters on this issue. Property insurance capacity available now has apparently reached, if not exceeded, the maximum amount necessary to decontaminate and clean up a large commercial reactor as determined by the PNL study. Although there may be cost increases in the future, no satisfactory formula for measuring them exists. Unlike such measures as the Consumer Price Index or the Handy-Whitman construction index, measures of decontamination costs depend on a very limited universe of experience. Furthermore, present trends suggest that growth in insurance capacity will outstrip decontamination cost escalation. It can be expected that most licensees will purchase the maximum available notwithstanding changes in NRC requirements.

Of course, NRC resources might be required to perform periodic analyses to determine changes in accident recovery costs and possibly to conduct rulemaking based on these analyses. Nevertheless, as one commenter has pointed out, any future rulemakings should be substantially less onerous and involved than the present one. Even PNL technical studies should be substantially less expensive if the same cost estimation methodology were to be used. Thus, the costs to the NRC of any future rulemaking should be lower. These costs would most likely be less than the excess premium costs incurred by those few licensees who would be required to buy more insurance than they otherwise would because of any automatic upward escalation of insurance requirements as discussed above.

3. Site-Wide vs. Unit Coverage

Summary of Comments: Very few commenters addressed this issue directly, although some discussed it in relation to the reinstatement considerations covered under issue "1". Consequently, most recommendations were concerned with allowing a reasonable period for licensees to obtain reinstatement of coverage for their facilities. One commenter suggested that some latitude be allowed so that different licensees sharing the same site would not be required to maintain a single insurance limit for the site. Most others strongly endorsed the NRC's acceptance of site-wide as opposed to per-unit coverage.

NRC Response: The NRC continues to believe that site-wide coverage is appropriate given that general per-unit coverage has not been and probably will not be available and that the chance of a second accident occurring at one site during a policy year prior to reinstatement of the full policy limits is extremely remote. As indicated under issue "1", the NRC also believes three is some merit in revising the rule to allow reasonable steps to be taken for reinstatement. With respect to the comments that provision be made for units of different licensees at the same site, the NRC agrees. Although per-site coverage is acceptable where a single licensee owns more than one reactor, separate coverage is needed for different licensees operating different units at the same site. This is because differences in factors such as reactor design and utility management can result in different risks for different licensees. In addition, separate coverage conforms to the manner in which reactor property damage insurance is offered and held. For these reasons, the final rule requires each licensee to obtain property damage insurance for its nuclear facilities. Thus, different licensees operating different units at the same site would each have to provide coverage for their reactor units.

4. State Laws Prohibiting the Purchase of Certain Insurance

Summary of Comments: Relatively few comments were received on the issue of what should be done about those utilities subject to State laws or constitutional provisions prohibiting the purchase of mutual or retroactive insurance.[2] All those commenting on this issue insisted that the NRC must show greater flexibility to those utilities prohibited from buying full insurance coverage. Commenters suggested that § 50.54(w)(3)[3] of the existing rule should be retained. This section provides some leeway for affected utilities either to obtain alternate coverage or to be exempted from unachievable NRC requirements.

Several commenters indicated that they have taken a variety of steps to

[2] Prohibitions generally take two forms. One prohibits public entities in some States from owning stock in private corporations. Such prohibitions have been construed to include the purchase of insurance from mutual insurance companies whereby the insured becomes an owner of the company. A second prohibits public entities from extending credit to private corporations, an action interpreted to include the payment of retrospective premiums. The insurance offered by NML and NEIL-II is mutual insurance and may require the payment of retrospective premiums.

[3] This paragraph reads, "When a licensee is prohibited from purchasing on-site property damage insurance because of state or local law, the licensee shall purchase the specific amount of such insurance found by the NRC to be reasonably available to that licensee, or to obtain an equivalent amount of protection . . ."

attempt to purchase additional insurance. One commenter described recent efforts to amend the sections of the Texas Constitution pertaining to the prohibitions against purchasing insurance. The only way the Texas Constitution can be amended is by referendum and the proposal submitted to Texas voters in November 1984 was defeated. Another commenter indicated that the Nebraska Constitution prohibits public entities in the State from becoming "a subscriber to the capital stock, or owner of such stock, or any portion of interest therein of any railroad, or private corporation, or association" (Article XI, Section I). The New York Power Authority stated that NEIL–II excess insurance is unavailable to it at the present time but did not explain why.

Some commenters indicated that they have made efforts to secure equivalent protection, including surety bonds or letters or lines of credit. However, instruments in the amount necessary to comply with the rule are not available. Even if available, however, these commenters concluded that "the existence of such protection on a liability (however contingent), backed by no assets and not covered by any current revenues, would effectively preclude them from future financing needed to maintain, improve, and expand their physical plant." Commenters concluded, therefore, that they would be unable to furnish evidence of equivalent protection in accordance with the proposed rule.

Commenters suggested that three alternatives exist. First, affected utilities could continue to explore with NEIL–II the possibility that through amendment to its by-laws and charter and to its current policies, NEIL–II could offer insurance structured to comply with State law. Nebraska publicly-owned utilities have done this and are awaiting a decision by the Nebraska Supreme Court. Second, the relevant portions of State laws or constitutions could be amended. However, as indicated above, this could be a protracted process with no assurance of success. Third, licensees could seek exemption under 10 CFR 50.12 from the proposed amendments. Several commenters mentioned that if these alternatives were unavailable, they would probably be forced to shut down their reactors at enormous cost.

Finally, one commenter suggested that one result of the NRC's proposal in this area was to inject itself into the regulation of terms and conditions of property insurance, a result the NRC previously indicated it wished to avoid.

NRC Response: The proposed rule was designed to allow utilities either to purchase the requisite insurance or to demonstrate an equivalent amount of protection by alternate means. When the Commission published the proposed rule for public comment, it believed that such alternate means of financial assurance would be available. This assumption formed the basis for the Commission's conclusion that it probably could not promulgate a rule that would preempt the State prohibitions at issue. Based on the comments received, however, it now appears that alternate means of protection might not be available to some utilities. As noted above, these utilities indicated that surety bonds or letters or lines of credit are not available in the amount necessary to comply with the proposed rule. Self insurance, although discussed as a possibility in the legal analysis of the preemption question, would not be acceptable because the potential liability would greatly exceed the net assets of the affected utilities. Thus, a guarantee based on the financial strength of the licensee would be insufficient. A trust fund based on collections from customers would be prohibitively expensive if funded immediately, because it would require collecting the entire amount in advance. If funded over a period of time, it would not meet the Commission's objective of providing financial assurance for decontamination and cleanup because an accident could occur before the full amount had been collected.

In these circumstances, the Commission believes that a clear conflict exists between the requirements of Federal and State law. The Commission has determined that $1.06 billion of nuclear property damage insurance is needed to stabilize, decontaminate and clean up a reactor after an accident so as to mitigate potential threats to the health and safety of workers and the public and to the environment. Accordingly, the Commission is requiring reactor licensees to purchase this insurance. Some State laws or constitutions prohibit certain licensees from purchasing mutual or assessment insurance. No other insurance is available in an amount sufficient to comply with the Commission's requirement. There are no reasonable alternative means of financial assurance available to these licensees. Based on these changed circumstances, the Commission believes that its property insurance rule would preempt conflicting State laws.

There can be no doubt that this rule is concerned with reactor safety. Indeed, in discussing the issue of whether to impose a decontamination priority in the proposed rule the Commission stated:

> In fact, the Commission has no reason to impose a property insurance requirement other than to protect the public health and safety. Proceeds from insurance would be used both to assure that contamination from a reactor immediately after the accident did not threaten public health and safety and the environment and to eliminate delays and degradations to the cleanup process that could cause threats to health, safety and the environment over time.

Thus, the rule operates in an area of exclusive Federal control. Although the State prohibitions at issue do not attempt to regulate within this area, they prohibit what the Commission's rule requires. They would, therefore, be preempted because they are in direct conflict with Federal law. It should be noted that "[f]ederal regulations have no less preemptive effect than federal statutes." Capital Cities Cable, Inc. v. Crisp, 81 L.Ed.2d 580, 589 (1984), quoting Fidelity Federal Savings and Loan Assn. v. De La Cuesta, 458 U.S. 141 (1982). In addition, the State prohibitions concern insurance, a matter that the States have traditionally regulated. Accordingly, Congressional intent to preempt must be "clear and manifest." Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947). Such intent is present, however, when the requirement of Federal and State law are in conflict. See Florida Avocado and Lime Growers v. Paul, 373 U.S. 132, 142–43 (1963); Ferebee v. Chevron Chemical Co., 736 F.2d 1529 (D.C. Cir. 1984), cert. denied, 469 U.S. 1062 (1984).

A conflict with Federal law arises when compliance with both Federal and State law is impossible or the State law frustrates the accomplishment of a Federal objective. Pacific Gas and Electric Co. v. State Energy Resources Conservation and Development Commission, 461 U.S. 190, 204 (1983). In Capital Cities, supra, the Supreme Court held that an FCC regulation requiring cable television operators to carry certain broadcast signals without alteration preempted an Oklahoma constitutional provision prohibiting the advertising of alcoholic beverages within the State. State law compelled deletion of wine commercials, an action that Federal law prohibited. Cable operators who complied with Federal law were subject to criminal prosecution under State law.

The Court found a conflict based on the impossibility of complying with both Federal and State law, as well as obstruction of the Federal objective of

increased program diversity. 81 L.Ed.2d at 593–94. Similarly, it is impossible for a reactor licensee to comply with both the Commission's rule requiring the purchase of nuclear property damage insurance and the State constitutional provisions prohibiting the purchase of that insurance. In addition, the State prohibitions interfere with the Federal objective of exclusive Federal regulation of reactor safety. Thus, the provisions of Federal and State law are clearly in conflict.

This conclusion is consistent with recent Supreme Court decisions on Federal preemption under the Atomic Energy Act, notwithstanding the absence of a conflict in those cases. In Pacific Gas, supra, the Court upheld California's moratorium on the certification of new nuclear power plants pending Federal approval of a demonstrated technology or means for the permanent disposal of high level radioactive wastes. The Court reasoned that, under the Atomic Energy Act, Congress provided for a system of dual regulation of nuclear-generated electricity in which the Federal Government maintains complete control over reactor safety and the States exercise their traditional authority over economic questions, such as the need for power, type of facilities to be licensed, land use, and ratemaking. Because the moratorium was based on economic rather than safety concerns and did not conflict with Federal safety regulations, the Court held that the California statute was not preempted. The Court relied on the fact that the moratorium would only affect reactors at the planning stage, cautioning that "[s]tate regulations which affected the construction and operation of federally approved nuclear power plants would pose a different case." 461 U.S. at 223 n.34. The State prohibitions at issue here affect a reactor licensee's ability to comply with the Commission's safety requirements. Thus, they would affect the operation of a Federally licensed reactor and would not escape Federal preemption under the rationale of Pacific Gas.

In Silkwood v. Kerr-McGee Corp., 464 U.S. 238, (1984), the Supreme Court held that the Atomic Energy Act does not preempt an award of punitive damages under State tort law for personal injuries or property damage from radioactive materials. The Court examined the legislative history of the Price-Anderson Act and found ample evidence that Congress had assumed that remedies under State tort law would continue to be available to persons injured by nuclear incidents. There was no conflict with Federal law because licensees could pay both Federal fines and State-imposed punitive damages. Citing a failure of proof, the Court declined to decide whether an award of damages could be so large as to conflict with the NRC's policy of avoiding penalties which would put a licensee out of business or have an adverse effect on safety. Thus, the Court did not preclude the possibility of Federal preemption in an appropriate case based on a conflict with Federal law.

Finally, the Commission rejects the notion that a conflict with Federal law could be avoided by the licensee's option of ceasing to operate the reactor. Rather, the Commission believes that in analyzing this issue, a court would conclude that a conflict exists where the licensee's only option is to withdraw from its Federally licensed activities. This is suggested not only by Pacific Gas, supra, but by other Federal preemption cases. See, e.g., Ferebee, supra, 736 F.2d at 1541; Douglas v. Seacoast Products, Inc., 431 U.S. 265 (1977); Sperry v. Florida, 373 U.S. 379 (1963).

The Commission believes that, where a reactor licensee has no reasonable alternatives to purchasing nuclear property damage insurance, the State prohibitions at issue would conflict with Federal law. For all the foregoing reasons, the Commission concludes that its property insurance rule would preempt these State prohibitions.

5. Decontamination Priority

Summary of Comments: The great majority of comments received on the proposed rule focused on the NRC's proposal to require some form of decontamination priority, that is, proceeds from insurance should be used to decontaminate and clean up after an accident before any other purpose such as facility restoration or payment of investors.

Although the comments in response to the Advance Notice of Proposed Rulemaking (ANPRM) published on June 24, 1982 (47 FR 27371) evoked a similar degree of interest in the issue of decontamination priority, comments on the proposed rule provide more detail and elaboration of the reasons for the extensive opposition to the NRC proposal.

The NRC proposal was drafted as a modified decontamination priority [4] with hope that earlier objections by utilities could be ameliorated. In the ANPRM, utilities had objected to an absolute decontamination priority because such a priority: (1) Would conflict with trust indenture language and fuel leasing agreements that require licensees in general to maintain sufficient insurance to protect bondholders and fuel lessors in case of damage to property; (2) would be unnecessarily restrictive in allowing utilities to respond to an accident and thus would inhibit an expedited recovery and adversely affect public health and safety; (3) could, because of reduced investor protection, lead to reduce access to funds from investors or increased cost of funds; and (4) would be unnecessary because of the existing priority offered in the excess layer through NEIL–II. (This priority covers ". . . all expenses necessarily incurred in discharging the obligation or liability of the Insured(s) to remove debris of and to decontaminate the property covered by this Policy following direct physical damage to such property caused by any peril covered under the Underlying Property Policy . . ." (see NEIL's Decontamination Liability and Excess Property Insurance Policy, p. 12)).

Many of these same arguments were raised again by commenters in response to the modified decontamination proposal. Some commenters indicated that a modified priority, while not as seriously affecting finances as an absolute priority, would still have substantial adverse impact. This point was made most comprehensively by the Edison Electric Institute (comment 13) and endorsed by several other commenters. It stated in part:

> While the EEI recognizes that the Commission sought to afford utilities some financial flexibility to respond to any future accident by giving the Director of Nuclear Reactor Regulation the authority to require payments under the decontamination priority, the sole substantive standard guiding the use of this authority is that he may direct insurance proceeds be used 'to the extent that such decontamination is required to protect public health and safety.' . . . While this approach provides more flexibility than an absolute decontamination priority, we continue to have serious concerns about this proposal. In particular, there seems to be virtually no limit upon the discretion of the Director, other than the 'public health and safety' standard. If an accident were to occur, we fear that the Director would immediately impose the decontamination priority for all insurance proceeds, whether or not all funds are necessary to protect public health and safety since this step maximizes his future options. Once this happens, there would be no administrative mechanism to cause a reconsideration of this decision. Moreover,

[4] As proposed, paragraph 50.54(w)(3) reads, "The proceeds of this insurance shall be used first to decontaminate the licensed reactors before any other purpose when and to the extent that such decontamination is required to protect public health and safety and is so ordered to be used by the Director of Nuclear Reactor Regulation."

the Director is likely to be under pressure from multiple sources to (1) require decontamination prior to other actions that may be appropriate to restore the property to operating condition and (2) manage the course of repair and clean-up through his control of the insurance proceeds. These factors cause EEI to fear that the broad discretion vested in the Director over the use of proceeds from the decontamination priority may effectively deprive utilities of any of the benefits of property insurance. In effect, the Director would become the ultimate manager of the decontamination and repair operation.

EEI believes one way to balance the need for flexibility to respond to an accident with the need to limit the Director's authority over property insurance proceeds is to restrict the time period in which any order regarding the use of proceeds from property insurance for decontamination remains in effect. Limiting the duration of any such order will ensure that post-accident response decisions are periodically reevaluated as conditions change and new information becomes available. EEI proposes that the Director's initial determination respecting use of the property insurance proceeds for decontamination shall issue a new order regarding the use of such proceeds. This second order would remain in effect for no more than six months. It could be followed by new orders which terminate every six months. All such orders should be final orders which are subject to judicial review. Each should reveal the rationale, basis and record which are relied upon support the Director's determination. In addition, the Director should sequest [sic] only those portions of the insurance funds reasonably needed for decontamination so that funds also would be available to carry out other activities necessary to restore the utility's property.

Finally, EEI interprets the Commission's proposal to allow the Director to act expeditiously without holding hearings since that could seriously delay the decisionmaking process. In order to avoid any confusion, we suggest the Commission confirm our understanding of this process.

Other commenters suggested similar problems. For example, by not establishing standards or criteria by which the Director of NRR is to order a decontamination priority, the resulting uncertainty would be as unsettling to investors as a more rigid priority. Further, such an order would probably be subject to a protracted review process, open to intervention, and might so tie up funds that the cleanup process could be hampered and public health and safety adversely affected. One commenter stated that, although the NRC has authority to impose decontamination requirements on a licensee, it does not have authority "to dictate either to insurers or to indenture trustees how they are to deal with the insurance proceeds" (comment 15). Similarly, another commenter suggested that requiring a decontamination priority would preempt the coverages filed by ANI/MAERP with State insurance departments and would thus be in effect a preemption of State law, a result the NRC sought to avoid (comment 7, p. 2).

Another commenter analyzed several scenarios in which an accident caused varying amounts of damages and the resulting actions that probably would be taken by the trustee (Comment 15, p. 2):

If the damaged plant can be reused, decontamination would be a necessary element of the repair, and the trustee would release insurance proceeds. After initial decontamination, repairs would proceed simultaneously with decontamination. The only effect of an order establishing a priority for decontamination would be to forbid use of the funds acquired from the trustee for anything but decontamination. This would presumably require the licensee to segregate and invest the portion of the insurance proceeds trhat would be spent on repairs rather than decontamination and to use other sources of funds for the repairs. When the priority order was lifted, the segregated funds could then be used to replace the funds spent on repairs. In short, the priority order would cause some added bookkeeping without serving any useful purpose.

If the damaged plant could not be restored to use, the trustee might refuse to release funds for decontamination on the ground that they would not be used for repairs or replacement. However, the utility could still obtain the funds if it could provide additional unbonded property. While the utility would probably use the funds for decontamination without compulsion, NRC could require it to do so even in the absence of the proposal in § 50.54(w)(3).

If the licensee did not have additional unbonded property to offer the trustee, it could obtain the proceeds only on the basis that it would use them to build or acquire new public utility property. Thus, an NRC priority order would require the use of the proceeds for decontamination while the indenture would forbid their use for that purpose, and the licensee might be unable to reach the proceeds.

This could push the licensee into insolvency and possibly bankruptcy. We doubt that reorganization would be appealing to NRC since it might find itself with the responsibility for the cleanup and the possibility that in the post-bankruptcy period it could not recover the cleanup costs from the licensee.

Absent a priority, the trustee, in its discretion, could still refuse to relinquish the proceeds if the licensee was unable to substitute additional property. But this is not a position it would take lightly. Such a step could also push the licensee into bankruptcy, and the trustee would run the risks that (i) its efforts to use the proceeds to benefit bondholders would be automatically stayed and (ii) it would be forced to turn the proceeds over to the licensee or reorganization trustee for use in post-bankruptcy operations.

In the case of a possible bankruptcy, we believe that, as a practical matter, the licensee, its creditors and NRC would have a common interest in working out a plan that allowed the licensee to continue as an entity while decontaminating to the extent necessary to protect public health and safety. Our analysis is that the proposed priority could not facilitate that result and in some circumnstances would impede it. We therefore urge that NRC reject 50.54(w)(3).

A somewhat different conclusion was reached by another commenter. This commenter suggested two approaches. First, perhaps a licensee could "identify those decontamination costs which are not treatable as capital repairs and cause them to be insured separately or at least paid separately under existing insurance. It may then be possible to conclude that such insurance is not property insurance which must be payable to mortgage trustees." (Comment 20, p. 2–3). This approach would allow release of a significant amount of funds not subject to the control of the trustee. Second, funds would be released by the trustee if they were to be used for repairs that would be treated as additions "chargeable to plant accounts in accordance with sound accounting practice." (Ibid, p. 3) However, this commenter concludes,

To the extent that decontamination expenses do not constitute repairs so chargeable, the trustee may refuse to release the funds unless the Company happens to have available property additions which have not previously been tendered to the trustee. There can certainly be no assurance that the Company will have independently available property additions to tender to the trustee to obtain such release. The Company simply may be unable to obtain release of funds to expend on decontamination, at least to the extent that such expenditures do not constitute repairs under the provisions of the mortgage. (Ibid, p. 3)

Other commenters emphasized the impact on investor perceptions. One commenter indicated that because of the lack of clear standards for imposing a decontamination priority, bondholders probably would not have a "significantly greater sense of security for their investment than they could have had under the 1982 proposal of an absolute priority." (Comment 18, p. 4). Further, "existing bondholders purchased their bonds with an understanding that Federal regulatory policy would allow utilities to protect their investment with insurance." (Ibid, p. 5). A letter from Morgan Stanley & Co. was enclosed with EEI's comments to support this view. This letter states that particularly since TMI, investors expect that, "in the event of an accident, a portion of these insurance proceeds will

be available to repair or replace their investment."

Finally, the comment from the insurance pools suggested

> that they were able to pay the owner of TMI Unit 2 $68 million for loss to their nuclear fuel, even though decontamination was barely commenced. This contributed to regaining financial stability and made it more likely that the owners could address the long-range plans to decontaminate the reactor. (Comment 31, p. 2).

Despite their strong reservations about a decontamination priority, several commenters proposed ways of making such a priority less burdensome. Suggested revisions to the proposed rule would: (1) Provide specific criteria for determining when public health and safety is endangered, such as by following limits used in 10 CFR Part 20; (2) establish "sunset" provisions so that the Director's order would last only for a specified time, e.g., three to six months subject to renewal; and (3) have the Director of NRR issue a show cause order requiring the licensee to explain its prepared work plan and schedule and related expenditures are in the public interest. Following a hearing on the show cause order, the Commission could issue a modification of the licensee's work plan or schedule. Until an order was issued, the licensee would be able to proceed with its work plan.

Others suggested that the term "decontamination" be defined. These commenters argued that preparatory expenditures, such as stabilization costs and purchase of equipment and other materials necessary for cleanup might not be included in the definition of decontamination priority. Similarly, the degrees of decontamination should be tied to avoiding "exposure of the off-site public to radiation levels exceeding those allowed by NRC regulations" (comment 18, p. 6) or should otherwise indicate the level above which health and safety is endangered (comment 16, p. 3).

One comment addressed the specific issue of timing the implementation of a decontamination priority to coincide with the renewal dates of the policies. Because policies issued by NML and NEIL-II are, in effect, bilateral contracts, changes would be difficult to make without mutual consent or without awaiting policy expiration.

In preparing the proposed rule, the NRC relied on comments and proposals submitted by the Association of the Bar of the City of New York (the Association) in response to the 1982 ANPRM. As indicated in the proposed rule (49 FR 44647, Co. 3), the Association determined that utility trust indentures do not in general give bondholders any vested rights to a given amount or type of coverage. It also recognized that to respond properly to a nuclear accident, a licensee may be required to take a range of actions apart from decontamination and debris removal. Consequently, this commenter favored priority for payment of decontamination and debris removal expenses only insofar as it is "necessary to remove any significant health or safety hazard." The Association suggested this goal could be accomplished if a regulation were properly drawn, although it proposed no wording for such a regulation in its comments.

In responding to the proposed rule, however, the Association changed the focus of its comments. Although the Association indicated that it supported "in principle the form of decontamination priority which the Commission has proposed," it believes that, "as now proposed, the amendments to the Commission's property insurance regulations may not effectively provide for the decontamination priority which the Commission desires to achieve . . . that in the event of a serious nuclear accident, the utility's indenture trustee may refuse to release property insurance proceeds for decontamination or debris removal purposes." (Comment 12, p. 5).

The Association believes that "only by restricting payment of insurance proceeds to the trustee can there be any reasonable assurance that the proposed decontamination priority will prove effective." (p. 6). Such a restriction of payment would not be effective merely by payment directly to the utility because funds would still be vulnerable to creditor delays due to bankruptcy or insolvency. The Association perceives a fundamental conflict between the Atomic Energy Act, NRC regulations, and the terms of the license on the one hand and the provisions of the Bankruptcy Code on the other. The Association presents a legal analysis and synopsis of the arguments that the parties might use in obtaining property insurance proceeds and concludes from its analysis that

> a decontamination priority can only be effectively implemented if the decontamination proceeds are paid neither to the indenture trustee nor the utility itself but rather into a separate trust fund previously established for that purpose. The proceeds under the insurance policy would be paid to the trustee of the trust fund and disbursed to pay for costs incurred in decontaminating the reactor and removing radioactive debris. The remaining amounts, up to the limits of the policies, would then be available to pay for property damage and these funds would be paid to the indenture trustee." (p. 13).

Finally, the Association believes that such an approach should not conflict with utility indenture provisions because such indentures generally require a utility to maintain property insurance to the same extent as companies similarly situated and operating like properties, and not a particular level of coverage. Primary policies offered by ANI/MAERP and NML would have to be modified analogously to the NEIL–II excess policy, yielding a hybrid decontamination liability and property insurance policy.

NRC Response: The NRC disagrees that a decontamination priority would conflict with bond indenture language. As the Association indicated, such language typically would require a utility "to insure its property against loss or damage to the same extent that property of a similar character is usually so insured by companies similarly situated and operating like properties." [5] The NRC agrees with the Association's conclusion that such language would allow the NRC to impose a decontamination priority because all utility licensees would face similar conditions, would be insured "to the same extent" and would thus comply with indenture language. More recently, the Association concluded that, after a large accident, conflict between the interests of bondholders as represented by their trustees on the one hand, and the NRC on the other, could seriously impede, in some circumstances, recovery from an accident. The Association's recommended solution, i.e., to require all insurance proceeds to be deposited in a trust apart from the utility or bondholder's trustee, would provide additional assurance that funds would be available for accident decontamination and cleanup but could exacerbate this conflict, if imposed.

The extent to which this conflict would adversely affect investor perceptions and thus increase utility cost of capital and reduce access to capital is speculative. It is possible that utilities would incur some, perhaps significant, increased capital costs if a full decontamination priority were imposed. However, there are a number of factors which should temper the

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[5] One commenter indicated that its mortgage provisions require it to maintain insurance in "a reasonable amount against loss or damage by fire and from other causes customarily insured against by similar companies." (Comment 20). This is not appreciably different from the language cited by the Association. The staff has attempted without success to obtain assistance from the Federal Energy Regulatory Commission (FERC) and others to determine the extent to which indenture language varies.

rational investor's possible disquiet. First, as some commenters pointed out, the NRC has the authority under sections 161, 182(a), and other sections of the Atomic Energy Act to impose a decontamination priority after an accident whether or not such a priority is actually spelled out in 10 CFR 50.54(w). Given this, it can be argued that a conflict existed all along, although perhaps not known to certain investors.

Second, investors now are covered for a relatively small portion of their investment, although it has increased from the maximum $300 million coverage at the time of the TMI–2 accident. Because NEIL–II coverage has its own decontamination priority,[6] the most coverage investors could currently expect is $620 million. When compared to the $5 billion or more to construct the latest nuclear power facilities, an investor would be covered for little over 10% of the value of the investment. The NRC doubts that an investor would derive security from this limited coverage but would tend not to invest if an NRC decontamination priority were imposed.

Third, commenters essentially ignored in their comments the rapid growth in insurance capacity. The NRC cannot speculate on whether and to what extent capacity will grow further. Nevertheless, because of the shortfall in coverage as compared to facility value, it would be expected that demand for, if not supply of, insurance will remain high. If capacity continues to grow at a pace that substantially exceeds possible increases in estimated facility decontamination costs, it would be expected that investors would find a decontamination priority progressively less onerous as more funds would be made available exceeding those subject to a priority.

Fourth, as some commenters have suggested, a decontamination priority is only necessary for a scenario in which a plant is completely written off and the interests of the NRC and indenture trustee would conflict to the extent that bankruptcy might occur. Without a priority, some commenters argue that both the NRC and the trustee would have incentive to work out a plan "that allowed the licensee to continue as an entity while decontaminating." (Comment 15) Again, the NRC disagrees that a decontamination priority would destroy that incentive. If the priority itself ever became an impediment to accident recovery and resulted indirectly in a threat to public health and safety, it could be rescinded or made part of a broader recovery framework as the previous commenter discussed. The NRC, no less than the investors, would not wish to precipitate bankruptcy and so impede accident recovery.

The NRC rejects the argument that a decontamination priority would reduce flexibility in responding to an accident. Obviously, the NRC would not interpret a priority in so rigid a manner as to preclude prudent practices necessary to an orderly decontamination, such as equipment purchases, stabilization activities, etc. The decontamination priority was not meant to be applied sequentially in that all expenditures on cleanup would have to be made before any others. The priority has been worded to allow licensee flexibility, particularly after a reactor has been stabilized after an accident. Despite possible utility reluctance, the priority should be compatible with the broadest range of actions necessary to protect public health and safety. Further, the decontamination priority is meant to be invoked only when there would be serious concern over the availability of funds for decontamination.

Although most commenters opposed imposition of a decontamination priority, many did recommend changes to the wording of the priority that would make it less onerous. One change, suggested with slight variation by several commenters, would require that a definite time limit be established for an order by the Director of NRR. Some suggested that a time limit, of three or six months duration, could be extended as necessary. The NRC agrees that periodic reevaluation of the need to continue the Director's order is desirable and is thus incorporating a variety of provisions in the final rule relating to duration of the priority. However, the NRC believes that, as a practical matter, orders for decontamination priority would be extended as necessary to protect public health and safety. Thus, the principal effect of sunset provisions would be to allow for additional consideration as each order was replaced or extended.

Concerning the matter of hearings, the mechanism for imposing the decontamination priority would be an order to show cause by the Director of NRC. The Commission's rules in 10 CFR Part 2, Subpart B, afford the licensee the right to demand a hearing when the NRC staff seeks to impose requirements by order. In addition, any person whose interest may be affected by the proceeding could request a hearing or file a petition to intervene. If the Commission followed its usual practice of confining the scope of the proceeding to whether the order should be sustained, only pesons opposing the order could request a hearing or petition to intervene. Petitioners who did not object to the order but might seek further corrective measures would lack the requisite interest in the proceeding. See Bellotti v. NRC, 725 F.2d 1380 (1983). Thus as a practical matter, the Director's ability to impose the priority without a hearing would most likely depend on the licensee's response to the order.

With regard to the commenter's concern about delay in the decisionmaking process, the Commission notes that, even if a hearing were held, insurance proceeds would not necessarily be tied up. This is because the Commission's authority to impose the priority before holding a hearing would depend on the circumstances.

Other suggested changes to the actual wording of the priority concern the definition of the degree to which public health and safety should be protected. Some commenters recommend defining what is meant by protection of public health and safety; others suggest referencing the radiation protection guidelines used in 10 CFR Part 20.

The NRC favors tying decontamination limits to 10 CFR Part 20 standards for radiation protection and the ALARA principle (as low as reasonably achievable). Notwithstanding reliance on these radiation protection standards, the NRC believes it is also necessary to work with a decontamination plan tailored both to the specific problems and characteristics of the particular site suffering the accident and to the general characteristics that differentiate decontamination after an accident from decommissioning. This approach would allow both the NRC and the licensee greater discretion in initiating and completing a safe recovery and would be particularly desirable because accidents are expected to be rare and, to a large degree, unique. The NRC also believes that some commenters have confused the purpose of this rule—to provide adequate funds for recovery after an accident—with the process of accident recovery itself which is more thoroughly covered in other parts of the NRC's regulations.

This rule applies to decontamination after an accident; it does not encompass decommissioning. The NRC realizes that there may be an overlapping area of

[6] The fact that NEIL–II itself has a decontamination priority raises the question of whether NEIL–II's priority would not also conflict with bond indenture language. The comments directed to this area did not differentiate between the adverse effects that the NEIL–II priority and the NRC priority might have.

tasks which cannot be defined as uniquely decontamination or decommissioning. For example, certain components would be removed and disposed of whether as a result of cleanup following an accident or as part of decommissioning operations at the end of a plant's useful life. The NRC has attempted to minimize this overlap, but acknowledges that it cannot be eliminated.

The NRC understands, as confirmed by ANI officials, that insurers would likely pay for activities required or components damaged as a result of the accident. Insurers would not distinguish between accident decontamination and decommissioning when paying out insurance proceeds, as long as a licensees could offer proof of causation of damage.

If a reactor suffered an accident so severe that restart would not be possible, the reactor would have to be decommissioned. In this situation, the distinction between decontamination and decommissioning would be difficult to maintain. For example, a licensee could use property insurance proceeds for decontamination activities, such as removal and disposal of certain components, that under normal circumstances would clearly be considered part of the decommissioning process. As a result, the licensee might be able to preserve some decommissioning funds for other purposes following completion of decommissioning. Conversely, a licensee might try to draw upon funds reserved for decommissioning to perform decontamination tasks if property insurance proceeds were expended prior to completion of decontamination.

If an accident were severe enough to prevent restart of the reactor, however, essentially all of the property insurance proceeds would likely be needed for decontamination. Because property insurance also covers replacement of components, equipment, and structures, the insurance proceeds would be insufficient under current (and likely future) limits to cover all replacement as opposed to decontamination expenses. Thus, it is likely that all property insurance proceeds would be paid out regardless of whether used for accident decontamination or decommissioning activities.

In sum, the Commission is implementing a decontamination priority further modified to reflect many commenters' concerns. The section of the rule containing the priority, 19 CFR 50.54(w)(3), begins by establishing a priority for stabilizing the reactor after an accident so as to prevent any significant risk to the public health and safety. After the reactor is safe and stable, the licensee is required under section 10 CFR 50.54(w)(3)(ii) to submit a cleanup plan that identifies all cleanup operations necessary to bring the reactor to the point of decommissioning or restart. Various cleanup operations are indentified and reference to 10 CFR Part 20 occupational exposure standards is made so as to differentiate between decontamination after an accident and decommissioning. Section 10 CFR 50.54(w)(3)(iii) addresses the scope of the decontamination priority.

With respect to the Association's recommendation that all insurance proceeds be placed in trust so as not to be available to the bondholder's trustee, the NRC believes this requirement provides additional protection of public health and safety. As explained in the Association comments, utility bond indentures typically require available property insurance proceeds to be paid directly to the indenture trustee, not to the utility. This means that in the event of a serious accident, the insurance policy proceeds would not be under the control of the utility. If the NRC were to order the utility to spend all or part of the proceeds for protection of the public health and safety, the utility would be powerless to do so without asking for and receiving the proceeds from the trustee.

However, the bondholder trustee might not be willing or even legally able to release the proceeds. The trustee's obligation is not to the public health and safety, but to bondholders, and the bondholders are interested in preserving their investment. Thus, utility indentures generally limit the trustee's ability to pay insurance policy proceeds to the utility to circumstances where the funds will be used for repairs to or replacement of the damaged property and the bondholder's interests will thereby be protected. Most importantly, if a utility were forced into default because of the financial consequences of a serious accident, the trustee might be legally prohibited from paying policy proceeds to the utility. As the Association points out and NRC's own experience confirms, the NRC's ability under the Bankruptcy Code to get priority for expenditures of funds for safety is very uncertain. For these reasons, the Commission is adopting the Association's proposed approach to the decontamination priority. Thus, 10 CFR 50.54(w)(4) requires that the policy proceeds be paid to a separate trust fund established for the sole purpose of protecting the public health and safety.

The NRC also believes that an approach worth further evaluation is to seek legislation in Congress that would give preference in any bankruptcy proceeding to expenditures that mitigate threats to public health and safety. The NRC is currently studying the feasiblity of this approach.

6. Other Issues

Summary of Comments: Very few comments were received that were not related to the previously discussed issues. One commenter endorsed NRC's position stated in the proposed rule of not becoming involved in regulating insurance terms and conditions (comment 1). Another endorsed the NRC's position of not requiring licensees to carry coverage from both primary insurers (i.e., NML and ANI/MAERP) (comment 19). Finally, one commenter suggested that the term "financial protection" not be used in 10 CFR 50.54(w)(2). "Financial protection," as defined in the Atomic Energy Act and 10 CFR Part 104, is used in a specific sense not meant in Part 50.

NRC Response: The NRC essentially agrees with these comments and is incorporating them in the rulemaking. The NRC agrees that the term "financial protection" might be misleading to some in the context used in Part 50. Thus, the rule will be revised to use the less ambiguous term, "financial security."

Environmental Assessment and Finding of No Significant Environmental Impact

These amendments to 10 CFR 50.54(w) will increase the amount of insurance that each commercial reactor licensee is required to maintain to clean up a licensed reactor site after an accident. The amount of required insurance will increase from a minimum of $620 million currently required to $1.06 billion. The rule also adds a requirement that proceeds from insurance must be used first to stabilize and then decontaminate the licensed reactors before any other purpose when and to the extent that decontamination is required to protect public health and safety and is consistent with the Commission's 10 CFR Part 20 radiation protection standards. These actions are required to provide greater assurance that commercial reactor licensees will have sufficient funds to clean up their reactors following an accident. Assurance of these funds is required so that public health and safety is not adversely affected during the cleanup process. Alternatives to this action consist of maintaining the existing rule or establishing some other limit of insurance. Neither this action nor the alternatives to it have any significant impact on the environment. No other

agencies or persons were contacted for this action.

Consequently the Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and therefore an environmental impact statement is not required. Although changes in insurance requirements affect the financial arrangements of licensees and have economic and social consequences, they do not alter the environmental impact of the licensed activities. As determined in the above environmental assessment, the alternatives to the proposed action likewise do not have any significant impact on the environment. No other documents related to this proposed action exist. The foregoing constitutes the environmental assessment and finding of no significant impact for this final rule.

Paper Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.SC. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget approval number 3150–0011.

Regulatory Analysis

The Commission has prepared a regulatory analysis for this regulation. This analysis examines the costs and benefits of the alternatives considered by the Commission. Interested persons may examine and copy for a fee the regulatory analysis at the NRC Public Document Room, 1717 H St. NW., Washington, DC. Single copies of the analysis may be obtained from Robert S. Wood, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492–8413.

Backfit Analysis

This final rule requiring an increase in property damage insurance does not require "the modification of or addition to systems, structures, components, or design of a facility; or the design approval or manufacturing license for a facility; or the procedures or organization required to design, construct, or operate a facility." Accordingly, this action is not a backfit as defined in § 50.109. However, the staff has prepared an analysis of the rule's impact in light of the factors listed in § 50.109(c). This analysis may be examined or obtained in the same manner as the regulatory analysis mentioned previously.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

This rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Fire prevention, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, and the NRC is adopting the following amendment to 10 CFR Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 is revised to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.23, 50.35, 50.55, 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 50.10 (a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10 (b) and (c), and 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.55(e), 50.59(b), 50.70, 50.71, 50.72, 50.73, and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. Section 50.54 is amended by revising paragraph (w) to read as follows:

§ 50.54 Conditions of licenses.

* * * * *

(w) Each electric utility licensee under this part for a production or utilization facility of the type described in § 50.21(b) or § 50.22 shall, by June 29, 1982, take reasonable steps to obtain onsite property damage insurance available at reasonable costs and on reasonable terms from private sources or to demonstrate to the satisfaction of the Commission that it possesses an equivalent amount of protection covering the facility. Provided that:

(1) This insurance must have a minimum coverage limit for the reactor station site of either $1.06 billion or whatever amount of insurance is generally available from private sources, whichever is less. If a licensee's coverage falls below the required minimum, the licensee shall within 60 days take all reasonable steps to restore its coverage to the required minimum.

(2) The licensee shall report to the NRC on April 1 of each year the current levels of this insurance or financial security it maintains and the sources of this insurance or financial security.

(3)(i) The proceeds of this insurance shall be used first to ensure that the licensed reactor is in a safe and stable condition and can be maintained in that condition so as to prevent any significant risk to the public health and safety. The licensee shall inform the Director of the Office of Nuclear Reactor Regulation in writing when that condition is attained.

(ii) Within thirty (30) days after the licensee informs the Director of the Office of Nuclear Reactor Regulation that the reactor is and can be maintained in a safe and stable condition, the licensee shall prepare and submit a cleanup plan for the Director's approval. The plan shall identify all cleanup operations that will be required to decontaminate the reactor sufficiently to permit the licensee either to resume operation or to commence decomissioning of the reactor in a manner that is consistent with the Commission's occupational exposure

limits in 10 CFR Part 20. If applicable, these operations may include:

(A) Processing any contaminated water generated by the accident and by decontamination operations to remove radioactive materials:

(B) Decontamination of surfaces inside the auxiliary and fuel handling buildings and the reactor building to levels consistent with the Commission's occupational exposure limits in 10 CFR Part 20, and decontamination or disposal of equipment;

(C) Decontamination or removal and disposal of internal parts and damaged fuel from the reactor vessel; and

(D) Cleanup of the reactor coolant system.

(iii) Following review of the licensee's plan, the Director will order that the licensee complete all operations that the Director finds are necessary to decontaminate the reactor sufficiently to permit the licensee either to resume operation or to commence decommissioning of the reactor, in a manner that is consistent with the Commission's occupational exposure limits in 10 CFR Part 20. Any property insurance proceeds not already expended to place the reactor in a safe and stable condition pursuant to paragraph (w)(3)(i) of this section shall be used first to complete those decontamination operations that are the subject of the Director's order. Such order may not be effective for more than one year, at which time it may be renewed. Each subsequent renewal order, if imposed, may be effective for not more than six months.

(4) Property insurance proceeds subject to the decontamination priority in paragraph (w)(3) of this section must be payable to a separate trust established for the sole purpose of paying for costs incurred in decontaminating the reactor and removing radioactive debris. The trust and trustee must be acceptable to the Commission. An acceptable trustee includes an appropriate State or Federal government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(5) The decontamination priority and trust requirements set forth in paragraphs (w)(3) and (w)(4) of this section must:

(i) Be incorporated in onsite property damage insurance policies for nuclear power plants not later than October 4, 1988 and

(ii) Apply uniformly to all onsite property damage insurance policies for nuclear power plants required under paragraph (w)(1) of this section.

Dated at Washington, DC, this 31st day of July 1987.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 87-17796 Filed 8-4-87; 8:45 a.m.]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-13-AD; Amdt. 39-5702]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which requires inspection for disbonding of tear straps in fuselage body section 46, and repair, if necessary. This AD is prompted by reports of disbonding of upper body hot bonded skin tear straps on eight airplanes. This condition, if not corrected, could lead to rapid depressurization if a longitudinal body skin crack should occur adjacent to the area of ineffective tear strap attachment.

EFFECTIVE DATE: September 13, 1987.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Owen E. Schrader, Airframe Branch, ANM-120S; telephone (206) 431-1923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive to require inspection for disbonding of upper body hot bonded skin tear straps in body section 46 of Boeing Model 747 series airplanes, and subsequent repair, if necessary, was published in the **Federal Register** on March 17, 1987 (52 FR 8264). The comment period for the proposal closed on May 4, 1987.

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the three comments received. Comments were received from the Air Transport Association (ATA) of America, on behalf of its members; a non-U.S. operator; and the manufacturer.

The ATA, as well as the non-U.S. operator, were concerned that the proposed compliance time was too short and would require the operators of large fleets to commence inspections prior to the issuance of the final rule or suffer possible grounding of some airplanes. The ATA further stated that its members have requested that the compliance time be extended to as much as 1,000 landings after the effective date of the final rule. The basis for this request is to provide sufficient time for the operator to accomplish the required inspections. The manufacturer also commented on the proposed compliance time and recommended that airplanes from line number 231 through 349 be inspected within 750 landings after the effective date of the final rule, based upon recent negative findings on 16 airplanes between line number 231 and 349, and the fact that there was a process control tightening at line number 231. The manufacturer also recommended that airplanes from line number 1 through 230 be inspected within 250 landings after the effective date of the final rule. The FAA has considered these comments and has determined that the extension of compliance time, as recommended by the manufacturer, will provide an acceptable level of safety, and also provide adequate relief for the operators to schedule the inspections. Paragraph A. of the final rule has been revised to reflect this change.

Two commenters requested that the initial compliance times refer to the effective date of the AD and not some other date. The FAA concurs, and has revised the initial compliance time of the final rule to reflect the effectivity of this amendment. Paragraph A. of the final rule has been revised to reflect this change.

The commenters were concerned that the final rule may be different from the Notice of Proposed Rulemaking and might require additional effort. The FAA does not concur. If additional requirements are imposed, the FAA would be required to propose them in a separate rulemaking action.

The ATA requested that this AD allow the utilization of an external skin inspection for cracking as an optional inspection until the tear strap inspection is accomplished. This request is based on the assumption that the purpose of

the tear straps is to prevent unknown cracks from becoming critical. The FAA does not concur. The tear straps are important to stop crack growth, but the area of inspection is partially within the path of debris from an engine turbine burst. The proper functioning of the tear straps could be essential to continued safe flight in the event the fuselage is struck by debris. Therefore, the FAA does not consider that an external skin inspection would provide an equivalent level of safety.

The manufacturer recommended that paragraph C. of the proposed AD be changed to correspond to the service bulletin that allows for deferral of the repair if the unbonded area exceeds 60% but does not exceed 75% of the total tear strap area between stringers. The FAA does not concur because the rate of growth of the disbond area cannot be predicted with adequate certainty. Paragraph C. remains unchanged.

The manufacturer recommended that the AD reference Revision 1 of the service bulletin. The FAA concurs. This change does not increase the scope of the inspection, but only provides clarification of instructions for certain models of the airplane. This change has been incorporated into the final rule.

The manufacturer also stated that only pressurized flights should be counted in determining compliance. The FAA concurs and has added a paragraph in this regard to the final rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes noted above.

It is estimated that 125 airplanes of U.S. registry will be affected by this AD, that it will take approximately 72 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $360,000 for the initial inspection.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities, because few, if any, Model 747 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) 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 airworthiness directive:

Boeing: Applies to Model 747 series airplanes, as listed in Boeing Alert Service Bulletin 747-53A2279, dated January 15, 1987, certificated in any category. Compliance required as indicated, unless previously accomplished.

To detect disbonding of the upper body tear straps in body section 46, accomplish the following, unless already accomplished:

A. Within 250 landings after the effective date of this AD for airplanes line number 1 through 230, and within 750 landings after the effective date of this AD, for airplanes line number 231 through 349, perform an ultrasonic inspection of tear straps for disbonding in accordance with Boeing Alert Service Bulletin 747-53A2279, Revision 1, dated May 7, 1987, or later FAA-approved revisions.

B. If no evidence of unbonded areas are found, reinspect those areas at intervals not to exceed 6 years.

C. If evidence of unbonded areas is found, and the unbonded area between any two adjacent stringers does not exceed 60 percent of the total tear strap area between these stringers, reinspect those areas at intervals not to exceed the limits allowed by the chart in Figure 2 or 4, as appropriate, of Boeing Alert Service Bulletin 747-53A2279, Revision 1, dated May 7, 1987, or later FAA-approved revisions.

D. If evidence of unbonded areas is found, and the unbonded area between any two adjacent stringers exceeds 60 percent of the total tear strap area between these stringers, repair those areas prior to further flight in accordance with Boeing Alert Service Bulletin 747-53A2279, Revision 1, dated May 7, 1987, or later FAA-approved revisions. If blind fasteners are used, visually reinspect installation at intervals not to exceed 1,000 landings for loose or missing fasteners, cracks, or corrosion.

E. Terminating action for the inspections required by this AD is the installation of solid fasteners at all affected tear strap locations in accordance with Boeing Alert Service Bulletin 747-53A2279, Revision 1, dated May 7, 1987, or later FAA-approved revisions.

F. For the purpose of complying with this AD, the number of landings may be determined to equal the number of pressurization cycles where the cabin pressure differential was greater than 2.0 PSI.

G. An alternate means of compliance or adjustment of the compliance time, which provide an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

H. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective September 13, 1987.

Issued in Seattle, Washington, on July 29, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87-17689 Filed 8-4-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-106-AD; Amdt. 39-5701]

Airworthiness Directives; Lockheed-California Model L-1011-385 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of Lockheed-California Model L-1011-385 series airplanes by individual telegrams. This AD requires repetitive ultrasonic inspections for cracks of the inboard retract lugs of both the left and right main landing gear (MLG) shock strut cylinder. Failure to detect and correct cracks can result in structural failure of the MLG shock strut cylinder and ultimate collapse of the MLG.

DATES: Effective August 24, 1987. This AD was effective earlier to all recipients of telegraphic AD T87-15-51, dated July 22, 1987.

ADDRESSES: The applicable service information may be obtained from Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Order Administration, Dept. 65-33, U-33, B-1. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Augusto Coo, Aerospace Engineer, Airframe Branch, ANM-121L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6319.

SUPPLEMENTARY INFORMATION: On July 22, 1987, the FAA issued telegraphic AD T87-15-51, applicable to Lockheed-California Model L-1011-385 series airplanes, which requires repetitive ultrasonic inspections for cracking of the inboard retract lugs of both the left and right main landing gear (MLG) shock strut cylinder, and repair or replacement, if necessary. This action was prompted by the report of an accident where, during roll-out after landing, the right-hand MLG on a Model L-1011-385 airplane collapsed and separated from the aircraft. The failure was attributed to a stress corrosion crack emanating from the bore of the inboard retract actuator lug on the right-hand MLG strut cylinder. This condition, if not corrected, could result in structural failure of the MLG shock strut cylinder and ultimate failure of the MLG.

Preliminary investigation of the aforementioned accident revealed that the strut cylinder lug bushing installed was was made of stainless steel and is the type of bushing the installation of which constitutes terminating action for the repetitive inspection requirements of AD 82-10-52-R1, Amendment 39-4671 (48 FR 29470; June 27, 1983). That AD was issued to require repetitive visual and/or ultrasonic inspections for cracks of the inboard retract actuator lug on both MLG strut cylinders of all Model L-1011-385 series airplanes; installation of a stainless steel strut cylinder lug bushing was provided as an optional terminating action for the required repetitive inspections. In light of the recent accident that has prompted this amendment, the FAA may consider further rulemaking action to amend the requirements of AD 82-10-52-R1.

Since this condition may exist or develop on other airplanes of this same type design, this AD requires, within 10 days after the effective date of this amendment, an initial ultrasonic inspection of the inboard retract lugs of both the left and right MLG shock strut cylinder on Model L-1011-385 series airplanes equipped with stainless steel bushings in the retract lugs, and repetitive inspections thereafter at intervals not to exceed 400 landings. Any MLG shock strut cylinder found to be cracked must be repaired or replaced in a manner approved by the FAA prior to further flight.

Since a situation existed, and still exists, that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The Federal Aviation Administration has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations 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 airworthiness directive:

Lockheed-California Company: Applies to Lockheed-California Model L-1011-385 series airplanes, certificated in any category, which have stainless steel bushings installed in the retract lugs of the left and/or the right main landing gear (MLG) shock strut cylinder. Compliance required as indicated, unless previously accomplished.

To detect cracks and prevent structural failure of the MLG shock strut cylinder, accomplish the following:

A. Within 10 days after the effective date of this AD, unless previously accomplished within the last 400 landings, and thereafter at intervals not to exceed 400 landings, perform an ultrasonic inspection of the inboard retract lugs of both the left and right MLG shock strut cylinder, following the procedure specified in Section 2, Accomplishment Instructions, of Lockheed-California L-1011 Service Bulletin 093-32-A211, Revision 1, dated October 26, 1982, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

B. Any MLG shock strut cylinders that are found cracked must be repaired or replaced prior to further flight, in a manner approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the inspection requirements of this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer, may obtain copies upon request to Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Order Administration, Dept. 65-33, U-33, B-1. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 4344 Donald Douglas Drive, Long Beach, California.

This amendment becomes effective August 24, 1987.

It was effective earlier to all recipients of Telegraphic AD T87-15-51, issued July 22, 1987.

Issued in Seattle, Washington, on July 29, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87-17690 Filed 8-4-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-NM-27-AD; Amdt. 39-5699]

Airworthiness Directives; Short Brothers Model SD3-60 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Short Brothers Model SD3-60 series airplanes, which requires repetitive inspection of the spar webs of the horizontal stabilizer, and repair if cracks are found. This amendment is prompted by results of extended fatigue testing by the manufacturer, which revealed cracks in the spar web of the horizontal stabilizers. This condition, if not corrected, could result in loss of the structural integrity of the horizontal stabilizer.

EFFECTIVE DATE: September 10, 1987.

ADDRESSES: The applicable service information may be obtained from Short Brothers Aircraft, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, which requires repetitive inspections of the spar webs of the horizontal stabilizer on Short Brothers Model SD3-60 series airplanes, and repair if cracks are found, was published in the **Federal Register** on April 14, 1987 (52 FR 11998).

Interested parties have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After issuance of the proposal, Short Brothers issued Revision 3 to Service Bulletin SD360-55-11, dated April 28, 1987. This revision of the service bulletin differs from the original issue in that the initial compliance time for inspection has been extended from 8,000 flights to 12,000 flights for certain serial-numbered airplanes and other airplanes which have used 15° take-off flaps, and the number of flights between inspections has been extended from 1,000 flights to 1,500 flights. The final rule has been revised to reflect the compliance time and repetitive inspection intervals as indicated in Revision 3 to the Short Brothers service bulletin. The FAA has determined that this change will not have a significant adverse effect on the safety of flight, and will not impose any additional economic burden on operators.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes noted above.

It is estimated that 33 airplanes of U.S. registry will be affected by this AD, that it will take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $6,600.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because of the minimal cost of compliance per airplane ($200). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations 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 airworthiness directive:

Short Brothers PLC: Applies to Model SD3-60 airplanes, serial numbers SH3601 through SH3691 and SH3694, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent loss of the structural integrity of the horizontal stabilizer accomplish the following:

A. Visually inspect, in accordance with the schedule listed below, the forward face of the rear spar web and the aft face of the front spar web for cracks between fuselage attach fitting at 12.5" left and right of the airplane center line, in accordance with Short Brothers Model SD3-60 Service Bulletin SD360-55-11, Revision 3, dated April 28, 1987.

1. For airplanes serial numbers SH3680 through SH3691 and SH3694, and airplanes which have used only 15° flap take-off since before or upon reaching 5,000 flights, inspection is required within the next 100 flights or prior to the accumulation of 12,000 flights, whichever occurs later. Repeat the inspection at intervals not to exceed 1,500 flights.

2. For all other airplanes, inspection is required within the next 100 flights or prior to the accumulation of 8,000 flights, whichever occurs later. Repeat the inspection at intervals not to exceed 1,000 flights.

B. If cracks are found, prior to further flight, modify by strengthening the horizontal stabilizer in accordance with Short Brothers Model SD3-60 Service Bulletin SD360-55-12, dated April 1986.

C. The repetitive inspections required by paragraph A., above, may be terminated following completion of the modification described in Short Brothers Model SD3-60 Service Bulletin SD360-55-12, dated April 1986.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Short Brothers Aircraft, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective September 10, 1987.

Issued in Seattle, Washington, on July 28, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87-17691 Filed 8-4-87; 8:45 am]

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CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1015

Freedom of Information Act Regulations; Final Amendments on Fees

AGENCY: Consumer Product Safety Commission.

ACTION: Final amendments.

SUMMARY: When members of the public are provided documents under the Freedom of Information Act, the Commission may impose fees for such services as duplication and searching. The Commission is amending its regulations so that (1) the fees will reflect more accurately the Commission's direct (actual) costs of providing the services and (2) the fees will conform to the Freedom of Information Reform Act of 1986.

DATES: The amendments will become effective on September 4, 1987.

FOR FURTHER INFORMATION CONTACT: Alan Shakin, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6980.

SUPPLEMENTARY INFORMATION:

A. Background

The Commission's existing regulations on Freedom of Information Act (FOIA) fees appear at 16 CFR 1015.9. They provide, in essence, that fees will be charged for FOIA services, but "certain information provided routinely in the normal course of doing business will be provided at no charge" (§ 1015.9(a)); that the Commission's Secretary determines and levies fees and may waive or reduce them "when the furnishing of the information can be considered as primarily benefiting the general public or when special circumstances warrant" (§ 1015.9(b)); that the Secretary's determination of fees may be appealed to the commission (§ 1015.9(b)); that the first $25 of fees will be waived (§ 1015.9(c)); and that fees are not levied where the requested documents are not provided or made available (§ 1015.9(d)).

The existing regulations also direct that payment should be by check or money order payable to the Consumer Product Safety Commission (§ 1015.9(e)). Finally, they set forth the schedule of charges for FOIA services: searches, computer time, reproduction, postage, microfiche, and microfilm (§ 1015.9(f)).

In October 1986 the Commission voted to propose certain changes to these FOIA fee regulations. Before it did so, however, the Freedom of Information Reform Act of 1986 ("Reform Act," at sections 1802-04 of Pub. L. 99-570, the Anti-Drug Abuse Act of 1986) was enacted.

The Commission's reasons for wanting to amend its FOIA fee provisions were to make the fees better reflect the direct (actual) costs of responding to FOIA requests and to clarify some provisions. The Reform Act addresses the direct-costs issue and other issues that require changes to the Commission's fee provisions.

On March 27, 1987 the Office of Management and Budget issued its final Fee Schedule and Guidelines ("OMB Guidelines") which the Reform Act required OMB to issue. 52 FR 10011. On April 2, 1987 the Department of Justice's Office of Legal Policy issued a memorandum on New FOIA Fee Waiver Policy Guidance ("DOJ Memorandum"). After considering the guidance provided in these OMB and DOJ documents, the Commission proposed amendments to its FOIA fee regulations on May 12, 1987. 52 FR 17767.

B. Public Comments

The Commission received one public comment on its proposed FOIA fee amendments. This comment, from attorneys for Public Citizen and the Freedom of Information Clearinghouse ("Public Citizen"), did not specifically address the Commission's proposal—rather, it discussed issues raised by the Reform Act, its legislative history, the OMB Guidelines, and the DOJ Memorandum. The Commission has considered Public Citizen's applicable points and addresses them in section C, below.

C. Final Amendments

This section summarizes the final amendments issued below, discusses their rationales, and explains the changes made to the proposed amendments (the citations are to the final amendments):

1. The Commission will provide certain routine information at no charge; otherwise, the Secretary will determine and levy FOIA fees in accordance with the regulations (§ 1015.9(a)). This provision shortens, but does not change, existing provisions.

2. Checks and money orders will be payable to the Treasury of the United States, instead of to the CPSC, but will continue to be sent to the CPSC (§ 1015.9(b)). This will make fee collection administratively easier because the U.S. Treasury eventually receives funds collected for FOIA responses.

3. Under the Reform Act, different categories of requests incur different types of costs. The four types of requests are: (a) Commercial use requests; (b) requests from educational and non-commercial scientific institutions; (c) requests from representatives of the news media; and (d) all other requests. The three types of costs are duplication, search, and review.

The Commission specifically sought comment on the issue of whether lawyers would be "commercial use requesters" or "other" requesters when seeking information under FOIA for use in product liability lawsuits. Although no public comments addressed this issue, the Commission has evaluated arguments on both sides, considered the positions taken by other federal agencies, and decided to apply the following criteria to requests from lawyers:

(a) If a FOIA request from a lawyer is being submitted on behalf of a client, the Commission will consider the client's use of the information to determine the proper category for that request. If the client is a victim seeking reimbursement for injuries suffered in an incident involving a consumer product, the request will be an "other" request and not a "commercial use" request. For clients in different categories, the intended use of the information will determine the type of request for fee purposes.

(b) If a FOIA request from a lawyer doesn't identify a client, the Commission will attempt to find out—for example, by telephoning the lawyer—if the request was submitted on behalf of a client.

(c) If the lawyer is not representing a client or refuses to reveal the client's identity, the lawyer's intended use of the information will determine whether the request is a "commercial use" request or some other type.

(d) For FOIA fee purposes, lawyers may identify their clients by category rather than by name. To assess appropriate fees, however, the Commission may insist on a specific description of the intended use.

4. To reflect and clarify the approach of categorizing requests from lawyers according to their clients' intended use of the information (whenever possible), the Commission has modified its definition of "commercial use request." As proposed, the definition referred 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." The final definition refers, more simply, to a request that seeks information for a use or purpose that furthers commercial, trade, or profit interests (§ 1015.9(c)(v)).

Public Citizen sought a definition for "commercial use request" that would "[draw] a bright line between private, profit-making and non-profit entities." This seemed to be a request for a blanket guarantee that no request from public interest or non-profit organizations would ever be categorized as a commercial use request. The Commission believes that a fairer and more workable approach is to consider—for each FOIA request on an individual basis—how the information is intended to be used.

The statutory language of the Reform Act supports this approach by directing agency regulations to "provide that . . . fees shall be limited to reasonable standard charges for document search, duplication, and review, when records are requested *for commercial use.*" 5 U.S.C. 552(a)(4)(A)(ii), as amended (emphasis added). The Act does not refer to commercial or other types of *users.* While FOIA requests from non-profit groups are unlikely to be commercial requests, the Commission will categorize them on a case-by-case basis.

5. Public Citizen suggested definitions for "educational institution" and "representative of the news media." The Commission's proposed definition of "educational institution," taken from the OMB Guidelines, listed the types of schools it included. Public Citizen's suggestion was that the Tax Code contains a better definition: entities "organized and operated exclusively for . . . educational purposes." The Commission is adopting a final definition that is based on this language (§ 1015.9(c)(vi)), but will not be bound by any tax law authorities in interpreting it.

Similarly, the Commission is changing its definition of "representative of the news media," in response to Public Citizen's comment, to "any person or organization which regularly publishes or disseminates news to the public, in print or electronically (§ 1015.9(c)(viii)). The proposed definition unfairly excluded free-lance journalists who are not associated with any specific news organization, and the final definition remedies that problem. Public Citizen also suggested broadening the definition to those who publish or disseminate information, rather than news, to the public. However, the Commission retained the word "news" in the definition because it is based on the statutory phrase "news media." "Information" is so broad that it might apply to people and organizations outside of the generally understood category of the news media.

All but one of the remaining definitions are being issued in final form as they were proposed (§ 1015.9(c) (i), (ii), (iii), and (iv)). The definition of "non-commercial scientific institution" has been rewerded for clarity, but the Commission intends its meaning to remain unchanged.

6. Commercial use requesters may be charged for duplication, search, and review costs; educational institution and non-commercial scientific institution requesters and representatives of the news media may be charged for duplication costs; and all other requesters may be charged for duplication and search costs (§ 1015.9(d)). The following discussion illustrates how the Commission intends to impose review costs under the amendments:

Section 6(b) of the Consumer Product Safety Act (15 U.S.C. 2055(b)) requires the Commission to give manufacturing and private labeling firms the opportunity to comment on documents in which they are identified. The Commission then reviews those comments and decides whether to withhold the documents. If so, the documents are often withheld because of a specific statutory provision, section 6(b), which makes them exempt from disclosure under Exemption 3 of the FOIA (5 U.S.C. 552(b)(3)).

The time spent processing documents under section 6(b) of the CPSA would be a "review" cost under the amendments, since "review" is defined to include the examination of documents to determine whether they are permitted to be withheld. Depending on the nature and length of the firms' comments, such review time is sometimes considerable.

7. Some changes are being made to the fee structure (§ 1015.9(e)), to make fees reflect direct (actual) costs more closely than the existing fees do:

(a) The cost of a search does not now depend on what type of employee conducted it. Under the amendments, clerical personnel will be "billed out" at one rate ($3.00 for each 15-minute period), while non-clerical and professional and managerial personnel will be billed out at a higher rate ($4.90 for each 15-minute period). In addition, any special costs of sending records from field locations to headquarters for review will be included in search fees, at the clerical rate.

(b) Computer time rates are being revised. Postage will be charged, on a direct-cost basis, only for special handling. The rates for materials and services not specified in the regulations will be on direct-cost bases, as determined by the Secretary.

(c) The costs of review, which are not currently charged, will be billed at $4.90 for each 15-minute period, since lawyers and other professionals perform this work.

8. The Reform Act addresses the circumstances under which agencies must waive FOIA fees. First, 100 pages of duplication and two hours of search time must be waived, except for commercial users. Second, fees must be waived (or, in rare cases, reduced) if 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.

The Commission currently waives the first $25 of fees for all requests. It also directs the Secretary to waive or reduce fees when the disclosure would primarily benefit the general public or when special circumstances warrant. These provisions are being amended as follows:

For commercial use requests, there will be no automatic waiver (§ 1015.9(f)(i)). For educational institutions, noncommercial scientific institutions, and representatives of the media (for which the Commission only imposes duplication costs), there will be a $10 waiver for duplication costs (at $.10/page, 100 pages of duplication would cost $10) (§ 1015.9(f)(ii)). For any other requester (for which the Commission imposes duplication and search costs), the waiver will be $10 for duplication costs and $40 for search costs (§ 1015.9(f)(iii)). The cost of a two-hour search would vary, depending on the status of the employee searcher, from $24.00 to $39.20 (computer searches are excluded). For administrative convenience, the Commission will waive the highest possible figure for a two-hour search, $39.20, rounded off to $40.

Under the amendments, the Secretary will consider all "public interest" waiver requests under the six factors outlined in the DOJ Memorandum (§ 1015.9(f) (iv) and (v)). Public Citizen commented that the advice in the DOJ Memorandum is inconsistent with the Reform Act, disingenuous, and biased. However, the Commission does not plan to rely on the Justice Department's advice any more or less than it would rely on the legislative history of the Reform Act and its own

interpretation of the Act, should a question arise about applicability of the "public interest" waiver. The six factors merely isolate and restate the statutory language, and the Commission finds them to be a useful framework for its regulation. Therefore, they are retained in the final amendments.

The Secretary's decisions on waivers will be appealable to the General Counsel (§ 1015.9(f)(vi)).

9. Other amendments concerning the assessment and collection of fees follow the OMB Guidelines:

(a) The Commission will assess interest charges on an unpaid bill, starting on the 31st day after the billing was sent (§ 1015.9(g)(i)).

(b) The Commission will assess charges for time spent searching, even if responsive documents are not located or located documents are exempt from disclosure (§ 1015.9(g)(ii)). Such charges shall not exceed $25, unless the requester has authorized a higher amount.

(c) The Commission will require advancce payment if (1) charges are estimated to exceed $250 and the requester has no history of payment and cannot provide satisfactory assurance of payment, or if (2) a requester has previously failed to pay within 30 days of the billing date (§ 1015.9(g)(iii)).

(d) The Commission will aggregate requests for billing purposes when it reasonably believes that one request has been "broken down" into a series of requests for the purpose of evading fees (§ 1015.9(g)(iv)).

(e) Under the Reform Act, agencies are prohibitied from charging a fee if the cost of collecting the fee would be equal to or greater than the fee itself. Therefore, the Commission will not charge for any request in which the total bill is less than $9.00 (§ 1015.9(g)(v)), an amount that the Commission estimates is the average cost of proceeding one fee collection.

The amendments will become effective on September 4, 1987. In proposing them, the Commission found that neither an environmental assessment nor an environmental impact statement was required. In addition, because any changes in the numbers of firms affected or the amounts of fees collected under the FOIA are not expected to be substantial, the Commission certified that the proposed amendments were not expected to have a significant economic impact on a substantial number of small entities, under the Regulatory Flexibility Act, 5U.S.C. 603(3).

List of Subjects in 16 CFR Part 1015

Freedom of information.

Pursuant to 5 U.S.C. 552(a)(4)(A), as amended, the Commission hereby amends 16 CFR Part 1015 as follows:

PART 1015—[AMENDED]

1. The authority citation for Part 1015 continues to read as follows:

Authority: 86 Stat. 1207; (15 U.S.C. 2051), 74 Stat. 372 as amended; (15 U.S.C. 1261), 84 Stat. 1670; (15 U.S.C. 1471), 70 Stat. 953; (15 U.S.C. 1211), 68 Stat. 11 as amended; (15 U.S.C. 1191), 81 Stat. 54 as amended (5 U.S.C. 552).

2. Section 1015.9 is revised to read as follows:

§ 1015.9 Fees for production of records.

(a) The Commission will provide, at no charge, certain routine information. For other Commission responses to information requests, the Secretary shall determine and levy fees for duplication, search, review, and other services, in accordance with this section.

(b) Fees shall be paid by check or money order, payable to the Treasury of the United States and sent to the Commission.

(c) The following definitions shall apply under this section:

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

(2) "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.

(3) "Duplication" refers to the process of making a copy of a document necessary to respond to a FOIA request.

(4) "Review" refers to the process of examining documents located in response to a commercial use request to determine whether any portion of any document located is permitted to be withheld.

(5) "Commercial use request" refers to a request that seeks information for a use or purpose that furthers commercial, trade, or profit interests.

(6) "Educational institution" refers to an entity organized and operated exclusively for educational purposes, whose purpose is scholarly.

(7) "Non-commercial scientific institution" refers to an entity organized and operated exclusively 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" refers to any person or organization which regularly publishes or disseminates news to the public, in print or electronically.

(d) A commercial use request may incur charges for duplication, search, and review. The following requests may incur charges only for duplication: A request from an educational institution for records not sought for commercial use; a request from a non-commercial scientific institution for records not sought for commercial use; a request from a representative of the news media. Any other request may incur charges for duplication and search.

(e) The following fee schedule will apply:

(1) Copies of documents reproduced on a standard photocopying machine: $0.10 per page.

(2) File searches conducted by clerical personnel: $3.00 for each one-quarter hour (a fraction thereof to be counted as one-quarter hour). Any special costs of sending records from field locations to headquarters for review will be included in search fees, billed at the clerical personnel rate.

(3) File searches conducted by non-clerical or professional or managerial personnel: $4.90 for each one-quarter hour (a fraction thereof to be counted as one-quarter hour).

(4) Review of records: $4.90 for each one-quarter hour (a fraction thereof to be counted as one-quarter hour).

(5) Computerized records: for central processing, $0.32 per second of central processing unit (CPU) time; for printer, $10.00 per 1,000 lines; and for computer magnetic tapes or discs, direct costs.

(6) Postage: Direct-cost basis for mailing requested materials, if the requester wants special handling or if the volume or dimensions of the materials requires special handling.

(7) Microfiche: $0.35 for each frame.

(8) Other charges for materials requiring special reproducing or handling, such as photographs, slides, blueprints, video and audio tape recordings, or other unusual materials: direct-cost basis.

(9) Any other service: An appropriate fee established by the Secretary, based on direct costs.

(f) Fees shall be waived as follows:

(1) No automatic fee waiver shall apply to commercial use requests.

(2) The first $10.00 of duplication costs shall be waived for requests from educational institutions, non-commercial scientific institutions, and representatives of the news media.

(3) For all other requests, the first $10.00 of duplication costs and the first $40 of search costs shall be waived.

(4) The Secretary shall waive or reduce fees whenever 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 disclosure of the requested information is not primarily in the commercial interest of the requester.

(5) In making a determination under paragraph (f)(4) of this section, the Secretary shall consider the following factors:

(i) The subject of the request: Whether the subject of the requested records concerns the operations or activities of the government.

(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.

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to public understanding.

(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.

(v) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(vi) 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.

(6) Any determination made by the Secretary concerning fee waivers may be appealed by the requester to the Commission's General Counsel in the manner described at § 1015.7.

(g) Collection of fees shall be in accordance with the following:

(1) Interest will be charged on amounts billed, starting on the 31st day following the day on which the billing was sent. Interest will be at the rate prescribed in 31 U.S.C. 3717.

(2) Search fees will be imposed (on requesters charged for search time) even if no responsive documents are located or if the search leads to responsive documents that are withheld under an exemption to the Freedom of Information Act. Such fees shall not exceed $25.00, unless the requester has authorized a higher amount.

(3) Before the Commission begins processing a request or discloses any information, it will require advance payment if:

(i) Charges are estimated to exceed $250.00 and the requester has no history of payment and cannot provide satisfactory assurance that payment will be made; or

(ii) A requester failed to pay the Commission for a previous Freedom of Information Act request within 30 days of the billing date.

(4) The Commission will aggregate requests, for the purposes of billing, whenever it reasonably believes that a requester or group of requesters is attempting to separate a request into more than one request for the purpose of evading fees.

(5) If a requester's total bill is less than $9.00, the Commission will not request payment.

Dated: July 23, 1987.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 87-17055 Filed 8-4-87; 8:45 am]

BILLING CODE 6355-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 30, 32, and 166

Foreign Futures and Foreign Options Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is adopting final regulations governing the domestic offer and sale of options and futures contracts traded on or subject to the rules of a foreign board of trade. These rules are intended to implement the provisions of sections 2(a)(1)(A), 4(b) and 4c of the Commodity Exchange Act ("Act"), which vest the Commission with exclusive jurisdiction over the offer and sale of such instruments in the United States.

EFFECTIVE DATE: January 4, 1988.

FOR FURTHER INFORMATION CONTACT: Jane C. Kang, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION:

I. Background

On April 8, 1986, the Commission published for public comment a new part 30 to its regulations to govern the domestic offer and sale of futures and options entered into on or subject to the rules of a foreign board of trade. 51 FR 12104.[1] Following an initial comment period of 90 days, the comment period was twice extended and closed on November 14, 1986. Upon careful consideration of all comments received and its own reconsideration of the regulations as proposed in light of its regulatory objectives, the Commission is today publishing final rules.

With the development of international futures markets, and increasing public awareness of such markets, these regulations will add to the Commission's existing customer protection regulatory scheme coverage of foreign futures and options transactions undertaken by U.S. domiciliaries. Throughout the formulation of these rules, the Commission has been guided by Congress' intent that foreign futures and options products sold in the U.S. be subject to regulatory safeguards comparable to those applicable to domestic transactions.[2] In particular, requirements with respect to registration, disclosure, capital adequacy, protection of customer funds and recordkeeping will be applied to the offer and sale of foreign products as they are to the offer and sale of domestic products. In addition, the regulations will extend the open season provisions of section 12(e) of the Act to permit the application of state law to those persons and foreign transactions that operate in violation of the regulatory scheme. Currently, the Commission has exclusive enforcement jurisdiction with respect to all foreign futures and options transactions. *See* section 12(e). Further, the rules potentially are a vehicle for harmonizing regulatory programs among international markets, thus facilitating the growth of these markets.

Finally, the regulations are a prerequisite to permitting the offer and sale of foreign options, now banned, to members of the public.[3] As described in greater detail in section IV, *infra*, pursuant to rule 30.3(a) adopted herein, the Commission intends to authorize by separate order the offer and sale of foreign options on a market-by-market basis.

In order to give affected persons sufficient time to comply with the rules (and to coincide with the effective date of certain offshore regulatory programs), the Commission is delaying their effective date to January 4, 1988. In the interim, the prohibition on foreign options will remain in place, while foreign futures may be offered subject only to the antifraud provisions of section 4b of the Act and current Commission rule 30.02. The Commission is mindful that the implementation of a regulatory scheme such as this is an evolving process, particularly as the issues are numerous and complex. Accordingly, the Commission invites affected persons to seek interpretations of the rules, no-action positions and

[1] This proposal was preceded by an advance notice of proposed rulemaking that was published in the **Federal Register** on July 25, 1984 in response to amendments to the Act in the Futures Trading Act of 1982, Pub .L. No. 97-444, 96 Stat. 2204, 2299 (1983). 49 FR 29963.

[2] *See* S. Rep. No. 384, 97th Cong., 2d Sess. 45-46 (1982) and 51 FR at 12107.

[3] Although Congress removed the statutory prohibition on the offer and sale of foreign options formerly contained in section 4c(c) of the Act, *see* Futures Trading Act of 1986, Pub. L. No. 99-641, section 102, 100 Stat. 3556 (1987), the regulatory prohibition set forth in Commission rule 32.11, 17 CFR 32.11 (1987), adopted pursuant to section 4c(b) of the Act, remains in effect. This regulatory prohibition, of course, is subject to the trade option exception set forth in Commission rule 32.4, 17 CFR 32.4 (1987).

exemaptions, as appropriate. In this regard, the Commission has determined to retain the general exemptive provision set forth in rule 30.10, as proposed.

As the Commission noted in proposing this rule, among other things, it allows persons located outside the United States that are subject to a comparable regulatory scheme to seek an exemption from the application of certain of the rules adopted herein. In this connection, the Commission is issuing concurrently as Appendix A to Part 30 of these rules, an interpretative statement generally indicating how this exemption would be applied which sets forth the elements the Commission will examine in determining whether to grant an exemption to such persons. As described more completely in the interpretative statement, a party seeking an exemption must set forth with particularity the comparable rule or rules applicable in the jurisdiction in which the party is located. Moreover, any exemption that may be granted will be subject to the condition that the foreign person consensually submit to U.S. jurisdiction by designating an agent for service of process in the United States with respect to the foreign transactions that are the subject of these rules. In addition, the foreign person must agree to make its relevant books and records available in the United States to a Commission or Department of Justice representative.

The Commission would like to make clear that the more general exemption described herein and in the interpretative statement would be available to persons located outside the United States that are subject to a comparable regulatory structure. It is not the Commission's intention to grant such exemptions to persons located in the United States that solicit or accept orders for execution on a foreign board of trade although, as noted above, the Commission will entertain from domestic persons petitions for exemption or no-action to address technical problems of particularity in the application of the Commission's foreign futures and options rules to given persons, as it would with respect to any Commission rules. Otherwise, U.S. persons required to register with the Commission under part 30 generally will be expected to comply in all respects with its provisions and related provisions of the Commission's rules.

II. Summary of Comments on Proposed Rules

During the seven-month comment period, the Commission received thirty letters on the notice of proposed rulemaking, representing five United States contract markets, four futures commission merchants, the Futures Industry Association ("FIA"), National Futures Association ("NFA"), two United States Government agencies (Departments of Commerce and Justice), the North American Securities Administrators Association, Inc. ("NASAA"), a company which provides bookkeeping systems to futures commission merchants and to other commodity clients in London and Hong Kong, and thirteen foreign commenters. The foreign commenters included five foreign exchanges, one of which submitted its views through a comment letter prepared jointly by a United States law firm and a Canadian law firm, and one letter from the Joint Exchanges Committee in London, representing the views of the London Commodity Exchange Ltd., the Metal Market and Exchange Company Ltd., the London International Financial Futures Exchange Ltd., the Grain and Feed Trade Association, the International Petroleum Exchange of London Ltd., and International Commodities Clearing House Ltd. (hereinafter "London Exchanges"), two foreign commodities firms, one of which is also a registered futures commission merchant, and five foreign governmental entities. Two commenters submitted more than one comment letter. [4] A synopsis of the views of the three major groups of commenters, *i.e.*, U.S. exchanges, U.S. futures commission merchants and foreign exchanges, in addition to that of NFA, follows. A more detailed survey of the comments received is outlined in the analysis of the final rules.

The U.S. futures commission merchants generally questioned the need for any regulation whatsoever. However, their specific concerns centered on the separate segregation requirement, which they believed would be expensive to implement and which they contended their current computer systems would not be able to accommodate. The futures commission merchants also expressed reservations about serving as an agent for service of process of all communications under the proposed alternative procedure, fearing that as a result they could be held responsible for the conduct of the foreign entity over which they had no control. The majority of the futures commission merchants also strongly recommended that the definition of "commercial" persons set forth in proposed rule 30.1 be broadened to include institutional users of the commodities markets and financial institutions.

The U.S. contract markets supported the adoption of a regulatory structure but contended that the proposed rules, if not exactly equivalent to the regulation of domestic products, would give a competitive advantage to foreign exchanges. The contract markets expressed particular concern that commercials would be excluded from the definition of a foreign futures and option customer setting a precedent for a trade futures exception and that foreign futures and option customer funds would not be included in a firm's required capital computation. They specifically addressed the issue of parity with respect to foreign and domestic products stating that these exclusions would make the cost of doing business on a foreign exchange less expensive than the cost of doing business in the U.S. and, hence, would have an anticompetitive effect on the U.S. market. They also expressed concern about the increased threat to U.S. customer funds for lack of capital reflecting the risk of foreign positions in the event of the bankruptcy of the futures commission merchant.

The foreign exchanges also asserted the rules were anticompetitive but, conversely, that they discriminated in favor of the U.S. markets. They particularly expressed concern about the registration requirement for firms not located in the U.S. In their view, the alternative procedure in proposed rule 30.5 provided little relief, since it would require the foreign firm to effect transactions through a registered domestic futures commission merchant.[5] However, they strongly supported the exemptive procedure. The foreign exchanges also objected to the disclosure requirement, contending it suggests that trading on a foreign exchange is riskier than trading on a U.S. exchange. Finally, since foreign exchanges permit "upstairs" or over-the-counter trading, the exchanges asked that the rules make clear that such transactions are not prohibited. Conversely, on this matter, the U.S. contract markets requested clarification that section 4(a), which prohibits the offer and sale of all off-exchange futures contracts, would be applicable to off-exchange foreign futures contracts.

NFA commented that U.S. participants in foreign futures and options transactions should be afforded protections substantially similar to those afforded customers whose transactions are executed on domestic

[4] These commenters were the Department of Justice and the Coffee, Sugar & Cocoa Exchange, Inc. In addition, on July 3, 1987, the Joint Exchanges Committee in the United Kingdom submitted a letter on behalf of the London Exchanges, the Bank of England, the Securities and Investments Board, the Association of Futures Brokers and Dealers and the Department of Trade and Industry urging the Commission to adopt final rules governing foreign futures and options transactions as expeditiously as possible.

[5] Notably, the U.S. exchanges criticized the alternative procedure in proposed rule 30.5 as it would provide an intermediate basis for qualifying to do business from offshore without the corresponding agreement of offshore self-regulators to cooperate in enforcing the regulations.

exchanges. In that connection, NFA urged the Commission to promulgate rules governing registration and minimum financial requirements for firms engaged in foreign futures and options transactions, but commented that maximum flexibility would be achieved if the Commission permitted additional requirements in areas such as segregation, recordkeeping, disclosure and sales practices to be imposed through NFA rulemaking. According to NFA, this approach to regulation would be especially appropriate in view of the apparent general trend among foreign govenments to provide for regulation in their jurisdictions through self-regulatory bodies.

III. Final Rules

A. In General

The rules which the Commission is now adopting reflect the Commission's careful evaluation of the comments received and refinement of its regulatory objectives in this rulemaking proceeding. As a result, the regulatory system outlined in the final rules as adopted herein is consistent with that proposed by the Commission in April of last year while refining the proposed rules in three principal respects. These principal revisions to the proposed rules are discussed at length below, followed by a discussion of the other aspects of the final rules. Generally, these revisions reflect the resolution of issues raised for comment in favor of according substantially comparable treatment, insofar as practicable, to foreign and domestic products sold in the U.S., a resolution that effectuates the overall purpose of the rulemaking. As previously noted, however, the Commission is mindful of the particularly complex nature of the issues presented by these rules as well as the regulatory goals embodied herein. In consideration of the foregoing, and to give affected persons sufficient time to comply or to apply for an exemption through the exemptive procedure in rule 30.10, the Commission is delaying the effective date of the rules to January 4, 1988, and reiterates its invitation to affected persons to seek interpretations, clarifications and exemptions, as appropriate.[6]

[6] The Commission wishes to note that the staff will continue to consider requests for issuance of no-action letters with respect to the offer and sale of foreign futures contracts which are based on stock indices in light of the criteria set forth in section 2(a)(1)(B) of the Act. The rules herein will regulate the offer and sale of foreign futures contracts based on such indices, but does not eliminate the necessity of complying with other provisions of the Act applicable to such contracts.

B. Principal Revisions to Proposed Rules

Commercial exclusion. Unlike the broad definition of a "customer" for purposes of domestic exchange transactions, the Commission proposed to exclude from the definition of a "foreign futures or foreign options customer" a "producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of the foreign futures contract or foreign options transaction, or the products or byproducts thereof, when such foreign futures contracts or foreign options transactions are entered into solely for purposes related to its business as such." Proposed § 30.1(c). The Commission, which modeled this exception on the trade option exception, proposed this exclusion based upon the current nonregulation of foreign futures generally and its belief that, historically, persons who had determined to use transactions on foreign exchanges in connection with their business had taken the time to investigate those markets and the brokers with which they would be dealing. As a result, except for the prohibitions on fraud that in any event are applicable to the offer and sale of all transactions on foreign exchanges, the Commission preliminarily determined that such persons may not require the special protections afforded by the Commission's proposed regulatory scheme for the domestic offer and sale of such foreign products. However, the Commission specifically requested comment on whether this exclusion was appropriate.[7]

The commercial exclusion generated strong opinions on both sides of the issue. The exchanges expressed great concern with the Commission's plan to exclude from the definition of "customer" all "commercial" entities, commenting that the proposal is inconsistent with the objectives of customer protection and fair competition. Noting the Commission's statement in the proposal that commercial traders are more sophisticated than non-commercial traders and, therefore, do not need the "special protections" provided by Commission regulations, they commented that the need for such protections is even less compelling when transactions occur on domestic exchanges, where safeguards that may not be found on foreign markets are enforced directly by the contract markets and their clearing organizations, subject to Commission oversight. However, the primary reason the exchanges opposed this exclusion was their concern that it provided a competitive advantage to foreign markets at the expense of domestic markets. Another U.S. commenter noted the Commission's assessment in the proposed rules that virtually all foreign futures and foreign options transactions originating from the U.S. are for commercial accounts and was troubled that the exclusion of commercials from the definition of a foreign futures or foreign options customer would have eliminated the desirable aspects of the Commission's customer protection rules.

The futures commission merchants and foreign commenters who remarked on this provision endorsed the Commission's effort to exempt from the scope of the proposed regulations certain commercial entities. Nevertheless, they believed that the language of the commercial customer exclusion, set forth in proposed rule 30.1(c), should be broadened in two respects. First, the exclusion should be expanded to include a sophisticated professional and business user of the markets who would not strictly be "a producer, processor or commercial user of, or a merchant handling the commodity which is the subject of the foreign futures contract or foreign options transactions. . . ." Second, they suggested that the restriction that an excluded customer enter into the foreign futures or options transaction "solely for purposes related to its business as such" is too narrow and could undermine completely the benefits of the proposed exemption. In this connection, certain futures commission merchants noted that the narrow scope of the exclusion would require them to carry commercials in two separate accounts, since commercials frequently engage in transactions that would not qualify for an exclusion. Hence, the benefits intended by the proposed rule would be lost and administrative problems and costs of doing a global business would be materially magnified. In essence, these commenters endorsed a "sophisticated investor" exclusion from the definition of a foreign futures and foreign options customer.

The Commission finds merit in the position of the U.S. exchanges that "commercials" be included in the definition of a foreign futures and foreign options customer. This assessment is generally consistent with Congressional intent that the Commission adopt rules to protect *all* U.S. residents and that any regulations adopted not result in either domestic or foreign products having a comparative

[7] 51 FR at 12107.

advantage over the other.[8] Moreover, the Commission has determined that it would not be appropriate to expand the scope of the language in the trade option exception to all commercials trading in foreign futures and foreign options. As noted by one U.S. exchange, the mere fact that a firm deals in the underlying commodity does not mean that it is a "sophisticated" trader of all foreign futures or foreign options and that it could not benefit from the safeguards applicable to other non-commercial customers. Further in this regard, as noted above, the futures commission merchant community appeared generally dissatisfied with the scope of the exclusion, arguing that it did not provide meaningful relief as proposed. The Commission, however, was concerned that such an exclusion, particularly in that it may provide lesser protections to funds of institutions which invest and carry funds for the general public, may not be in the public interest. Therefore, the Commission has determined not to exclude commercials from the definition of foreign futures and foreign options customers.[9]

Capital requirements. The Commission proposed no changes to Commission rule 1.17 which currently does not require that foreign futures customer funds be taken into account in computing the firm's minimum net capital requirements, although a futures commission merchant is required to take a charge against its capital for undermargined house proprietary accounts or customer futures accounts (including foreign futures accounts) carried by the futures commission merchant. Commission rule 1.17(c)(5)(viii)–(x), 17 CFR 1.17(c)(5)(viii)–(x) (1987). Thus, as proposed, the rules would not have applied the present four percent of segregated fund captial requirement to foreign futures and options with respect to entities currently registered as futures commission merchants. For entities which registered as futures commission merchants and engaged exclusively in foreign futures or option transactions, an adjusted minimum net capital of no less than $50,000 would have been required under Commission rule 1.17(a). An entity which registered as an introducing broker would have been required to maintain an adjusted net capital of at least $20,000 or be guaranteed by a futures commission merchant. Commission rule 1.17 (a), (j), 17 CFR 1.17 (a), (j) (1987). The Commission specifically requested comment, however, on whether this approach to the minimum net capital requirement of futures commission merchants that carry foreign futures or options was appropriate and, in particular, whether it was sufficient in the case of certain foreign markets that do not have explicit margin requirements. 51 FR at 12107–08.

The U.S. exchanges strongly opposed the proposal not to impose the same capital requirements applicable to domestic transactions on foreign futures and foreign options. Specifically, they commented that domestic and foreign contracts carried by a firm must be treated alike in order to provide a meaningful net capital standard to provide the protections generally envisioned by capital against risk to the financial integrity of a firm, particularly in that margin may not always be assessed, and to insure that foreign products do not enjoy a built-in competitive advantage over domestic products. Otherwise, they argued, U.S. firms will favor the sale of foreign futures and options and firm capital will inadequately protect customers who are sold such instruments. Additionally, they urged the Commission to impose a minimum capital requirement on firms engaged exclusively in the domestic offer and sale of foreign futures and options that accurately reflects the risk inherent in the total positions carried by such firms.[10] Finally, the exchanges noted that the growing availability of such instruments in the U.S. creates a real danger that foreign trading losses could cause an otherwise safe and sound domestic firm to fail.

One foreign exchange also questioned the adequacy of the Commission's proposal in this regard and commented that in the jurisdiction in which it is situated, its member firms are required to include all contracts, including foreign futures and options, in calculating their minimum net capital requirement (except for exempt contracts consisting of spreads in the same commodity entered into on the same commodity future exchange, short covered hedge positions and commodity futures contracts held for financial institutions). One futures commission merchant which commented on this issue noted that the Commission's approach to minimum net capital was appropriate.

On this issue as well, the Commission has considered the comments in light of the proposal's intent to ensure, to the degree reasonably possible, the comparable treatment of domestic and foreign products, and the Congressional directive in this regard. The Commission's capital requirement essentially serves three related purposes. First, it ensures that a firm has made a sufficient financial commitment to doing business and that it has an adequate inclination to operate a responsible business. Second, the capital requirement promotes a firm's stability and enhances its ability to perform as an agent to its customers. Finally, and most importantly, the minimum adjusted net capital requirement promotes a firm's financial integrity and coupled with margin, protects against firm insolvencies. As previously discussed, the U.S. exchanges expressed the view that domestic and foreign products must be treated alike in order to ensure a meaningful net capital standard, and further expressed great concern that the failure to account for foreign futures and options in computing the firm's minimum net capital requirement could affect an otherwise safe and sound domestic firm. For these reasons, the Commission believes that, in light of the differences in margin treatment on foreign exchanges and Congressional concern with respect to the comparable treatment of domestic and foreign products, rule 1.17 should be applied to money, securities and property which a futures commission merchant holds for or on behalf of foreign futures and foreign options customers to secure open foreign futures and foreign options positions as well as domestic positions.[11] Specifically, pursuant to

[8] S. Rep. No. 384, 97th Cong., 2d Sess. 46 (1982).

[9] The Commission notes, however, that, as under current Commission rules and regulations with respect to transactions on U.S. contract markets, a person trading foreign futures and options solely for proprietary accounts will not be required to register as a futures commission merchant, although such a person will remain subject to all other applicable provisions of the Act of the rules, regulations and orders thereunder. See Commission rule 3.10(c), 17 CFR 3.10(c) (1987).

[10] The Commission has recently sent letters to all of the industry self-regulatory organizations, welcoming their efforts to develop and test a risk-based minimum capital requirement as an alternative to certain proposals advanced by the Commission after the default of Volume Investors Corporation in 1985. The Commission stated that it looks forward to receipt of this proposal, which it understands may be submitted to the Commission within the next few months. The Commission further stated that any such proposal would deserve a prompt, yet thorough, examination and comment process, which will permit all interested parties sufficient time to review and assess its potential impact. However, the Commission believes that the continuing work on a general modification of the Commission's capital rules, however timely, should not further defer the adoption of the rules herein.

[11] The definition of such funds, the secured amount, describes the minimum amount required to be maintained in the separate account or accounts mandated by new rule 30.7 on behalf of foreign futures and options customers. The secured amount can be deposited in an account together with nonregulated customer funds provided there is no competing security interest in such account and the provisions of § 30.7(b) are met.

amendments to rule 1.17, the capital requirement applicable to firms carrying foreign futures and foreign options positions will include four percent of the foreign futures and foreign options secured amount, which is defined in new rule 1.3(rr) and discussed more fully below. The Commission believes this determination is more consistent with Congressional intent and the Commission's goal of ensuring to the extent possible, the parallel treatment of domestic and foreign futures and options products and the financial integrity of firms doing an integrated business.

To effectuate this new determination, conforming amendments have been added to part 1 of the Commission's rules. As referenced above, the definition of foreign futures and foreign options customer funds in proposed § 30.1(d) has been deleted and the definition of foreign futures and foreign options secured amount has been added at rule 1.3(rr) because of the reference to such term in conforming amendments to rules 1.10, 1.16 and, most significantly, in rules 1.12 and 1.17, CFR 1.10, 1.12, 1.16 and 1.17 (1978). This secured amount was adopted in lieu of a separate segregation requirement for excess margin in order to reduce the accounting and transmission problems affiliated with the requirement that all such excess funds be accounted for and maintained onshore. In essence, the foreign futures and foreign options secured amount is an amount equal to the money, securities and property held by, or held for or on behalf of, a futures commission merchant from, for, or on behalf of foreign futures or foreign options customers required to margin, guarantee or secure *open* foreign futures contracts or representing premiums paid or received, plus other funds required to guarantee or secure open option transactions, plus any unrealized gain or minus any unrealized loss on such transactions. In the case of certain foreign options, the Commission understands that premiums paid by customers are held not by the firm but transferred directly to the opposite party to the foreign option contract. Since such premium would not be held by or held on behalf of the futures commission merchant, such premium would not constitute foreign futures and foreign options secured amount.

This will also be the amount to which the existing four percent capital requirement is applied and in calculating the early warning level for firm capital pursuant to 1.12(b)(2) and the firm's adjusted net capital in sections 1 17(a)(1)(i)(B), (b)(2), (c)(5)(iii), (e)(1)(ii), (h)(2)(iv)(C)(2), (h)(2)(vii)(A)(2), (h)(2)(vii)(B)(2), (h)(2)(viii)(A)(2), (h)(3)(ii)(B) and (h)(3)(v)(B) of the Commission's rules. Further, pursuant to amendments to rule 1.10, futures commission merchants must account for money, securities and property received from foreign futures and foreign options customers on the Form 1–FR. Similarly, in rule 1.16, which deals with the qualifications and reports of accountants, paragraph (a)(4) which defines "customer" has been revised to include a foreign futures and foreign options customer as that term is defined in rule 30.1(c).

Foreign Futures and Foreign Options Secured Amounts. In specifying which of the Commission's existing rules and regulations would not be applicable, the Commission noted that rule 1.20, requiring the segregation of customer funds, would not be applicable in recognition of the fact that the Commission could not impose upon members of foreign exchanges, or the foreign exchanges, or the foreign exchanges themselves, the same obligations imposed upon U.S. clearing member firms and clearing organizations consistent with Congressional directive discussed more fully below.[12] Therefore, the Commission originally proposed a separate segregation rule to govern the treatment of foreign futures or foreign options customer funds, imposing upon futures commission merchants carrying foreign futures or options customer funds virtually the same obligations with respect to funds in their possession as they have with respect to U.S. futures or option customer funds as long as such funds are held in the United States. Proposed § 30.7. This rule, in effect, required excess margin funds for foreign transactions to be retained onshore.

Under the modified segregation proposal, futures commission merchants were required to deposit foreign futures or options customer funds in a bank located in the United States [13] or with another futures commission merchant and separately account for and segregate such funds as belonging to foreign futures or option customers. However, such funds subsequently could be deposited with a member of a foreign exchange, with the clearing organization of such foreign exchange or with their respective designated depositories to purchase, margin, guarantee, secure, transfer, adjust or settle foreign futures contracts or options of behalf of the foreign futures or options customer. The requirement of a U.S. deposit before the transmission of funds offshore was intended to insure the availability of bank and futures commission merchant records with respect to such funds which would help establish that they had indeed been transferred on behalf of customers and assist in the tracing of funds.

Proposed rule 30.7 also provided that such funds could, for convenience, be commingled with the funds of other foreign futures or options customers and deposited in the same account or accounts with a bank or trust company located in the United States or with another futures commission merchant, but under no circumstances could such funds be commingled with customer funds required to be segregated under section 4d of the Act and Commission rule 1.20. The Commission expressed concern that to permit such commingling would possibly dilute the pool of funds available to U.S. futures customers in the event of a bankruptcy of the futures commission merchant to the extent funds located overseas could not be repatriated. The Commission's bankruptcy rules provide that for purposes of determining the pro rata distribution of property to customers who hold claims against a debtor, all property segregated on behalf of, or otherwise traceable to, a particular account class is to be allocated to that particular class. Commission rule 190.08(c)(1), 17 CFR 190.08(c)(1) (1987). Thus, to the extent funds located overseas could not be repatriated, if foreign futures and foreign options customer funds were commingled with customer funds required to be segregated pursuant to section 4d, the shortfall in foreign futures and foreign options customer funds would have diminished the pro rata distribution to all customers, including customers trading on domestic exchanges.

However, by requiring foreign futures and foreign options customer funds to be segregated in a separate account, proposed rule 30.7, in conjunction with the Commission's recordkeeping requirements, would have permitted these separately segregated funds to be traceable to a foreign futures or options account class. Provided foreign futures and options customer funds were on deposit in the United States or were otherwise recoverable, foreign futures or options customers would have received the same priority with respect to their

[12] 51 FR at 12108 and proposed § 30.2.

[13] In this connection, the Commission wishes to emphasize that this is a current requirement for domestic futures commission merchants and that a United States branch of a foreign bank may be an acceptable depository.

See Commodity Exchange Authority Administrative Determination No. 238 (September 4, 1974).

funds as U.S. futures and options customers. The Commission also requested comment on whether, in the alternative, this segregation requirement should be eliminated and foreign futures and foreign options customer funds continue to receive a lower priority as was then accorded to them as unregulated funds under the Commission's backruptcy rules.

One U.S. exchange argued very strongly that the Commission should impose identical segregation requirements for funds securing foreign and domestic positions, commenting that the practical effect of the Commission's present proposal is to mislead such customers as to the fate of their funds in a bankruptcy.[14]

On different grounds, U.S. futures commission merchants also objected to the Commission's proposed separate segregation requirement. Essentially, the futures commission merchants noted that the proposed requirement would be extremely complex and costly to implement, requiring major systems changes over an extended period of time. The futures commission merchants noted that in order to comply with the existing segregation requirements of section 4d of the Act, they currently separate customer and non-customer funds. They contended that the Commission's segregation proposal would require the creation of two additional categories within the customer level (commercial and speculative) and could also result in one client being classified in both categories depending upon the commodity being traded. In addition, they commented that separate segregated accounts would be necessary for each possible foreign currency. They contended current systems are not equipped and could not be equipped without excessive cost to handle an additional set of segregated accounts for yen, HK Dollars, Swiss francs, deutschmarks, pounds sterling and Australian Dollars, among other foreign currencies.[15]

They further noted that even if separate segregation could be accomplished without costly systems changes, reporting to clients with respect to such accounts would be confusing and perhaps misleading. Firms also would need to account for segregated (in U.S.) and no longer segregated customer funds (funds transferred to the foreign country) and this would be extremely complex. They were also concerned how to identify accurately where excess funds could be deposited in light of likely substantial nonregulated spot transactions in foreign currencies of their foreign futures and options customers.

One futures commission merchant took a contrary position and commented that it would prefer that no distinction be made between the customer funds of U.S. residents trading in domestic futures and options and the funds of those U.S. residents trading on foreign boards of trade and that these funds be allowed to be retained by futures commission merchants in a consolidated account as long as the funds are located in the United States.[16] If the purpose of the contemplated segregation regulation was to protect the funds of U.S. residents trading in foreign futures and options, this futures commission merchant believed that there was no conceptual basis for treating foreign futures and options customers any differently from U.S. residents who trade on U.S. exchanges or for treating the funds of commercial or institutional customers any differently from those of speculative customers generally. Accordingly, the futures commission merchant requested that consideration be given to the proposition that all U.S. resident customers funds be generally commingled, regardless of the location of the exchange. Finally, this futures commission merchant urged the Commission to clearly authorize futures commission merchants to invest foreign futures and options customer funds in the same manner as they may invest domestic futures and options customer funds.

The majority of the foreign commenters supported the Commission's proposal not to require the segregation in the U.S. of funds necessary to margin foreign futures and foreign options positions overseas, commenting that once foreign futures and option customer funds are transmitted to their respective jurisdictions, such funds are protected by the segregation and other customer protection rules in place in such jurisdictions.

Upon further reflection on this matter, the Commission has determined to modify rule 30.7 to reflect the concerns of the commenters. In so doing, the Commission reaffirms its view that domestic customers of all commodity futures and options products, wherever they originate, should receive substantially the same protections. The Commission further recognizes the inherent limitations on its ability to provide U.S. residents trading on foreign exchanges the identical protections available to U.S. residents trading on U.S. contract markets. Weighed against these considerations, however, is the decision not to promulgate rules which in any way would diminish the pool of funds available to domestic customers trading on U.S. exchanges in the event of a firm failure and not to create biases in favor of the trading of foreign products. Accordingly, pursuant to paragraph (a) of rule 30.7 as adopted, the Commission will require futures commission merchants to maintain in a *separate* account or accounts at least that amount of money, securities and property defined in new rule 1.3(rr) adopted herein, discussed above, which is equal to original client margins set by the futures commission merchant plus accruals and less losses. This amount, "the secured amount," must be deposited in an account accessible on behalf of customers. This rule specifies only the minimum amount required to be maintained in such an account(s). Nothing in these rules prohibits a firm from maintaining additional money, securities and property received from the appropriate customers in such separate account or accounts provided that these amounts are not subject to a competing security interest or claim for noncustomers.

For example, pursuant to new paragraph (b) of this section, the secured amount may, if permitted under foreign laws, be deposited in the same account as are the funds of foreign customers of the futures commission merchant trading on foreign boards of trade

[14] Another U.S. exchange expressed concern that proposed section 30.7 did not address whether, in linked transactions, it would be permissible for funds received from customers to margin *either* the domestic or foreign positions to be commingled in the same segregated account at the registrant, at a depository, or at the clearinghouse. In that connection, on November 17, 1986, the Division of Trading and Markets issued an interpretative letter at the request of COMEX on the permissible treatment of funds received to margin transactions executed pursuant to COMEX's linkage agreement with the Sydney Futures Exchange. Specifically, the Division stated therein that trades executed on the Sydney Futures Exchange and cleared under the linkage agreement with the COMEX would not be treated as foreign futures but rather as contracts for future delivery on or subject to the rules of a contract market to which the provisions with respect to the segregation of customer funds under section 4d(2) of the Act apply. However, any trades executed on the Sydney Futures Exchange outside of the agreement would be treated as foreign futures. Interpretative Letter No. 86-26, 2 Comm. Fut. L. Rep. (CCH) ¶23,359 (Nov. 17, 1986). *See also* Mutual Offset System's Customer Funds Treatment, Interpretative Letter No. 84-19 [1984-1986 Transfer Binder]. Comm. Fut. L. Rep. (CCH) ¶22,389. (Aug. 9, 1984).

[15] In this connection, the Commission notes that a separate account for each foreign currency would not be necessary if such foreign currencies are converted into U.S. dollars.

[16] Under such a system, all foreign futures and foreign options, including funds required to be segregated pursuant to 4d of the Act, would be automatically included in computing the firm's net capital requirement.

provided that the claims of such customers do not diminish the amount required to be on deposit by rule 30.7.[17] Consequently, new paragraph (b) to rule 30.7 requires that, in such instances, the amount on deposit in such account or accounts may be no less than the greater of: (i) The foreign futures and foreign options secured amount plus the amount required to be on deposit if all such customers were foreign futures or foreign options customers under part 30; or (ii) the foreign futures or foreign options secured amount plus the amount required to be held in such separate account(s) for or on behalf of customers pursuant to any law or rule, regulation or order thereunder, or any rule of any self-regulatory organization authorized thereunder, in the jurisdiction in which the depository or the customer is located. This is because, if these funds are subject to an offshore segregation requirement, it is not clear that the priority on behalf of domestic foreign futures and options customers would prevail, as the funds would constitute a trust for two purposes. In the case of other excess funds permitted to be maintained in the separate account, of course, foreign futures and options customers should have a priority claim in the event of insolvency. The foreign futures and foreign options secured amount may not be deposited with money, securities or property of the futures commission merchant or of noncustomers, nor used to secure or guarantee the obligations of such futures commission merchant or of noncustomers. Further, pursuant to paragraph (d), under no circumstances may such secured amount be commingled with funds required to be segregated pursuant to section 4d of the Act and the regulations thereunder.

Pursuant to paragraph (c), the secured amount must be deposited in a separate account or accounts maintained under an account name clearly identifying them as such with a bank or trust company located in the U.S. or as designated, another futures commission merchant, the clearing organization of any foreign board of trade, any member of such foreign board of trade or their designated depositories as permitted under applicable local law. Also pursuant to paragraph (c), as with funds required to be segregated pursuant to section 4d, futures commission merchants must retain in their files for the period designated in rule 1.31, an acknowledgment from the depository that it has been advised that the money, securities or property are held for or on behalf of foreign futures and foreign options customers and are being held in accordance with the provisions of these regulations.

This permits futures commission merchants to continue to document other money, securities and property belonging to foreign futures and foreign options customers deposited in respect of nonregulated transactions such as spot currency transactions subject only to certain recordkeeping and reporting requirements. These requirements include, but are not limited to, the provisions of rule 1.10(d), which, in essence, requires futures commission merchants to include such unregulated funds in addition to the foreign futures and options "secured amount" in completing the Form 1–FR; the requirements of new paragraph (e) to § 30.7, which parallels Commission rule 1.27(a), 17 CFR 1.27(a) (1987), and requires futures commission merchants to account strictly for the investment of money, securities or property on behalf of foreign futures or foreign options customers; new paragraph (f), which parallels Commission rule 1.32, 17 CFR 1.32 (1987), which requires a daily calculation of all funds on deposit, the total amount of money securities and property required to be on deposit in such separate account(s) and, finally, the amount of the futures commission merchant's residual interest in such funds.

In this connection, the Commission's bankruptcy rules as noted above and in the preamble to the proposed rules provide that for purposes of determining the pro rata distribution of property to customers who hold claims against a debtor, all property segregated on behalf of, or otherwise traceable to, a particular account class is to be allocated to that particular class. Commission rule 190.08(c)(2), 17 CFR 190.8(c)(2) (1987). Under such a formulation, therefore, the Commission does not need to amend its bankruptcy rules. Foreign futures and options secured amounts would be automatically allocated to foreign futures and options customers, to the extent such funds are on deposit in the U.S. or are repatriated. In addition, by imposing strict recordkeeping requirements set forth in rule 30.7(d) and other applicable Commission rules, all money, securities and property held for or on behalf of foreign futures and foreign options customers, should also be traceable to such foreign futures and foreign options account class. Provided these funds are on deposit in the U.S. or may be recovered, such customers should receive such funds on a pro-rated basis.

C. Other Final Rules

Definitions. The proposed rules set forth definitions of, among other terms, "foreign futures" and "foreign options". Proposed § 30.1. These definitions were drawn from similar definitions relating to domestic exchange-traded futures and options. Thus, the definition of "foreign options" paralleled the definition of "commodity option" at Commission rule 1.3(hh), 17 CFR 1.3(hh) (1987). Similarly, the term "foreign futures" was drawn from the definition of the same term at section 761(11) of the Bankruptcy Code, which previously had been incorporated by reference in the Commission's own bankruptcy rules. *See* Commission rule 190.01(t), 17 CFR 190.01(t) (1987). The term "foreign futures", therefore, was defined to include a "contract for the purchase or sale of any commodity for future delivery made, or to be made, on or subject to the rules of any board of trade located outside the United States, its territories or possessions." [18] The Commission specifically requested comment on whether the terms "foreign futures" and "foreign options" may be defined more precisely.

One exchange commented that the Commission's proposed definition of foreign futures was unnecessarily restricted to contracts traded on a "board of trade." It suggested that the Commission adopt the statutory formulation—"board of trade, exchange, or market"—in the definition to ensure that the regulatory scheme will be applicable to all forms of futures and options contracts executed in a foreign location.

One futures commission merchant noted, however, that read in conjunction with proposed rule 30.3, the definition of foreign futures in rule 30.1 would prohibit all off-exchange foreign futures transactions, regardless of the fact that a particular transaction may be entirely consistent with the laws or organized trading practices of the foreign nation. Noting that there are significant "curb" markets that should not be embraced in such a definition, it urged the Commission to amend the definition by adding at the end of that subsection

[17] Specifically, if a firm has foreign futures and foreign options customers as well as clients overseas who trade on foreign boards of trade, the funds of all such customers may be consolidated in the same account or accounts.

[18] A "board of trade" is defined at section 2(a)(1)A) of the Act and §1.3(a), 17 CFR 1.3(a) (1987), of the Commission's rules to include "any exchange or association, whether incorporated or unincorporated, of persons who shall be engaged in the business of buying or selling any commodity or receiving the same for sale on consignment."

". . . or otherwise consistent with the laws of any other nation."

First, the Commission notes that it did not intend in any way to limit the definition of foreign futures subject to coverage under these regulations, and subject to the other limitations of the Act, by abbreviating the statutory term, "board of trade, exchange, or market" to simply "board of trade." In that connection, this problem has been ameliorated by the addition of the definition of "foreign board of trade" at rule 1.3(ss) in part 1 of the Commission's rules to mean "any board of trade, exchange or market located outside the United States, its territories or possessions, whether incorporated or unincorporated, where foreign futures or foreign options transactions are entered into."

With respect to the concern expressed by the futures commission merchant that the definition of "foreign futures" would prohibit all off-exchange foreign futures transactions, including transactions deemed lawful in the jurisdiction in which they occur, the Commission has already taken note of the fact that not all foreign commodity exchanges may operate in the same manner as domestic exchanges and that questions may arise as to whether a particular transaction either is, or should be, a foreign futures or foreign option. The Commission also takes note of legislative history in this regard in which Congress stated that in adopting rules in this regard, the Commission should "take into account the customs and practices of foreign boards of trades or markets and recognize that differences may exist between the practices of foreign boards of trade and their U.S. counterparts." [19]

The Commission reiterates its belief that these terms should be interpreted as broadly as possible in order to effectuate the intent of Congress. As the Commission previously commented in the proposed rules, the London Metals Exchange ("LME") is often referred to as a principals' spot and forward market rather than a futures market; however, to the extent the members of the LME execute transactions for futures delivery for or on behalf of U.S customers, such transactions by the Commission would be deemed to be foreign futures transactions for purposes of part 30. At the same time, the Commission also emphasized that these rules do not permit the offer and sale in the U.S. of futures and options which are not executed *on or subject to* the rules of a foreign board of trade and that, pursuant to the terms of section 4(a) of the Act, the domestic offer and sale of off-exchange futures contracts, whether foreign or domestic, is prohibited.[20] Thus, off-exchange products have already been explicitly prohibited, regardless of whether such transactions may be deemed lawful by the jurisdiction in which they occur.

However, in amending section 4b of the Act in the Futures Trading Act of 1986 to make explicit that the prohibition against fraud applies to the offer and sale of all commodity futures contracts, regardless of where traded, Congress clarified that "antifraud enforcement action brought under 4b involving foreign futures contracts will not be directed at the rules of, or trading practices occurring on, foreign boards of trade, exchanges, or markets, or at the terms or conditions of the futures contracts traded on such boards of trade, exchanges or markets." In that connection, Congress stated that it does not intend that certain activities which occur subject to the rules of foreign markets such as curb trading or after-hours trading be the subject of Commission enforcement action for fraud.[21] To the extent questions arise as to whether a particular transaction occurs subject to the rules of a foreign board of trade, the Commission encourages affected persons to request staff interpretations.

Applicability of the Act and regulations. To effectuate the dual purposes of insuring that domestic customers of all commodity futures and options products wherever they originate receive substantially the same protections against improper sales practices and to limit any additional burden on current Commission registrants as the result of the adoption of a regulatory scheme to affect the marketing by them of these products, the Commission determined not to propose an entirely new regulatory structure. Rather, the Commission proposed that, except as specified or unless the context otherwise requires, the Act and the existing regulations thereunder should be deemed applicable to the persons and transactions subject to the requirements of part 30 as though they were set forth therein. Proposed § 30.2. Consistent with the above, the regulations governing the conduct of Commission registrants, including the Commission's recordkeeping and reporting requirements, would have been applicable to the persons required to be registered in the same capacities under part 30 in connection with the transactions subject to regulation under such part. In paragraph (b), the Commission identified certain specific provisions of the Commission's rules which would not be applicable.

Several foreign commenters expressed the concern that such a blanket provision regarding the applicability of the Act and regulations could lead to misunderstandings about the applicable law, particularly on the part of the foreign entities to whom, among others, the regulations would apply. Accordingly, they urged the Commission to amend the proposed regulations to identify explicitly those statutory provisions and regulations which are intended to apply to foreign futures and foreign options transactions. The Commission finds merit in this comment and, accordingly, has revised rule 30.2 to identify the provisions of the Act and regulations which will generally be applicable to such transactions. Specifically, rule 30.2(a) provides that sections 2(a)(1), 4, 4c, 4f, 4g, 4k, 4l, 4m, 4n, 4o, 4p, 6, 6c, 6d, 8, 8a, 9, 12, 13 and 14 of the Act and parts 1, 3, 4, 10, 11, 12, 13, 14, 21, 155, 166 and 190 of the Commission's regulations will apply, as appropriate. Further, in that regard, in rule 30.2(b), the Commission has expanded upon which of the Commission's rules and regulations, particularly those in part 1 of the Commission's regulations, will not be applicable to the transactions herein. Specifically, the provisions of §§ 1.20 through 1.30, 1.32, 1.35(a) (2-4) and (c)-(i), 1.36(b), 1.38, 1.39, 1.40 through 1.51, 1.53, 1.54, 1.55, 1.58, 1.59, 33.2 through 33.6 and parts 15 through 20 of the Commission's rules shall not be applicable to foreign futures and foreign options transactions.

The Commission also wishes to highlight here several other provisions in part 1 which will be specifically applicable to foreign futures and options transactions as if the terms "foreign futures", "foreign option" and "foreign futures and option customer" appeared therein or because by their terms, they are sufficiently broad to encompass such persons and transactions.[22] These rules include the requirements of rule 1.31, dealing with the books and records required to be maintained under the Act and regulations; rule 1.34, pertaining to the preparation of a monthly "point balance"; rule 1.35 (a), (a-1), (b) (1)-(3), concerning records of cash commodity, future and options transactions; rule 1.36(a), concerning records of securities and property received from futures and

[19] S. Rep. No. 384, 97th Cong., 2d Sess. 46 (1982).

[20] *See* 51 FR at 12106.

[21] S. Rep. No. 291, 99th Cong., 2d Sess. 23-24 (1986).

[22] Other sections of part 1 which will apply have been explicitly incorporated into part 30 as paragraphs (d) and (e) of section 30.7.

option customers; rule 1.37 which requires firms to maintain a record of the customer's name, address and occupation and of the guarantor or controller of the account, if any; rule 1.52, which deals with the adoption by U.S. self-regulatory organizations of surveillance and minimum financial requirements; rule 1.56 which is the prohibition on guarantees against loss; rule 1.57 which deals with the operations and activities of introducing brokers; and rule 1.70, which requires the appropriate state official to notify the Commission of state enforcement actions brought under the Act. Finally, with respect to speculative position limits for foreign futures and foreign options generally, the Commission notes that contract markets, pursuant to the provisions of Commission rule 1.61, or NFA at the direction of the contract markets, may impose such limits with respect to their members if they so wish.

Prohibited transactions. Proposed rule 30.3 generally prohibited the offer and sale in the United States of any foreign futures contract or foreign options transaction except in accordance with the provisions of part 30. Specifically, except for persons not located in the United States that elected the alternative to registration contained in proposed rule 30.5, any person engaged in the domestic offer and sale of foreign futures or options would have been required to register in an appropriate capacity as required under proposed rule 30.4 and to be a member of a registered futures association that had provided for the regulation of the foreign futures and options-related activities of its members in a manner equivalent to that governing the domestic futures and options-related activities of its members. Proposed § 30.3(b). Moreover, except for persons not located in the United States that elected the alternative to registration contained in proposed rule 30.5 and that, in addition, deposited $50,000 with a futures commission merchant, foreign futures or options solicited from a foreign futures or options customer in the United States were required to be carried on a fully-disclosed basis by or through a futures commission merchant. Proposed § 30.3(c). The purpose of proposed rule 30.3(c) was to create a domestic record of foreign futures and options transactions entered into by U.S. customers and to ensure that any funds deposited by a foreign futures or options customer prior to transmission abroad would be deposited with a futures commission merchant subject to the segregation requirements of proposed rule 30.7.

The only foreign futures or options transactions entered into by foreign options or foreign futures customers that would not have been subject to regulation, other than antifraud regulation, under part 30 were those transactions "executed on a board of trade located outside the United States, its territories or possessions, subject to an agreement with a contract market that permits positions in a commodity interest which have been established on one of two markets to be liquidated on the other market",[23] *i.e.*, a link agreement such as that which presently exists between the Chicago Mercantile Exchange and the Singapore International Monetary Exchange ("SIMEX") and the Commodity Exchange, Inc. and the Sydney Futures Exchange.[24] Proposed § 30.3. Since transactions under such link agreements generally are effected pursuant to rules of a contract market located in the U.S. that have been approved by the Commission under section 5a(12) of the Act and rule 1.41, the Commission noted that such transactions are already subject to the panoply of the Commission's regulations, including the requirement that such transactions may be solicited or accepted only by Commission registrants.[25]

Although one U.S. exchange commented that a linkage agreement should not be a means of eluding the regulations proposed to be adopted, the remaining commenters on this issue supported the exclusion for linked transactions on the ground that transactions subject to such agreements are adequately regulated by the Commission and additional regulation would be essentially unnecessary and duplicative.

COMEX noted, however, that the text of the proviso in proposed section 30.3(a) is too narrow in scope. Specifically, the proviso describes only a two-exchange linkage whereas it is foreseeable that linkages will be formed among more than two markets. For example, a linkage might consist of three exchanges, located in the U.S., Asia and Europe, to maximize the benefits of 24-hour trading. Accordingly, COMEX recommended that the text of the proposed section 30.3 be modified to read as follows:

> . . . subject to agreement with and rules of a contract market which permit positions in a commodity interest which has been established on one market to be liquidated on *another* market.

The Commission has taken note of this suggestion and has incorporated appropriate amendments to rule 30.3(a).

The Commission has further added a new proviso to rule 30.3(a), as adopted. Specifically, language has been added to paragraph (a) that notwithstanding any other provisions of part 30, it shall be unlawful for a person to engage in the offer and sale of any foreign options until the Commission, *by order*, authorizes such foreign option to be offered in the U.S. As the Commission noted in its proposal, although the regulations contemplated that the prohibition on foreign options would be lifted, the Commission had not made a final decision to do so. In this connection, the Commission further stated that its decision would rest, in part, on the ability of the Commission to obtain information from the foreign exchange with respect to transactions entered into on that exchange on behalf of U.S. customers.[26] Accordingly, in order to ensure that foreign exchanges are both willing and able to share appropriate information with the Commission, particularly since blocking statutes in many foreign jurisdictions may inhibit such foreign exchange from providing such information, the Commission has determined to make the issuance of a Commission order authorizing the offer of a particular foreign option a prerequisite to the lawful offer and sale of such products. The Commission has determined that, in issuing such an order, the existence of an appropriate information sharing arrangement will be a consideration.[27]

Further, in this regard, the Commission notes that the current options ban applies to transactions executed pursuant to a link agreement and that the rules adopted herein will have no effect on the ability of options to be offered and sold pursuant to such links. The Commission wishes to clarify that it intends to approve the offer and

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[23] *See* rule 1.59(a)(5), 17 CFR 1.59(a)(5) (1987).

[24] In an earlier interpretative letter concerning the treatment of customer funds under the Chicago Mercantile Exchange's agreement with SIMEX, the Commission's staff clarified that any trades executed on the SIMEX *outsie* of the agreement would be treated as foreign futures. Interpretative Letter No. 84-19, [1984-1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,389 (Aug. 9, 1984). *See also* n. 14, *supra*.

[25] *See* 51 FR at 12108.

[26] 51 FR at 12105.

[27] Access to necessary information is essential if the Commission is to fulfill its obligations under the Act with respect to customer protection. For example, the Commission should be able to confirm by a simple telephone call or telex to the appropriate regulatory authority, such as the Securities and Investments Board or, alternatively, the Association of Futures Brokers and Dealers or other relevant self-regulatory organization whether a firm is, in fact, registered.

sale of a particular option traded pursuant to a link agreement by approval of a rule submission in this regard by the appropriate contract market. In considering the submission, the Commission intends to apply the same standards discussed above in connection with the issuance of a Commission order pursuant to rule 30.3(a).

Paragraph (b) of proposed § 30.3 which required each registrant to be a member of a registered futures association that regulates foreign futures and foreign options activities has been deleted. Under the Act and current regulations, NFA is effectively required to regulate the activities of *all* registrants and, therefore, the Commission has concluded that rule 30.3(b) is unnecessary.[28] Accordingly, paragraph (c) of proposed rule 30.3 has been redesignated as paragraph (b). In addition, this paragraph has been amended to clarify that persons located overseas are eligible to request an exemption from the application of this paragraph which makes it unlawful for any person, unless otherwise provided in § 30.4 (which sets forth the registration requirement), to engage in the offer and sale of any foreign futures contract or foreign option other than by or through a futures commission merchant on a fully-disclosed basis. Thus, although, as discussed in more detail below, persons located outside the United States are no longer eligible to act, through the alternative procedure, in the capacity of a futures commission merchant without first registering as such and maintaining an office in this country, they may request an exemption from the application of this rule through rule 30.10. As a result of this change, offshore firms have three choices, as more fully discussed below.

Registration. Except as described in rule 30.5 with respect to persons located outside of the U.S., the Commission proposed to require that persons who act in the capacity of futures commission merchant, an introducing broker, a commodity pool operator or a commodity trading advisor in the United States with respect to foreign futures or options customers register in the appropriate capacity with the Commission.[29] Proposed § 30.4. As Commission registrants, such entities would be subject generally to all of the regulatory requirements which currently apply to each category of registrant.[30] In addition, paragraph (e) as proposed required all persons required to be registered under this section and who did not elect the alternative procedure to maintain an office in the U.S. managed by a person domiciled in the U.S. and registered with the Commission as an associated person.

One U.S. exchange and NFA supported the Commission's regulatory objective of requiring the registration of appropriate persons. Specifically, NFA noted that it supports a registration requirement for persons doing a domestic business in foreign futures and options subject to appropriate exemptions and exclusions. In general, NFA believes that the proposed rules set forth appropriate requirements especially in view of the Commission's expressed willingness to grant exemptions pursuant to proposed rule 30.10 based on foreign regulatory protections and understandings with foreign governments and self-regulatory organizations.

However, one U.S. futures commission merchant and the London Exchanges commented that it was inappropriate to subject foreign entities and their business activities outside the United States to the Commission's rules and regulations. Further, the London Exchanges again expressed the view that the Commission has no authority to regulate the offer and sale of foreign futures contracts by persons not located in the United States.[31] They further commented that the requirements that a person registered as a futures commission merchant with the Commission pursuant to the proposed rules must maintain records and an office in the United States are burdensome, unnecessary, and discriminatory as against foreign brokers. Still another foreign exchange noted the serious consequences of proposed rule 30.4(e) which required all registrants to have a branch office in the U.S.[32] Specifically, it noted that under the U.S. Internal Revenue Code, the location of a branch office in the U.S. which engages in a U.S. trade or business with effectively connected income will subject that office to U.S. taxation.

With one major exception discussed below, the Commission has decided to adopt this section essentially as proposed. In addition to certain technical amendments to rule 30.4, the Commission has exempted from the commodity pool operator registration requirement, any investment trust, syndicate, or similar form of enterprise located outside the United States, its territories or possessions which is registered as an investment company under the Investment Company Act of 1940 and whose securities are registered in accordance with the Securities Act of 1933, or which is exempt from such registration requirements. However, this exemption is only available if no more than 10 percent of the participants in, and the value of the assets of, such investment trust, syndicate or similar form of enterprise located outside the United States, its territories or possessions are held by or on behalf of foreign futures and foreign options customers. §30.4(c). In essence, the Commission has incorporated an "otherwise regulated" exemption standard in this regard subject to a 10 percent limitation on the number of U.S. participants and the aggregate value of ownership by U.S. residents.

The Commission has also amended paragraph (d) to exclude from the definition of the term "commodity trading advisor" an insurance company subject to regulation by any state, or any wholly-owned subsidiary or employee thereof, provided that the furnishing of such trading advisory services is solely incidental to the conduct of its business or profession.[33]

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[28] *See* Commission rule 170.15, 17 CFR 170.15 (1987) and NFA Bylaw 1101. NFA commented that at present, it had not provided for the regulation of the foreign futures and foreign option-related activities of its members and in order to do so, NFA would have to amend its Bylaws to include foreign options and futures within NFA's definition of such products. NFA expects that it would take this step if the Commission adopted registration requirements applicable to foreign futures and foreign options transactions.

[29] In this connection, under rule 30.4 as proposed and adopted, the only persons required to register as a commodity trading advisor are those persons who solicit or manage discretionary accounts in foreign options or foreign futures.

[30] At the time the rules were proposed, the Commission stated that this registration requirement will serve to identify those who are lawfully engaged in the offer and sale of foreign futures and options and, thus, will assist those states that may wish to apply their laws to those who are unlawfully engaged in such activity. 51 FR at 12108.

[31] As the Commission has previously noted, however, nothing in section 4(b) or its legislative history limits the Commission's authority over foreign options and futures in section 2(a)(1)(A) of the Act. *See* 51 FR 12104.

[32] *See* 51 FR at 12109.

[33] This amendment is consistent with recent developments in this area. Specifically, in adopting the Futures Trading Act of 1986, the House Committee on Agriculture declined to adopt a proposed statutory amendment to exclude, among others, a life insurance company subject to regulation by any State from the definition of a commodity trading advisor provided that its commodity advisory activities are solely incidental to its bussiness. However, the Committee urged the Commission to issue regulations in this regard. H.R. Rep. No. 624, 99th Cong., 2d Sess. 46–48 (1986). In that regard, on May 26, 1987, the Commission published in the Federal Register proposed rules which would exclude, among others, the above-described insurance companies from the definition of a commodity trading advisor. 52 FR 19522.

This paragraph has also been amended to specify that registration as a commodity trading advisor will not be required if a person is already registered as, among other things, a commodity pool operator or is otherwise exempt from registration pursuant to rule 30.5.

As noted above, the most significant amendment to this section appears in paragraph (e), which, as proposed, had provided that *any* person required to be registered under this section and who did not elect the alternative procedure for non-domestic persons under proposed rule 30.5 must maintain an office in the U.S. managed by a registered associated person. As adopted, the paragraph now provides that any person required to be registered as a *futures commission merchant* under this part must maintain an office in the United States which is managed by an individual domiciled in the United States and registered with the Commission as an associated person. Specifically, this amendment reflects the Commission's reconsideration of its preliminary determination to include among those able to elect the alternative procedure to registration entities which act in the capacity of a futures commission merchant.

The Commission was particularly concerned that unscrupulous firms would merely establish their base of operations offshore, particularly in a locale which has no history or an inadequate history of cooperation with U.S. regulators and law enforcement officials, and by making the $50,000 deposit, solicit and accept money, securities and property from foreign futures and foreign options customers. The Commission was also concerned that the requirement in rule 30.3(b) that all accounts be carried through a futures commission merchant would be insufficient to adequately protect the funds of U.S. customers if carried on an omnibus basis. Accordingly, because the Commission has a paramount interest in the fitness and financial integrity of those entities which receive customer funds, the Commission has determined to require all entities which act in the capacity of a futures commission merchant to register as such.

Thus, for a firm located outside the U.S. which acts in the capacity of a futures commission merchant, the alternative procedure is no longer available and one of three options remain available to it. First, it can register as a futures commission merchant and open an office in the U.S. managed by an associated person who is also domiciled in the U.S. If it elects not to register, it is restricted to acting in the capacity of an introducing broker with respect to accounts which it solicits and all trades must be carried by a U.S. futures commission merchant on a fully-disclosed basis. As a third alternative, firms located in jurisdictions which, among other things, impose customer protection rules similar to those imposed by the Commission are eligible to seek an exemption from the futures commission merchant registration requirement in rule 30.4(a) through the exemptive procedure in rule 30.10.

Alternative procedures for non-domestic persons. As previously noted, the Commission proposed to exempt from registration any non-domestic person that solicited United States residents to trade foreign futures or options, if the person otherwise qualified to do business by entering into an agreement with a futures commission merchant through which the foreign futures or options that person solicited in the United States are carried,[34] designating that futures commission merchant as the agent for the service of process for communications both from the Commission and from the customers of the non-domestic person. Proposed § 30.5. A non-domestic person that would otherwise be required to be registered as a futures commission merchant and would be exempt from registration under the proposed rule generally would not have been able to accept customer funds except through a registered futures commission merchant on a fully-disclosed basis. However, that person would have been able to carry its foreign futures and foreign options customer accounts with a futures commission merchant on an omnibus basis if it deposited with that futures commission merchant money, securities or property in the amount of $50,000. The Commission specifically requested comment on the adequacy of the proposed alternative registration to protect the public.[35]

One U.S. exchange commented that this alternative to registration should be withdrawn and that all entities engaged in the offer and sale of foreign futures and options to customers in the U.S. should be required to register in the appropriate category or to create a U.S. subsidiary or affiliate. If a foreign entity finds this requirement too burdensome, the exchange commented that the foreign firm should be prohibited from having direct contact with U.S. customers. In the alternative, should the Commission determine to permit this alternative procedure, the exchange urged that the amount of money to be deposited with the futures commission merchant through which the foreign firm conducts business should be strictly related to the scale of foreign futures and foreign options activity with U.S. residents.

The foreign commenters, on the other hand, generally expressed the view that the alternative procedure put foreign market professionals at a clear competitive disadvantage by creating what is, in essence, a "tying arrangement," since the foreign entity's access to U.S. customers would be conditioned on the willingness of a domestic competitor to act as its agent. They argued that this requirement would discourage domestic customers from doing business with foreign brokers since by dealing directly with the U.S. futures commission merchant, the customer could avoid the additional costs of the domestic futures commission merchant's processing costs. The futures commission merchants and NFA supported the alternative procedure but the futures commission merchants expressed concerns about first, the scope of the term "communications" and, second, serving as an agent for service of process of all communications. Specifically, they were concerned that they would be held liable for the entirety of the foreign entity's conduct.

On the first issue of permitting persons located outside the U.S. to utilize the alternative procedure, the Commission, as noted above, has reassessed its initial position in this regard and has determined to exclude futures commission merchants from the class of registrants eligible for this alternative procedure. Accordingly, paragraph (c) of rule 30.5, as proposed, concerning the authority to act as an futures commission merchant has been deleted. Persons located overseas are reminded, however, that they may seek an exemption from this requirement pursuant to § 30.10.

Persons who act in the capacities of the remaining categories of registrant, that is, introducing brokers, commodity pool operators and commodity trading advisors and who are located outside the U.S. continue to be eligible to utilize the alternative procedure.[36] However, the Commission takes special note of the fact that pool operators located outside the U.S. will also be able to

[34] *See* proposed rule 30.3(c).

[35] *See* 51 FR at 12109.

[36] Pursuant to amendments to rule 30.4(c), however, certain foreign commodity pool operators may be exempted from the commodity pool operator registration requirement and, thus, would not be subject to the requirements of rule 30.5.

accept funds, securities or property from foreign futures and foreign options customers and that, as is the case of pools offering domestic products, the Commission is not similarly requiring such persons to have a base of operations in the U.S. In that connection, the Commission notes that pursuant to rule 30.6(b)(1), such persons remain subject to the disclosure requirement in rule 30.6(a)(1) the purpose of which is to alert foreign futures and foreign options customers to certain of the risks associated with such transactions. However, because of the Commission's paramount interest in protecting, to the degree reasonably possible, money, securities and property of all customers, the Commission intends to monitor this area closely. Specifically, if the Commission finds a pattern of abuse by foreign pool operators, the Commission will take appropriate measures to remedy any such problems.

With respect to the two concerns expressed by the futures commission merchants in regard to the alternative procedure, the first, regarding the scope of the term "communications," has been remedied by appropriate amendments to rule 30.5(a) which now reads, in part: "For the purposes of this section, the term communication includes any summons, complaint, order, subpoena, request for information, or notice, as well as any other written document or correspondence relating to any activities of such person *subject to regulation under this part*."

With respect to the second concern, the futures commission merchants stated that they should not be required to serve as an agent of an exempt person for purposes of receiving all customer communications since customers will have been solicited by and will have been doing business with the exempt entity, not the U.S. futures commission merchant. In this regard, the Commission is concerned that a significant degree of customer protection as well as the Commission's ability to regulate effectively foreign futures and options transactions would be lost if the Commission and the foreign entities' customers do not have a means of communicating with the foreign entity in a timely manner. In addition, as noted by the Commission in adopting rule 15.05, 17 CFR 15.05 (1987), which currently requires the designation of a futures commission merchant or introducing broker to be the agent of a foreign broker, customers of a foreign broker and foreign traders, in the past, the Commission's attempts to communicate *directly* with certain foreign persons have not always been well received, either by the recipient, or the recipient's foreign government.[37] Accordingly, the Commission is of the opinion that the designation of an agent for service of process is a significant element of the Commission's customer protection scheme.[38]

However, the Commission has taken note of the futures commission merchants' concerns and has determined that the same objectives may be achieved by broadening the scope of persons to be among those who are eligible to act as an agent for service of process. Specifically, rule 30.5 has been amended to include a registered futures association, *i.e.*, NFA, or any other person located in the United States in the business of providing such services. It is expected, however, that ordinarily the agent will be a futures commission merchant or the NFA.

Another amendment to rule 30.5 incorporates the comment of one futures commission merchant which suggested that all such agency agreements be filed only with NFA. Accordingly, paragraph (a) has been amended to require that rather than being filed both with the Commission and NFA, such agency agreement must now be filed only with the Vice President-Registration, NFA, with a copy to the Vice President-Compliance, NFA. In addition, NFA has been added, along with other self-regulatory organizations and the Department of Justice as appropriate issuers of communications as is the case with respect to domestic regulations. Conforming amendments in this regard have been added to paragraph (b) dealing with termination of such agreements. In paragraph (c), which identifies the rules applicable to persons exempt from registration under this section, rule 30.7 has been deleted as being applicable since the only entity subject to the requirements of that section, a futures commission merchant, can no longer use the alternative procedure. Finally, in paragraph (d), the Department of Justice has been added as an entity that can require persons exempt from registration pursuant to the alternative procedure to produce the books and records such persons are required to maintain under the Commission's rules and regulations.

Risk disclosure. Under proposed rule 30.6, a futures commission merchant or introducing broker could not open or introduce a foreign futures or options account for a customer without first obtaining written authorization from the customer, which authorization must have included a written risk disclosure statement containing only the language set forth in the proposed rule. The authorization could be contained either in the customer account agreement or on a separate form. However, if the futures commission merchant, introducing broker or an associated person of either had discretionary authority over the customer's account, the futures commission merchant or introducing broker was required to receive from the customer a signed and dated acknowledgment to the effect that he had received and understood the risk disclosure statement. This disclosure was required whether the customer had already been provided with the risk disclosure statement required in rules 1.55 and 33.7 of the Commission's regulations.[39]

Commodity pool operators and commodity trading advisors who direct or guide a customer's commodity interest trading in foreign futures or option contracts were also required to provide customers and prospective customers with the disclosure statement referred to above and receive the required acknowledgment prior to engaging in foreign futures or options transactions on behalf of foreign futures or option customers. The commodity pool operator or commodity trading advisor could make the disclosure language part of the Disclosure Document required by part 4 of the Commission's regulations by inserting it as the only language on the page(s) immediately following the disclosure required to be made by Commission rules 4.21(a)(17) and 4.31(a)(8). Otherwise, a separate disclosure statement was required to be provided. In either case, an acknowledgment was required to be received from such person and maintained in accordance with Commission rule 1.31.

In order to limit any additional regulatory burden that would be placed on Commission registrants, the Commission in proposing the rules determined to adopt, to the extent possible, the language and procedures set forth in NFA's Compliance Rule 2-28, governing disclosure to customers in connection with transactions entered into pursuant to link agreements. The Commission stated that upon receipt of

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[37] 45 FR 30426, 30427 (May 8, 1980).

[38] In this connection, as noted earlier, the Commission also intends to make this a requirement for foreign persons granted exemptions from these rules pursuant to rule 30.10.

[39] Under the rule as adopted, the options disclosure statement required under Commission rule 33.7 must also be furnished to a foreign options customer, unless the customer has previously received that disclosure statement in connection with opening a domestic exchange-traded options account under part 33. *See* § 30.6(d).

comments, it expected to coordinate with NFA regarding a uniform disclosure statement with respect to both linked and non-linked foreign futures and options transactions.[40]

One U.S. exchange supported the Commission's risk disclosure proposal, but urged that such disclosure should be required regardless of whether the positions are established in connection with a link. Moreover, the exchange commented that if the Commission adopts a regulatory scheme which provides for different segregation standards offering potentially different consequences in bankruptcy or minimum capital computations which fail to calculate the risk related to foreign futures positions, such matters must receive primary and detailed emphasis in all disclosure documents in standardized language by the Commission.

Conversely, foreign commenters expressed concern that the form of the risk disclosure statement could lead investors to conclude that U.S. contract markets are safer and subject to a greater degree of regulatory oversight and protection and contended that the Commission is inaccurately comparing the relative protections with respect to foreign futures and options contracts versus U.S. products and failing to distinguish between those foreign exchanges which have a history of a customer protection oriented regulatory scheme and those which do not. Instead, they urged the Commission to revise the current risk disclosure statements for U.S. traded futures and options contracts to include an appropriate reference to the market risks of foreign futures and options contracts. Such an incorporation would not only simplify procedures for the futures commission merchant and introducing broker community, but would also render the risks more understandable to the investor, who is already confronted with a myriad of forms and material upon opening a futures or options account.

The futures commission merchants commented that the Commission's decision to coordinate with NFA to achieve a uniform disclosure statement with respect to both linked and non-linked foreign futures and options is appropriate. In that connection, they commented that a separate authorization for foreign transactions should not be required. Rather, they urged the Commission to incorporate the foreign futures and foreign options disclosure statement into the general disclosure documents through amendments to rules 1.55 and 33.7, 17 CFR 1.55, 33.7 (1987). Thus, a maximum of two disclosure documents could be maintained—one for foreign and domestic futures and one for foreign and domestic options. The futures commission merchants further noted that rule 30.6(a)(2) requires a futures commission merchant which has received discretionary authority from a customer to trade foreign futures or foreign options to receive "specific consent" of the customer and a "separate acknowledgment signed and dated by the customer that the customer has received and understood the risk disclosure statement". The futures commission merchants commented that the general power of attorney contained in Commission regulation 166.2 is sufficient authorization for trading of futures and options contracts on all exchanges, domestic and foreign.

Finally, NFA commented that given the increasing integration of international futures and options markets, NFA believes the appropriate goal for NFA and the Commission should be a single risk disclosure statement adequate to apply to instruments traded on domestic, foreign and linked markets. The Commission has taken all of these comments into consideration and has incorporated amendments as it deems appropriate.

First, in response to concerns that the separate consent for such foreign transactions and separate acknowledgment for the risk disclosure statement were unnecessarily burdensome, the Commission has streamlined these requirements. Rule 30.6(a) as adopted, still provides that futures commission merchants and introducing brokers must first deliver the risk disclosure statement to all customers; however, in the final rule, the requirement of a separate customer consent for engaging in foreign futures and options transactions has been deleted. Instead, only those customers who have granted general discretionary authority must expressly authorize such transactions with respect to their account in accordance with the provisions of 166.2. In that regard, rather than requiring a separate authorization, the Commission has amended Commission rule 166.2 to clarify that customers must *expressly* grant in the document the authority to the futures commission merchant and introducing broker to engage in foreign futures and foreign options transactions. The Commission also wishes to clarify that although the futures commission merchant or introducing broker may still receive the separate acknowledgment that the customer has received and understood the risk disclosure statement, this requirement may also be satisfied by incorporating into the text of the customer's grant of general discretionary authority, another acknowledgment, also express, that the customer has received and understood the applicable risk disclosure document.

In addition, the language of the risk disclosure has been revised to incorporate the risks associated with linked transactions. Specifically, the Commission agrees with NFA that a single statement should be used to disclose the risks of trading in foreign futures and options, whether pursuant to a link agreement or not. Accordingly, appropriate language changes have been made in rule 30.6(b). In this connection, the Commission notes that at the option of the futures commission merchant or introducing broker, the disclosure statement in 30.6(b) may be given to linked transaction customers in lieu of that required under NFA Compliance Rule 2–28 or the NFA disclosure may be used. If a firm solicits a customer who engages in both foreign futures and options and linked transactions, the firm's disclosure obligation in this regard will be fulfilled by giving the customer the risk disclosure statement in 30.6(b). If a customer is exclusively a foreign futures and options customer, he must be given the statement in 30.6(b).

Finally, in this regard, the Commission takes note of concerns raised by almost all commenters as to the myriad of disclosure documents required to be provided to customers generally. The Commission has directed its staff, in consultation with NFA, in recognition of its general sales practice responsibility, to review the Commission's disclosure requirements in an effort to explore less burdensome alternatives.

Reporting requirements. In proposed rule 30.8, the Commission proposed to require that futures commission merchants file with the Commission on a monthly basis, separately by foreign exchange and commodity, long and short, customer and proprietary, a report containing data for the total volume of foreign futures contracts effected on such foreign exchange and the open interest at month end. With respect to foreign options, the Commission proposed to require that futures commission merchants report, on a monthly basis, separately by underlying futures contracts for options on futures contracts or by underlying physical for options on physicals, by put, by call, and by customer or proprietary, the total volume and the open interest at month end. The Commission further proposed

[40] 51 FR 12110.

that futures commission merchants report, on a monthly basis, the total amount of foreign futures and foreign options customer funds forwarded to each member of a foreign exchange, a clearing organization of such exchange or their respective designated depositories to purchase, margin or otherwise secure foreign futures or foreign options positions. Further, the Commission requested comment on whether these reports should be filed with NFA rather than with the Commission.

Although one U.S. exchange supported this requirement, many of the other commenters questioned the regulatory purpose of this monthly requirement which many futures commission merchants viewed as being burdensome. As NFA pointed out in its comment letter, however, such information is essential, along with the other reporting and recordkeeping requirements imposed by the Commission, for monitoring compliance with the Commission's financial and other regulatory requirements and targeting certain firms for sales practice audits with respect to their foreign futures and options business. However, the Commission agrees that a monthly requirement may not be necessary and, therefore, has changed the requirement to a quarterly one.[41] The Commission has also deleted subparagraph 5 of paragraph (d) concerning the total amount of foreign futures and foreign options customer funds forwarded overseas as a result of the revisions to the Commission's proposed rules regarding the treatment of such funds. Finally, the Commission is requiring that these reports be filed with NFA rather than the Commission based upon the comment of NFA and a U.S. futures commission merchant that NFA would be the appropriate entity to receive these reports.

Fraudulent transactions prohibited. The Commission proposed to redesignate rule 30.02 as rule 30.9 as modified to reflect the definitions set forth in the part 30 rules. The Commission received only one comment on this proposal, that from a futures commission merchant which had earlier commented on the scope of certain definitions. Specifically, this futures commission merchant noted that the language in 30.9(d) making it unlawful "to bucket any order, or to fill any order by offset . . ." could make certain overseas transactions illegal although such transactions may be ordinary and customary under the rules of a foreign jurisdiction. The Commission reiterates its earlier statement regarding amendments to section 4b of the Act and its comments in this regard.

Exemptive procedure. The Commission notes initially that although persons located in the U.S. may request exemptions in instances of particular hardship from specific requirements set forth in these regulations, the only persons eligible for a broader exemption from the general applicability of the rules are those persons located outside the U.S. who are subject to comparable regulation in the jurisdiction in which they are situated, provided such exemption would not otherwise be contrary to the public interest.

The Commission received many comments on this provision. The U.S. exchanges noted that immediate issues arise as to what constitutes "comparable regulation" and to what extent the enforcement authority in the various foreign nations is equal to the task set forth in statute. Moreover, they commented that the Commission should not accord this sort of recognition to the laws of nations which in many cases do not reciprocate in their treatment of U.S. firms and have obstructed the development of joint surveillance and other reciprocal trading agreements which would facilitate the offer of foreign futures and options by exchanges in this country.[42]

The foreign commenters were generally of the opinion that the exemptive procedure was entirely appropriate. They noted, however, that the Commission should establish an appropriate timetable to permit a substantial grace period between the promulgation of the final rules and their effective date. The grace period should provide sufficient time for an applicant to obtain an exemption or, if the exemption is denied, to obtain registration, should the applicant elect to do so. They further commented that, as a practical matter, the Commission should permit self-regulatory organizations, or government regulators, to apply for exemptions on behalf of all of their members or regulated persons, respectively. This would eliminate unnecessarily repetitious and administratively burdensome applications.

In this regard, the Commission, as previously noted, has delayed the effective date of these rules to January 4, 1988, and, accordingly, more than sufficient time has been provided for interested persons to seek the appropriate exemptions. All of the remaining comments are addressed in Appendix A to the rules herein, which is the Commission's interpretative statement with respect to its exemptive authority under section 30.10.

Applicability of state law. Finally, pursuant to its authority under the "open season" provisions of section 12(e) of the Act, the Commission proposed to authorize the application of any state law to transactions on a foreign exchange entered into by U.S. customers through any person not registered with the Commission or exempt from registration in accordance with this part. In this regard, the North American Securities Administrators Association, Inc. ("NASAA") requested clarification that pursuant to section 12(e)(3) of the Act, the states are not pre-empted from applying their laws against any person required to be registered but who is not so registered. The Commission notes that section 12(e)(3) is already clear in this regard.

In closing, the Commission wishes to make clear that it intends to monitor closely the application of this regulatory scheme for the offer and sale of foreign futures and foreign options in the U.S. and to make adjustments in these rules, as necessary, based, in part, on its experience in administering the exemptive procedure as well as other requests for interpretations of the provisions herein.

IV. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act ("PRA") of 1980, 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information as defined by the PRA. Office of Management and Budget ("OMB") control number 3038–3035 previously has been assigned to these part 30 rules. Other control numbers have been assigned to other rules referred to herein. The Commission previously submitted the propsed rules to OMB. However, the Commission is resubmitting to OMB an explanation and details of the information collection and recordkeeping requirements contained in the final rules. Any person wishing to comment on the information collection requirements should contact Robert Neal, Office of Information and Regulatory Affairs, Office of

[41] Thus, the first such reports would be required on the 10th business day in April 1988.

[42] One exchange further commented because granting such an exemption could have a far-reaching impact, the notice of the filing of a petition for exemption should be published in the **Federal Register** and interested parties should be given an opportunity to comment. The Commission declines to adopt such an unprecedented procedure.

Management and Budget, Washington, DC 20503. Copies of the information collection submission to OMB are available from Joseph G. Salazar, Clearance Officer, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254–9735.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. As the Commission noted in the preamble to the proposed rules, it has previously determined that neither futures commission merchants nor commodity pool operators should be considered small entities for purposes of the RFA. Specifically, the Commission found that with respect to futures commission merchants, based upon the fiduciary nature of futures commission merchant/customer relationships, as well as the requirement that futures commission merchants meet minimum financial requirements, futures commission merchants should be excluded from the definition of a small entity. With respect to commodity pool operators, Commission rule 4.13(a), 17 CFR 4.13(a) (1987), already exempts small entities from the regulatory requirements imposed on commodity pool operators.[43] Accordingly, the requirements of the RFA do not apply to those entities. For the same reasons, those entities required to register as futures commission merchants or commodity pool operators under this part should not be considered small entities.

With respect to introducing brokers and commodity trading advisors, and those required to register as such under these rules, the Commission stated that it is appropriate to evaluate within the context of a particular rule proposal whether some or all commodity trading advisors and introducing brokers should be considered to be small entities and, if so, to analyze the economic impact on such entities at that time. In this regard, the Commission noted that the regulations with respect to commodity trading advisors and introducing brokers are essentially the same as those governing these categories of registrant in connection with their activities relating to futures contracts and options traded or executed on or subject to the rules of a contract market designated by the Commission. Further, the Commission has previously found that its regulations governing these categories of registrant will not have a significant economic impact on a substantial number of small entities.[44] Therefore, pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

List of Subjects

17 CFR Part 1

Commodity futures, Financial requirements, Reporting and recordkeeping requirements, Customer protection, Definitions, Foreign futures, Foreign options, Registration requirements, Risk disclosure statements, Segregated funds, Introducing brokers.

17 CFR Part 30

Reporting and recordkeeping requirements, Customer protection, Definitions, Foreign futures, Foreign options, Registration requirements, Risk disclosure statements, Treatment of foreign futures and options secured amount.

17 CFR Part 32

Commodity options, Foreign options, Fraud.

17 CFR Part 166

Authorization to trade, Customer protection.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 2(a)(1), 4, 4a, 4b, 4c, 4d, 4e, 4f, 4g, 4h, 4i, 4j, 4k, 4l, 4m, 4n, 4o, 5, 5a, 6(a), 6(b), 6b, 6c, 8, 8a, 8c, 12, 15, 17, 19 and 20 thereof, 7 U.S.C. 2, 2a, 4, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 19, 21, 23 and 24 (1982), and pursuant to the authority contained in 5 U.S.C. 552 and 552b (1982), the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: Sections 2(a)(1), 4, 4a, 4b, 4c, 4d, 4e, 4f, 4g, 4h, 4i, 4j, 4k, 4l, 4m, 4n, 4o, 5, 5a, 6(a), 6(b), 6b, 6c, 8, 8a, 8c, 12, 15, 17 and 20 of the Commodity Exchange Act, 7 U.S.C. 2, 2a, 4, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 19, 21, and 24.

2. Section 1.3 is amended by adding paragraphs (rr) and (ss) to read as follows:

§ 1.3 Definitions.

* * * * *

(rr) *Foreign futures or foreign options secured amount.* This term means all money, securities and property held by or held for or on behalf of a futures commission merchant from, for, or on behalf of foreign futures or foreign options customers as defined in § 30.1 of this chapter:

(1) In the case of foreign futures customers, money, securities and property required by a futures commission merchant to margin, guarantee, or secure open foreign futures contracts plus or minus any unrealized gain or loss on such contracts; and

(2) In the case of foreign options customers in connection with open foreign options transactions money, securities and property representing premiums paid or received, plus any other funds required to guarantee or secure open transactions plus or minus any unrealized gain or loss on such transactions.

(ss) *Foreign board of trade.* This term means any board of trade, exchange or market located outside the United States, its territories or possessions, whether incorporated or unincorporated, where foreign futures or foreign options transactions are entered into.

3. Section 1.10 is amended by revising paragraphs (d)(1), (d)(2) and (g)(2) to read as follows:

§ 1.10 Financial Reports of Futures Commission Merchants and Introducing Brokers.

* * * * *

(d) *Contents of financial reports.* (1) Each form 1–FR filed pursuant to this § 1.10 which is not required to be certified by an independent public accountant must be completed in accordance with the instructions to the form and contain:

(i) A statement of financial condition as of the date for which the report is made;

(ii) A statement of changes in ownership equity for the period between the date of the most recent statement of financial condition filed with the Commission and the date for which the report is made;

(iii) A statement of the computation of the minimum capital requirements pursuant to § 1.17 as of the date for which the report is made;

(iv) For a futures commission merchant only, a schedule of segregation requirements and funds on deposit in

[43] *See* 47 FR 18618 (April 30, 1982).

[44] 48 FR 35248 (August 3, 1983).

segregation as of the date for which the report is made; and

(v) For a futures commission merchant only, a schedule of funds required to be on deposit and funds actually on deposit in separate accounts in accordance with § 30.7 of this chapter as of the date for which the report is made; and

(vi) In addition to the information expressly required, such further material information as may be necessary to make the required statements and schedules not misleading.

(2) Each form 1–FR filed pursuant to this § 1.10 which is required to be certified by an independent public accountant must be completed in accordance with the instructions to the form and contain:

(i) A statement of financial condition as of the date for which the report is made;

(ii) Statements of income (loss), changes in financial position, changes in ownership equity, and changes in liabilities subordinated to claims of general creditors, for the period between the date of the most recent certified statement of financial condition filed with the Commission and the date for which the report is made: *Provided,* That, for an applicant filing pursuant to paragraph (a)(2) of this section the period must be the year ending as of the date of the statement of financial condition;

(iii) A statement of the computation of the minimum capital requirements pursuant to § 1.17 as of the date for which the report is made;

(iv) For a futures commission merchant only, a schedule of segregation requirements and funds on deposit in segregation as of the date for which the report is made;

(v) For a futures commission merchant only, a schedule of funds required to be on deposit and funds actually on deposit in separate accounts in accordance with § 30.7 of this chapter as of the date for which the report is made;

(vi) Appropriate footnote disclosures; and

(vii) In addition to the information expressly required, such further material information as may be necessary to make the required statements not misleading.

* * * * *

(g) * * *

(2) All of the copies of the Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II or Part IIA, filed pursuant to paragraph (h) of this section will be public: *Provided, however,* That if the statement of financial condition, the computation of net capital, and the schedule (to be filed by a futures commission merchant only) of segregation requirements and funds on deposit in segregation and the schedule (to be filed by a futures commission merchant only) of funds required to be on deposit and funds actually on deposit in separate accounts in accordance with § 30.7 of this chapter are bound separately from the other financial statements (including the statement of income (loss)), footnote disclosures and schedules of the Financial and Operational Combined Uniform Single Report under the Securities and Exchange Act of 1934, Part II or Part IIA, trade secrets and certain other commercial or financial information on such other statements and schedules will be treated as nonpublic for purposes of the Freedom of Information Act and the Government in the Sunshine Act and Parts 145 and 147 of this chapter.

* * * * *

4. Section 1.12 is amended by revising paragraph (b)(2) to read as follows:

§ 1.12 Maintenance of Minimum Financial Requirements by Futures Commission Merchants and Introducing Brokers.

* * * * *

(b) * * *

(2) 6 percent of the following amount: The customer funds required to be segregated pursuant to the Act and these regulations and foreign futures or foreign options secured amount, less the market value of commodity options purchased by such customers on or subject to the rules of a contract market or a foreign board of trade: *Provided, however,* That the deduction for each such customer shall be limited to the amount of customer funds in such customer's account(s) and foreign futures and foreign options secured amounts; or

* * * * *

4. Section 1.16 is amended by revising paragraph (a)(4) to read as follows:

§ 1.16 Qualifications and Reports of Accountants

(a) * * *

(4) *Customer.* The term "customer" means customer (as defined in § 1.3(k)) and option customer (as defined in § 1.3(jj) and in § 32.1(c) of this chapter) and includes a foreign futures and foreign options customer (as defined in § 30.1(c) of this chapter).

* * * * *

5. Section 1.17 is amended by revising paragraphs (a)(1)(i)(B), (b)(2), (c)(5) (iii), (e)(1), (h)(2)(vi)(C), (h)(2)(vii)(A), (h)(2)(vii)(B), (h)(2)(viii)(A), (h)(3)(ii) and (h)(3)(v) to read as follows:

§ 1.17 Minimum financial requirements for futures commission merchants and introducing brokers.

(a) * * *

(1) * * *

(i) * * *

(B) Four percent of the following amount: the customer funds required to be segregated pursuant to the Act and these regulations and the foreign futures or foreign options secured amount, less the market value of commodity options purchased by customers on or subject to the rules of a contract market or a foreign board of trade: *Provided, however,* That the deduction for each customer shall be limited to the amount of customer funds in such customer's account(s) and foreign futures and foreign options secured amounts; or

* * * * *

(b) * * *

(2) "Customer" means customer (as defined in § 1.3(k)), option customer (as defined in § 1.3(jj) and in § 32.1(c) of this chapter) and includes a foreign futures and foreign options customer (as defined in § 30.1(c) of this chapter).

* * * * *

(c) * * *

(5) * * *

(iii) In the case of a futures commission merchant, four percent of the market value of commodity options granted (sold) by option customers on or subject to the rules of a contract market or a foreign board of trade.

* * * * *

(e) * * *

(1) Either adjusted net capital of any of the consolidated entities would be less than the greatest of:

(i) 120 percent of the appropriate minimum dollar amount required by paragraphs (a)(1)(i)(A) or (a)(1)(ii)(A) of this section;

(ii) For a futures commission merchant or applicant therefor, 7 percent of the following amount: the customer funds required to be segregated pursuant to the Act and these regulations and the foreign futures or foreign options secured amount, less the market value of commodity options purchased by customers on or subject to the rules of a contract market or a foreign board of trade: *Provided, however,* That the deduction for each customer shall be limited to the amount of customer funds in such customer's account(s) and foreign futures and foreign options secured amounts; or

(iii) For an applicant or registrant which is also a securities broker or dealer, the amount of net capital specified in Rule 15c3–1(e) of the

Securities and Exchange Commission (17 CFR 240.15c3–1(e)); or

* * * * *

(h) * * *

(2) * * *

(vi) * * *

(C) The secured demand note agreement may also provide that, in lieu of the procedures specified in the provisions required by paragraph (h)(2)(vi)(B) of this section, the lender, with the prior written consent of the applicant and the National Futures Association, or with the prior written consent of the registrant and the designated self-regulatory organization or, if the registrant is not a member of a designated self-regulatory organization, the Commission, may reduce the unpaid principal amount of the secured demand note: *Provided,* That after giving effect to such reduction the adjusted net capital of the applicant or registrant would not be less than the greatest of:

(*1*) 120 percent of the appropriate minimum dollar amount required by paragraphs (a)(1)(i)(A) or (a)(1)(ii)(A) of this section;

(*2*) For a futures commission merchant or applicant therefor, 7 percent of the following amount: the customer funds required to be segregated pursuant to the Act and these regulations and the foreign futures or foreign options secured amount, less the market value of commodity options purchased by customers on or subject to the rules of a contract market or a foreign board of trade: *Provided, however,* That the deduction for each customer shall be limited to the amount of customer funds in such customer's account(s) and foreign futures and foreign options secured amounts; or

(*3*) For an applicant or registrant which is also a securities broker or dealer, the amount of net capital specified in Rule 15c3–1d(b)(6)(iii) of the Securities and Exchange Commission (17 CFR 240.15c3–1d(b)(6)(iii)): *Provided, further,* That no single secured demand note shall be permitted to be reduced by more than 15 percent of its original principal amount and after such reduction no excess collateral may be withdrawn.

(vii) *Permissive prepayments and special prepayments.* (A) An applicant or registrant at its option, but not at the option of the lender, may, if the subordination agreement so provides, make a payment of all or any portion of the payment obligation thereunder prior to the scheduled maturity date of such payment obligation (hereinafter referred to as a "prepayment"), but in no event may any prepayment be made before the expiration of one year from the date such subordination agreement became effective: *Provided, however,* That the foregoing restriction shall not apply to temporary subordination agreements which comply with the provisions of paragraph (h)(3)(v) of this section nor shall it apply to "special prepayments" made in accordance with the provisions of paragraph (h)(2)(vii)(B) of this section. No prepayment shall be made if, after giving effect thereto (and to all payments of payment obligations under any other subordination agreements then outstanding, the maturity or accelerated maturities of which are scheduled to fall due within six months after the date such prepayment is to occur pursuant to this provision, or on or prior to the date on which the payment obligation in respect to such prepayment is scheduled to mature disregarding this provision, whichever date is earlier) without reference to any projected profit or loss of the applicant or registrant, the adjusted net capital of the applicant or registrant is less than the greatest of:

(*1*) 120 percent of the appropriate minimum dollar amount required by paragraphs (a)(1)(i)(A) or (a)(1)(ii)(A) of this section;

(*2*) For a futures commission merchant or applicant therefor, 7 percent of the following amount: the customer funds required to be segregated pursuant to the Act and these regulations and the foreign futures or foreign options secured amount, less the market value of commodity options purchased by customers on or subject to the rules of a contract market or a foreign board of trade: *Provided, however,* That the deduction for each customer shall be limited to the amount of customer funds in such customer's account(s) and foreign futures and foreign options secured amounts; or

(*3*) For an applicant or registrant which is also a securities broker or dealer, the amount of net capital specified in Rule 15c3–1d(b) (7) of the Securities and Exchange Commission (17 CFR 240.15c3–1d(b) (7)).

Notwithstanding the above, no prepayment shall occur without the prior written approval of the National Futures Association, in the case of an applicant, or without the prior written approval of the designated self-regulatory organization, if any, and the Commission, in the case of a registrant.

(B) An applicant or registrant at its option, but not at the option of the lender, may, if the subordination agreement so provides, make a payment at any time of all or any portion of the payment obligation thereunder prior to the scheduled maturity date of such payment obligation (hereinafter referred to as a "special prepayment"). No special prepayment shall be made if, after giving effect thereto (and to all payments of payment obligations under any other subordination agreements then outstanding, the maturity or accelerated maturities of which are scheduled to fall due within six months after the date such special prepayment is to occur pursuant to this provision, or on or prior to the date on which the payment obligation in respect to such special prepayment is scheduled to mature disregarding this provision, whichever date is earlier) without reference to any projected profit or loss of the applicant or registrant, the adjusted net capital of the applicant or registrant is less than the greatest of:

(*1*) 200 percent of the appropriate minimum dollar amount required by paragraphs (a)(1)(i)(A) or (a)(1)(ii)(A) of this section;

(*2*) For a futures commission merchant or applicant therefor, 10 percent of the following amount: the customer funds required to be segregated pursuant to the Act and these regulations and the foreign futures or foreign options secured amount, less the market value of commodity options purchased by customers on or subject to the rules of a contract market or a foreign board of trade: *Provided, however,* That the deduction for each customer shall be limited to the amount of customer funds in such customer's account(s) and foreign futures and foreign options secured amounts; or

(*3*) For an applicant or registrant which is also a securities broker or dealer, the amount of net capital specified in Rule 15c3–1d(c)(5)(ii) of the Securities and Exchange Commission (17 CFR 240.15c3–1d(c)(5)(ii)): *Provided, further,* That no special prepayment shall be made if pre-tax losses during the latest three-month period were greater than 15 percent of current excess adjusted net capital. Notwithstanding the above, no special prepayment shall occur without the prior written approval of the National Futures Association, in the case of an applicant, or without the prior written approval of the designated self-regulatory organization, if any, and the Commission, in the case of a registrant.

(viii) *Suspended repayment.* (A) The payment obligation of the applicant or registrant in respect of any subordination agreement shall be suspended and shall not mature if, after giving effect to payment of such payment obligation (and to all payments of payment obligations of the applicant or registrant under any other subordination agreement(s) then outstanding which are scheduled to

mature on or before such payment obligation), the adjusted net capital of the applicant or registrant would be less than the greatest of:

(*1*) 120 percent of the appropriate minimum dollar amount required by paragraphs (a)(1)(i)(A) or (a)(1)(ii)(A) of this section;

(*2*) For a futures commission merchant or applicant therefor, 6 percent of the following amount: the customer funds required to be segregated pursuant to the Act and these regulations and the foreign futures or foreign options secured amount, less the market value of commodity options purchased by customers on or subject to the rules of a contract market or a foreign board of trade: *Provided, however,* That the deduction for each customer shall be limited to the amount of customer funds in such customer's account(s) and foreign futures and foreign options secured amounts; or

(*3*) for an applicant or registrant which is also a securities broker or dealer, the amount of net capital specified in Rule 15c3–1d(b)(8)(i) of the Securities and Exchange Commission (17 CFR 240.15c3–1d(b)(8)(i)): *Provided,* That the subordination agreement may provide that if the payment obligation of the applicant or registrant thereunder does not mature and is suspended as a result of the requirement of this paragraph (h)(2)(viii) for a period of not less than six months, the applicant or registrant shall then commence the rapid and orderly liquidation of its business, but the right of the lender to receive payment, together with accrued interest or compensation, shall remain subordinate as required by the provisions of this section.

* * * * *

(3) * * *

(ii) *Notice of maturity or accelerated maturity.* Every applicant or registrant shall immediately notify the National Futures Association, and the registrant shall immediately notify the designated self-regulatory organization, if any, and the Commission if, after giving effect to all payments of payment obligations under subordination agreements then outstanding which are then due or mature within the following six months without reference to any projected profit or loss of the applicant or registrant, its adjusted net capital would be less than:

(A) 120 percent of the minimum dollar amount required by paragraphs (a)(1)(i)(A) or (a)(1)(ii)(A) of this section;

(B) For a futures commission merchant or applicant therefor, 6 percent of the following amount: The customer funds required to be segregated pursuant to the Act and these regulations and the foreign futures or foreign options secured amount, less the market value of commodity options purchased by customers on or subject to the rules of a contract market or a foreign board of trade: *Provided, however,* That the deduction for each customer shall be limited to the amount of customer funds in such customer's account(s) and foreign futures and foreign options secured amount; or

(C) For an applicant or registrant which is also a securities broker or dealer, the amount of net capital specified in Rule 15c3–1d(c)(2) of the Securities and Exchange Commission (17 CFR 240.15c3–1d(c)(2)).

* * * * *

(v) *Temporary subordinations.* To enable an applicant or registrant to participate as an underwriter of securities or undertake other extraordinary activities and remain in compliance with the adjusted net capital requirements of this section, an applicant or registrant shall be permitted, on no more than three occasions in any 12-month period, to enter into a subordination agreement on a temporary basis which has a stated term of no more than 45 days from the date the subordination agreement became effective: *Provided,* That this temporary relief shall not apply to any applicant or registrant if the adjusted net capital of the applicant or registrant is less than the greatest of:

(A) 120 percent of the appropriate minimum dollar amount required by paragraphs (a)(1)(i)(A) or (a)(1)(ii)(A) of this section;

(B) For a futures commission merchant or applicant therefor, 7 percent of the following amount: the customer funds required to be segregated pursuant to the Act and these regulations and the foreign futures or foreign options secured amount, less the market value of commodity options purchased by customers on or subject to the rules of a contract market or a foreign board of trade: *Provided, however,* That the deduction for each customer shall be limited to the amount of customer funds in such customer's account(s) and foreign futures and foreign options secured amounts;

(C) For an applicant or registrant which is also a securities broker or dealer, the amount of net capital specified in Rule 15c3–1d(c)(5)(i) of the Securities and Exchange Commission (17 CFR 240.15c3–1d(c)(5)(i)); or (D) the amount of equity capital as defined in paragraph (d) of this section is less than the limits specified in paragraph (d) of this section. Such temporary subordination agreement shall be subject to all the other provisions of this section.

* * * * *

6. Section 1.19 is revised to read as follows:

§ 1.19 Prohibited Trading in Certain "Puts" and "Calls".

No futures commission merchant or introducing broker may make, underwrite, issue, or otherwise assume any financial responsibility for the fulfillment of, any commodity option except:

(a) Commodity options traded on or subject to the rules of a contract market in accordance with the requirements of Part 33 of this chapter; or

(b) Commodity options traded on or subject to the rules of a foreign board of trade in accordance with the requirements of Part 30 of this chapter.

7. Section 1.33 is amended by revising paragraphs (a) and the introductory paragraph of paragraph (b) to read as follows:

§ 1.33 Monthly and Confirmation Statements.

(a) Monthly Statements. Each futures commission merchant must promptly furnish in writing to each commodity customer and to each option customer and to each foreign futures and foreign options customer, as of the close of the last business day of each month or as of any regular monthly date selected, except for accounts in which there are neither open positions at the end of the statement period nor any changes to the account balance since the prior statement period, but in any event not less frequently than once every three months, a statement which clearly shows:

(1) For each commodity customer and foreign futures customer—

(i) The open contracts with prices at which acquired;

(ii) The net unrealized profits or losses in all open contracts marked to the market; and

(iii) Any customer funds carried with the futures commission merchant; and

(iv) A detailed accounting of all financial charges and credits to such customer accounts during the monthly reporting period, including all customer funds and funds on deposit with respect to foreign futures transactions in accordance with § 30.7 of this chapter received from or disbursed to such customer and realized profits and losses; and

(2) For each option customer and foreign options customer—

(i) All commodity options and foreign options purchased, sold, exercised, or

expired during the monthly reporting period, identified by underlying futures contract or underlying physical, strike price, transaction date, and expiration date;

(ii) The open commodity option and foreign option positions carried for such customer as of the end of the monthly reporting period, identified by underlying futures contract or underlying physical, strike price, transaction date, and expiration date;

(iii) All open commodity option and foreign option positions marked to the market and the amount each position is in the money, if any;

(iv) Any customer funds carried in such customer's account(s); and

(v) A detailed accounting of all financial charges and credits to such customer's account(s) during the monthly reporting period, including all customer funds and funds on deposit with respect to foreign options transactions received from or disbursed to such customer, premiums charged and received, and realized profits and losses.

(b) Confirmation statement. Each futures commission merchant must, not later than the next business day after any commodity futures or commodity option transaction, including any foreign futures or foreign options transactions, furnish:

* * * * *

8. 17 CFR Part 30 is amended by revising the Part heading, by revising and redesignating § 30.02 as § 30.9 and by adding §§ 30.1–30.8 and 30.10–30.11 to read as follows:

PART 30—FOREIGN FUTURES AND FOREIGN OPTIONS TRANSACTIONS

Sec.

30.1 Definitions.
30.2 Applicability of the Act and rules.
30.3 Prohibited transactions.
30.4 Registration required.
30.5 Alternative procedures for non-domestic persons.
30.6 Disclosure.
30.7 Treatment of foreign futures and foreign options secured amount.
30.8 Quarterly reporting requirements.
30.9 Fraudulent transactions prohibited.
30.10 Petitions for exemption.
30.11 Applicability of state law.

Appendix A to Part 30—Interpretative Statement With Respect to the Commission's Exemptive Authority Under § 30.10 of Its Rules

Authority: Secs. 2(a)(1)(A), 4, 4c and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 4, 6, 6c and 12a (1982).

§ 30.1 Definitions.

For the purposes of this part:

(a) "Foreign futures" means any contract for the purchase or sale of any commodity for future delivery made, or to be made, on or subject to the rules of any foreign board of trade.

(b) "Foreign option" means any transaction or agreement which is or is held out to be of the character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty" or "decline guaranty", made or to be made on or subject to the rules of any foreign board of trade.

(c) "Foreign futures or foreign options customer" means any person located in the United States, its territories or possessions who trades in foreign futures or foreign options: *Provided,* That an owner or holder of a proprietary account as defined in paragraph (y) of § 1.3 of this chapter shall not be deemed to be a foreign futures or foreign options customer within the meaning of §§ 30.6 and 30.7 of this part.

§ 30.2 Applicability of the Act and rules.

(a) Except as specified in this part or unless the context otherwise requires, the provisions of sections 2(a)(1), 4, 4c, 4f, 4g, 4k, 4l, 4m, 4n, 4o, 4p, 6, 6c, 6d, 8, 8a, 9, 12, 13, and 14 of the Act and parts 1, 3, 4, 10, 11, 12, 13, 14, 21, 155, 166 and 190 of this chapter shall apply to the persons and transactions that are subject to the requirements of this part as though they were set forth herein and included specific references to foreign board of trade, foreign futures, foreign options, foreign futures and foreign options customers, and foreign futures and foreign options secured amount, as appropriate.

(b) The provisions of §§ 1.20 through 1.30, 1.32, 1.35(a) (2)–(4) and (c)–(i), 1.36(b), 1.38, 1.39, 1.40 through 1.51, 1.53, 1.54, 1.55, 1.58, 1.59, 33.2 through 33.6 and Parts 15 through 20 of this chapter shall not be applicable to the persons and transactions that are subject to the requirements of this part.

§ 30.3 Prohibited transactions.

(a) It shall be unlawful for any person to engage in the offer and sale of any foreign futures contract or foreign options transaction for or on behalf of a foreign futures or foreign options customer, except in accordance with the provisions of this part: *Provided,* That, notwithstanding any other provisions of this part, it shall be unlawful for any person to engage in the offer and sale of any foreign option until the Commission, by order, authorizes such foreign option to be offered in the United States: *And, provided further,* That, with the exception of the disclosure and antifraud provisions set forth in §§ 30.6 and 30.9 of this part, the provisions of this part shall not apply to transactions executed on a foreign board of trade, and carried for or on behalf of a customer at a designated contract market, subject to an agreement with and rules of a contract market which permit positions in a commodity interest which have been established on one market to be liquidated on another market.

(b) Except as otherwise provided in § 30.4 of this part or pursuant to an exemption granted under § 30.10 of this part, it shall be unlawful for any person to engage in the offer and sale of any foreign futures contract or foreign option transaction for or on behalf of any foreign futures or foreign options customer other than by or through a futures commission merchant on a fully-disclosed basis.

§ 30.4 Registration required.

Except as provided in § 30.5 of this part, it shall be unlawful for any person, with respect to a foreign futures or foreign options customer:

(a) To solicit or accept orders for or involving any foreign futures contract or foreign options transaction and, in connection therewith, to accept any money, securities or property (or extend credit in lieu thereof) to margin, guarantee or secure any trades or contracts that result or may result therefrom unless such person shall have registered, under the Act, with the Commission as a futures commission merchant and such registration shall not have expired nor been suspended nor revoked;

(b) Except an individual who elects to be and is registered as an associated person of a futures commission merchant, to solicit or accept orders for or involving any foreign futures contract or foreign options transaction, and who in connection therewith, does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trade or contracts that result or may result therefrom, unless such person shall have registered, under the Act, with the Commission as an introducing broker and such registration shall not have expired nor been suspended nor revoked;

(c) To engage in a business which is of the nature of an investment trust, syndicate, or similar form of enterprise, and, in connection therewith, to solicit, accept, or receive funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading, directly or indirectly, in any foreign futures contract or foreign options transaction

unless such person shall have registered, under the Act, with the Commission as a commodity pool operator and such registration shall not have expired nor been suspended nor revoked: *Provided, however,* That the registration requirement set forth in this paragraph shall not apply to any investment trust, syndicate, or similar form of enterprise located outside the United States, its territories or possessions which is registered as an investment company under the Investment Company Act of 1940 and whose securities are registered in accordance with the Securities Act of 1933, or which is otherwise exempt from such registration requirements: *And, provided further,* That no more than 10% of the participants in, and the value of the assets of, such investment trust, syndicate or similar form of enterprise located outside the United States, its territories or possessions, are held by or on behalf of foreign futures and foreign options customers.

(d) To solicit or enter into an agreement to direct, or to guide such customer's account by means of a systematic program that recommends specific transactions in any foreign option or foreign futures contract unless such person shall have registered, under the Act, with the Commission as a commodity trading advisor and such registration shall not have expired nor been suspended nor revoked: *Provided,* That the term "commodity trading advisor" does not include (i) any bank or trust company or any person acting as an employee thereof, (ii) any news reporter, news columnist, or news editor of the print or electronic media, or any lawyer, accountant, or teacher, (iii) the publisher or producer of any print or electronic data of general and regular dissemination, including its employees, (iv) the named fiduciary, or trustee, of any defined benefit plan which is subject to the provisions of the Employee Retirement Income Security Act of 1974, or any fiduciary whose sole business is to advise that plan, (v) any foreign board of trade or clearing organization of such board of trade, (vi) an insurance company subject to regulation by any State, or any wholly-owned subsidiary or employee thereof, and (vii) such other persons not within the intent of the term "commodity trading advisor" as the Commission may specify by rule, regulation, or order: *And, provided further,* That the furnishing of such services by the foregoing persons is solely incidental to the conduct of their business or profession. Registration as a commodity trading advisor shall not be required if such person is registered with the Commission as a futures commission merchant, introducing broker, commodity pool operator or associated person, or is otherwise exempt from registration pursuant to § 30.5.

(e) Any person required to be registered as a futures commission merchant under this section must maintain an office in the United States which is managed by an individual domiciled in the United States and registered with the Commission as an associated person.

§ 30.5 Alternative procedures for non-domestic persons.

(a) *Agent for service of process.* Any person not located in the United States, its territories or possessions, who is required in accordance with the provisions of this part to be registered with the Commission, other than a person required to be registered as a futures commission merchant, will be exempt from such registration requirement if such person enters into a written agency agreement with the futures commission merchant through which business is done in accordance with the provisions of § 30.3(b) of this part, with any registered futures association or any other person located in the United States in the business of providing such services, pursuant to which agreement such futures commission merchant or other person is authorized to serve as the agent of such person for purposes of accepting delivery and service of communications issued by or on behalf of the Commission, U.S. Department of Justice, any self-regulatory organization or any foreign futures or foreign options customer. If the written agency is entered into with any person other than the futures commission merchant through which business is done, such futures commission merchant must be expressly identified in such agency agreement. Service or delivery of any communication issued by or on behalf of the Commission, U.S. Department of Justice, any self-regulatory organization or any foreign futures or foreign options customer, pursuant to such agreement shall constitute valid and effective service or delivery upon such person. Unless otherwise specified by the Commission, the agreement required by this section shall be filed with the Vice President-Registration, National Futures Association, 200 West Madison Street, Chicago, Illinois 60606, with a copy to the Vice President-Compliance, National Futures Association. For the purposes of this section, the term "communication" includes any summons, complaint, order, subpoena, request for information, or notice, as well as any other written document or correspondence relating to any activities of such person subject to regulation under this part.

(b) *Termination of agreement.* Whenever the agreement referred to in paragraph (a) of this section is terminated or is otherwise no longer in effect, the futures commission merchant or any other person which is party to the agreement shall immediately notify the Vice President-Compliance of the National Futures Association and the futures commission merchant through which business is done, as appropriate. Upon notice, a futures commission merchant shall not accept from the person that has entered into such agreement any order, other than liquidating order(s), for, or on behalf of a foreign futures or foreign options customer. Notwithstanding the termination of the agreement referred to in paragraph (a) of this section, service or delivery of any communication issued by or on behalf of the Commission, U.S. Department of Justice, any self-regulatory organization or any foreign futures or foreign options customer pursuant to the agreement shall nonetheless constitute valid and effective service or delivery upon such person with respect to any transaction entered into on or before the date of the termination of the agreement.

(c) *Applicability of other rules.* Any person who is located outside of the United States, its territories or possessions, and who, in accordance with the provisions of paragraph (a) of this section, is exempt from registration as an introducing broker, commodity pool operator or commodity trading advisor under this part, shall nonetheless comply with the provisions of §§ 30.6 of this part and 1.37 and 1.57 of this chapter as if registered in such capacity.

(d) *Access to records.* Any person exempt from registration with the Commission in accordance with the provisions of paragraph (a) of this section must, upon the request of any representative of the Commission or U.S. Department of Justice, provide such records as such person is required to maintain under this part as requested at the place in the United States designated by the representative within 72 hours after the person receives the request.

§ 30.6 Disclosure.

(a) *Futures commission merchants and introducting brokers.* (1) No futures commission merchant or, in the case of an introduced account, no introducing broker may open a foreign futures or

foreign options account for a foreign futures or foreign options customer unless the futures commission merchant or introducing broker first delivers to the customer either in the customer account agreement or on a separate form the following risk disclosure statement set in bold-face type or print:

Risk Disclosure Statement

Foreign Futures and Foreign Options

The risk of loss in trading foreign futures and foreign options can be substantial. Therefore, you should carefully consider whether such trading is suitable for you in light of your financial condition. In considering whether to trade foreign futures or foreign options, you should be aware of the following:

(1) Participation in foreign futures and foreign options transactions involves the execution and clearing of trades on or subject to the rules of a foreign board of trade.

(2) Neither the Commodity Futures Trading Commission, the National Futures Association nor any domestic exchange regulates activities of any foreign boards of trade, including the execution, delivery and clearing of transactions, or has the power to compel enforcement of the rules of a foreign board of trade or any applicable foreign laws. Generally, the foreign transaction will be governed by applicable foreign law. This is true even if the exchange is formally linked to a domestic market so that a position taken on the market may be liquidated by a transaction on another market. Moreover, such laws or regulations will vary depending on the foreign country in which the foreign futures or foreign options transaction occurs.

(3) For these reasons, customers who trade foreign futures or foreign options contracts may not be afforded certain of the protective measures provided by the Commodity Exchange Act, the Commission's regulations and the rules of the National Futures Association and any domestic exchange, including the right to use reparations proceedings before the Commission and arbitration proceedings provided by the National Futures Association or any domestic futures exchange. In particular, funds received from customers for foreign futures or foreign options transactions may not be provided the same protections as funds received in respect of transactions on United States futures exchanges. Therefore, you should obtain as much information as possible from your account executive concerning the foreign rules which will apply to your particular transaction.

(4) You should also be aware that the price of any foreign futures or foreign options contract and, therefore, the potential profit and loss thereon, may be affected by any variance in the foreign exchange rate between the time your order is placed and the time it is liquidated, offset or exercised.

(2) If a futures commission merchant or introducing broker, or any associated person of such futures commission merchant or introducing broker, has received general discretionary authority to engage in foreign futures or foreign options transactions on behalf of a foreign futures or foreign options customer, the futures commission merchant or introducing broker must receive a separate acknowledgment signed and dated by the customer that the customer has received and understood the foreign futures and options risk disclosure statement.

(b) *Commodity pool operators and commodity trading advisors.* (1) No commodity pool operator registered or required to be registered under this part, or exempt from registration pursuant to § 30.5 of this part, may, directly or indirectly, solicit, accept or receive funds, securities or other property from a prospective participant in a foreign pool that it operates or that it intends to operate or, in the case of a commodity trading advisor, no commodity trading advisor registered or required to be registered under this part, or exempt from registration pursuant to § 30.5 of this part, may solicit or enter into an agreement with a prospective client to direct or to guide the client's foreign commodity interest trading by means of a systematic program that recommends specific transactions, unless the commodity pool operator or commodity trading advisor, at or before the time it engages in such activities, first complies with the provisions of paragraph (a)(1) of this section.

(2) The disclosure statement required to be made in paragraph (b)(1) above may be given as a separate document or, if a part of the Disclosure Document required to be furnished customers or potential customers pursuant to §§ 4.21(a) or 4.31(a) of this chapter, must be the only language on the page(s) immediately following the disclosure required to be made by §§ 4.21(a)(17) and 4.31(a)(8) of this chapter.

(c) The acknowledgment required by paragraphs (a) and (b) of this section must be retained by the futures commission merchant, introducing broker, commodity pool operator or commodity trading advisor in accordance with § 1.31 of this chapter.

(d) This section does not relieve a futures commission merchant or introducing broker from its obligations under § 33.7 of this chapter: *Provided, however,* That a new disclosure statement is not required to be furnished if the futures commission merchant or introducing broker has previously delivered such statement to the foreign options customer in connection with the opening of a commodity option account under part 33 of this chapter.

(e) This section does not relieve a futures commission merchant, introducing broker, commodity pool operator or commodity trading advisor from any other disclosure obligation it may have under applicable law or regulation.

§ 30.7 Treatment of foreign futures or foreign options secured amount.

(a) Except as provided in this section, a futures commission merchant must maintain in a separate account or accounts money, securities and property in an amount at least sufficient to cover or satisfy all of its current obligations to foreign futures or foreign options customers denominated as the foreign futures or foreign options secured amount. Such money, securities and property may not be commingled with the money, securities or property of such futures commission merchant, with any proprietary account of such futures commission merchant, or used to secure or guarantee the obligations of, or extend credit to, such futures commission merchant or any proprietary account of such futures commission merchant.

(b) A futures commission merchant may deposit together with the secured amount required to be on deposit in the separate account or accounts referred to in paragraph (a) of this section money, securities or property held for or on behalf of other customers of the futures commission merchant for the purpose of entering into foreign futures or foreign options transactions. In such a case, the amount that must be deposited in such separate account or accounts must be no less than the greater of (i) the foreign futures and foreign options secured amount plus the amount that would be required to be on deposit if all such customers were foreign futures or foreign options customers under this part 30, or (ii) the foreign futures or foreign options secured amount plus the amount required to be held in a separate account or accounts for or on behalf of customers pursuant to any law, or rule, regulation or order thereunder, or any rule of any self-regulatory organization authorized thereunder, in the jurisdiction in which the depository or the customer, as appropriate, is located.

(c) The separate account or accounts referred to in paragraph (a) of this section must be maintained under an account name that clearly identifies them as such, with any of the following depositories:

(i) A bank or trust company located in the United States or as designated;

(ii) Another person registered as a futures commission merchant;

(iii) The clearing organization of any foreign board of trade;

(iv) Any member of such board of trade; or

(v) Such member or clearing organization's designated depositories. Each futures commission merchant must obtain and retain in its files for the period provided in § 1.31 of this chapter an acknowledgment from such depository that it was informed that such money, securities or property are held for or on behalf of foreign futures and foreign options customers and are being held in accordance with the provisions of these regulations.

(d) In no event may money, securities or property representing the foreign futures or foreign options secured amount be held or commingled and deposited with customer funds in the same account or accounts required to be separately accounted for and segregated pursuant to section 4d of the Act and the regulations thereunder.

(e) Each futures commission merchant which invests money, securities or property on behalf of foreign futures or foreign options customers shall keep a record showing the following:

(i) The date on which such investments were made;

(ii) The name of the person through whom such investments were made;

(iii) The amount of money so invested;

(iv) A description of the obligations in which such investments were made;

(v) The identity of the depositories or other places where such obligations are maintained;

(vi) The date on which such investments were liquidated or otherwise disposed of and the amount of money received of such disposition, if any; and

(vii) The name of the person to or through whom such investments were disposed of.

(f) Each futures commission merchant must compute as of the close of each business day:

(1) The total amount of money, securities and property on deposit in separate account(s) in accordance with this section;

(2) The total amount of money, securities and property required to be on deposit in separate account(s) in accordance with this section; and

(3) The amount of the futures commission merchant's residual interest in money, securities and property on deposit in separate account(s) in accordance with this section. Such computations must be completed prior to noon on the next business day and must be kept, together with all supporting data, in accordance with the requirements of § 1.31.

§ 30.8 Quarterly reporting requirements.

(a) Each futures commission merchant required to be registered under this part shall file written quarterly reports on a form specified by the National Futures Association at the National Futures Association's headquarters office in Chicago, Illinois, by the tenth business day of the month following the quarter covered by the reports.

(b) Each report shall contain the following information separately for each foreign board of trade on which foreign futures contracts or foreign options transactions were effected:

(1) The total number of foreign futures contracts, separately by contract, long and short, customer or proprietary, executed during the quarter on such board of trade on behalf of the futures commission merchant or its foreign futures customers;

(2) The total number of foreign futures contracts, separately by contract, long and short, customer or proprietary, open on such board of trade on behalf of the futures commission merchant or its foreign futures customers as of the close of business on the last business day of the quarter;

(3) The total number of foreign options, separately by underlying futures contracts for options on futures contracts or by underlying physical for options on physicals, by put, by call, and by customer or proprietary, executed during the quarter on such board of trade on behalf of the futures commission merchant or its foreign options customers;

(4) The total number of foreign options, separately by underlying futures contracts for options on futures contracts or by underlying physical for options on physicals, by put, by call, and by customer or proprietary, open on such board of trade on behalf of the futures commission merchant or its foreign options customers as of the close of business on the last business day of the quarter.

§ 30.9 Fraudulent transactions prohibited.

It shall be unlawful for any person, by use of the mails or by any means or instrumentality of interstate commerce, directly or indirectly, in or in connection with any account, agreement or transaction involving any foreign futures contract or foreign options transaction:

(a) To cheat or defraud or attempt to cheat or defraud any other person;

(b) To make or cause to be made to any other person any false report or statement thereof or to enter or cause to be entered for any person any false record thereof;

(c) To deceive or attempt to deceive any other person by any means whatsoever in regard to any such account, agreement or transaction or the disposition or execution of any such account, agreement or transaction or in regard to any act of agency performed with respect to such account, agreement or transaction; or

(d) To bucket any order, or to fill any order by offset against the order or orders of any other person or without the prior consent of any person to become the buyer in respect to any selling order of such person, or become the seller in respect to any buying order of such person.

§ 30.10 Petitions for exemption.

Any person adversely affected by any requirement of this part may file a petition with the Secretary of the Commission, which petition must set forth with particularity the reasons why that person believes that he should be exempt from such requirement. The Commission may, in its discretion, grant such an exemption if that person demonstrates to the Commission's satisfaction that the exemption is not otherwise contrary to the public interest or to the purposes of the provision from which exemption is sought. The petition will be granted or denied on the basis of the papers filed. The petition may be granted subject to such terms and conditions as the Commission may find appropriate.

§ 30.11 Applicability of state law.

Pursuant to section 12(e)(2) of the Act, the provisions of any state law, including any rule or regulation thereunder, may be applicable to any person required to be registered under this part who solicits foreign futures and foreign options customers and who shall fail or refuse to obtain such registration, unless such person is exempt from such registration in accordance with the provisions of §§ 30.4, 30.5 or 30.10 of this part.

Appendix A–Part 30—Interpretative Statement With Respect to the Commission's Exemptive Authority Under Section 30.10 of Its Rules

Part 30 of the Commission's regulations establishes the regulatory structure governing the offer and sale in the United States of futures and options contracts made or to be made on or subject to the rules of a foreign board of trade. Section 30.10 of these regulations provides that, upon petition, the Commission may exempt any person from any requirement of this part. Specifically, section 30.10 states:

Any person adversely affected by any requirement of this part may file a petition with the Secretary of the Commission, which petition must set forth with particularity the reasons why that person believes that he should be exempt from such requirement. The Commission may, in its discretion, grant such an exemption if that person demonstrates to the Commission's satisfaction that the

exemption is not otherwise contrary to the public interest or to the purposes of the provision from which exemption is sought. The petition will be granted or denied on the basis of the papers filed. The petition may be granted subject to such terms and conditions as the Commission may find appropriate.

As the provisions of this section make clear, any person subject to regulation under part 30 may petition the Commission for an exemption. In adopting these regulations, however, the Commission noted in particular that persons located outside the United States that solicit or accept orders directly from United States customers for foreign futures or options transactions and that are subject to a comparable regulatory scheme in the country in which they are located may apply under section 30.10 for exemption from some or all of the requirements that would otherwise be applicable to such persons. This interpretative statement sets forth the elements that the Commission intends to evaluate in determining whether a particular regulatory program may be found to be comparable to the Commission's program.

The Commission wishes to emphasize, however, that this interpretative statement is not all inclusive, and that information with respect to other aspects of a particular regulatory program may be submitted by a petitioner or requested by the Commission. In this connection, the Commission would have broad discretion to determine that the policies of any program element generally are met, notwithstanding the fact that the offshore program does not contain an element identical to that of the Commission's regulatory program and conversely may assess how particular elements are in fact applied by offshore authorities. Thus, for example, in order to find that a particular program is comparable, the regulations thereunder would have to be applicable to all United States customers, notwithstanding any exemptions that might otherwise be available to particular classes of customer located offshore. A petitioner, therefore, must set forth with particularity the factual basis for a finding of comparability and the reasons why such policies and purposes are met, notwithstanding differences of degree and kind in its regulatory program.

No exemptions of a general nature will be granted unless the persons to which the exemption is to be applied consent to submit to jurisdiction in the United States by designating an agent for service of process pursuant to the provisions of rule 30.5 with respect to any activities of such persons otherwise subject to regulation under this part and to notify the National Futures Association of the commencement or termination of business in the United States. In this connection, to be exempted, such person must further agree to respond to a request to confirm that it continues to do business in the United States.

Persons located outside the United States may seek an exemption on their own behalf or an exemption may be sought on a general basis through the governmental agency responsible for the implementation and enforcement of the regulatory program in question, or the self-regulatory organizations of which such persons are members. The appropriate petitioner is a matter of judgment and may be determined by the parties seeking the exemption. The Commission, however, notes that it will be able to address petitions more efficiently if they are filed by the governmental agency or self-regulatory organization responsible for the regulatory program.

In this connection, as will be discussed in more detail below, any exemption of a general nature based on comparability will be conditioned upon appropriate information sharing arrangements between the Commission and the relevant governmental agency and/or self-regulatory organization. Representations from the appropriate governmental agency with respect to the applicability of any blocking statutes that may prevent the sharing of information requested under private arrangements would also be considered. Finally, in considering an exemption request, the Commission will take into account the extent to which United States persons or contracts regulated by the Commission are permitted to engage in futures-related activities or be offered in the country from which an exemption is sought.

In the Commission's review, the minimum elements of a comparable regulatory program would include: (1) Registration, authorization or other form of licensing, fitness review or qualification of persons through which customer orders are solicited and accepted; (2) minimum financial requirements for those persons that accept customer funds; (3) protection of customer funds from misapplication; (4) recordkeeping and reporting requirements; (5) minimum sales practice standards, including disclosure of the risks of futures and opotions transactions and, in particular, the risk of transactions undertaken outside the jurisdiction of domestic law; and (6) compliance.

Qualification. Under domestic law, registration identifies to the Commission, the public and other governmental agencies the individuals and entities that are properly authorized to solicit and accept customer orders and are in good standing. Equally important, the procedure provides the Commission, through the National Futures Association, the opportunity to determine whether applicants are unfit to deal with the public. In this connection, the standards for determining whether a person through its principals is fit for registration with the Commission are set forth in section 8a(2)–8a(4) of the Act. Timely access to information as to a firm's good standing and the application by relevant authorities of membership and licensing criteria, as well as the criteria themselves, will be considered by the Commission in assessing comparability.

Minimum Financial Requirements. Minimum financial requirements for persons that handle customer funds serve at least three critical functions. First, they provide a cushion together with margin such that in the event of a default of a customer, the losses of that customer need not adversely affect the funds held on behalf of other customers. Second, they help ensure that the person has sufficient funds to operate its business and, therefore, is less likely to be tempted to misapply customer funds for its own purposes. Third, they ensure that the person holding customer funds has some financial stake in its business and, therefore, is serious in its intent. In assessing comparability, capital rules or their equivalent will be considered together with any provisions made for insuring customer losses, the scope of clearing guarantees and segregation or customer trust calculation and accounting requirements which, to the extent they cover undermargined accounts, can provide significant protection of one customer from another customer's losses.

Customer Funds. The Act requires the strict segregation of customer funds from those of the person holding such funds. One of the primary purposes of this requirement is to prevent the misapplication of those funds for purposes other than those intended by the customer, which may affect not only the customer but the market as a whole. The purpose of segregation is also to identify customer deposits as assets of the customer, rather than the firm, in order that in bankruptcy such funds are payable only to satisfy the carrying firm's obligations to such customers and not other obligations of the firm. In assessing comparability of protection of customer funds, the Commission will consider protections accorded customer funds in a bankruptcy under applicable law, as well as protection from fraud.

Recordkeeping and Reporting. Recordkeeping requirements have long been recognized as the linchpin of the Commission's regulatory scheme. Reporting and recordkeeping requirements assist in determining that a registrant is acting in accordance with the provisions of the Act and the rules, regulations and orders of the Commission thereunder. Similarly, reporting requirements ensure that customers are timely advised of the transactions that have been executed on their behalf, thus ensuring that they are aware of their positions in the markets and may object to any transactions that they believe are in error. The Commission will consider the types of records maintained, the ability through those records to trace funds and transactions, and the period of retention and accessibility of records under the information sharing arrangements discussed below in considering comparability.

Sales Practice Standards. In 1982, Congress reaffirmed the importance of minimum sales practice standards to protect customers from fraud or misrepresentation by requiring any futures association registered by the Commission to adopt and enforce rules governing the sales practices of its members. The Commission has consistently provided that written disclosure of the risks of futures and options trading is essential to ensure that potential customers are aware of these risks and are not otherwise misled and that other appropriate disclosure is made. The Commission will review the type and manner of disclosure given and the mechanisms for assuring the disclosure requirements are met and, in particular, the treatment of discretionary accounts for which, for example, Commission rule 166.2 requires particularized documentation of intent to confer discretion in the case of foreign futures and options transactions.

Compliance. Finally, in assessing comparability of a program, the Commission will examine the procedures employed by the governmental authority or the appropriate self-regulatory organization to audit for compliance with, and to take action as appropriate against those persons that violate, the requirements of that program.

Information Sharing. As noted above, any exemption of a general nature would also require an information sharing arrangement between the Commission and the appropriate governmental or self-regulatory organization to ensure Commission access to information on an as needed basis as may be necessary to fulfill its regulatory responsibilities. The information subject to these arrangements generally would be of a type necessary in the first instance to monitor domestic markets and to protect domestic customers trading on foreign markets.

Firm-specific information that is potentially relevant to protection of domestic customers engaged in foreign transactions could include the following: (1) Registration qualification status; (2) names of principals; (3) current capital; (4) location of customer funds; (5) address of main office and branches; (6) exchange and self-regulatory organization memberships; (7) the existence of any derogatory information such as that required to be disclosed on the Commission's Form 7–R; (8) notice of limitations imposed on activities; (9) notice of undersegregation or undercapitalization; (10) notice of misuse of customer funds; and (11) notice of sanctions or of expulsion from exchange or self-regulatory organization membership. The Commission believes that much of the above information would be public in the ordinary course in most jurisdictions. From time to time, the Commission also may need immediate access to financial information concerning risks posed to domestic firms by the carrying of foreign positions.

In addition to information that relates to the financial stability and creditworthiness of the firm, the Commission should have access to transaction-specific information that confirms the execution of orders and prices and facilitates tracing of customer funds. Such data could include records reflecting: (1) That an order has been received by a firm on behalf of one or more United States customers; (2) that an order has been executed on an exchange on behalf of one or more United States customers; (3) that funds to margin, guarantee or secure United States customer transactions have been received by a firm and deposited in an appropriate depository; and (4) the price at which a transaction was executed and general access to pricing information.

Again, such information is likely to be maintained in the ordinary course of business. Tracing of customer funds would be most essential in cases of insolvency where repatriation of funds is at issue.

The Commission may also seek relevant position data information, including the identity of the position holder and related positions, in connection with surveillance of a potential "market disruption." This is particularly true in the case of integrated markets.

The Commission wishes to emphasize that the information sharing arrangements discussed herein are not necessarily a substitute for, nor would they preclude, a more formal agreement or arrangement with respect to the sharing of information.

PART 32—REGULATION OF COMMODITY OPTION TRANSACTIONS

9. The authority citation for Part 32 continues to read as follows:

Authority: Sections 2(a)(1)(A), 4c and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 6c and 12a (1982).

10. Section 32.1 is amended by revising paragraph (a) to read as follows:

§ 32.1 Definitions.

(a) *Scope.* The provisions of this Part, except for the provisions of §§ 32.8 and 32.9 which shall in any event apply to all commodity option transactions, shall apply to all commodity option transactions except for commodity option transactions conducted or executed on or subject to the rules of a contract market, or a foreign board of trade, pursuant to section 4c of the Act and the regulations promulgated thereunder.

* * * * *

11. Section 32.11 is amended by revising paragraph (b) to read as folows:

§ 32.11 Suspension of Commodity Option Transactions.

* * * * *

(b) The provisions of paragraph (a) of this section shall not apply to any commodity option transaction conducted in accordance with the provisions of § 32.4(a) of this part, or any commodity option transaction conducted on or subject to the rules of a contract market or a foreign board of trade in accordance with the provisions of section 4c of the Act and any rule, regulation or order promulgated thereunder.

* * * * *

PART 166—CUSTOMER PROTECTION RULES

12. The authority citation for Part 166 is revised to read as follows:

Authority: Sections 2(a)(1)(A), 4b, 4c, 4g, 4h, 4*l*, 4*o*, 8a, and 19 of the Commodity Exchange Act, 7 U.S.C. 4, 6b, 6c, 6g, 6h, 6*l*, 6*o*, 12a, and 23.

13. Section 166.1 is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 166.1 Definitions.

* * * * *

(b) The term "commodity interest" as used in this part means—

(1) Any contract for the purchase or sale of any commodity for future delivery, traded on or subject to the rules of a contract market or a foreign board of trade.

(2) Any agreement or transaction subject to Commission regulation under section 4c of the Act, including any such contract or transaction made or to be made on or subject to the rules of a foreign board of trade; or

* * * * *

14. Section 166.2 is amended by revising paragraph (b) to read as follows:

§ 166.2 Authorization to trade.

* * * * *

(b) Authorized in writing the futures commission merchant, introducing broker or any of their associated persons to effect transactions in commodity interests for the account without the customer's specific authorization; *Provided, however,* That if such futures commission merchant, introducing broker or any of their associated persons is also authorized to effect transactions in foreign futures or foreign options without the customer's specific authorization, such authorization must be expressly documented.

Issued in Washington, DC, on July 23, 1987, by the Commission.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 87-17607 Filed 8-4-87 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 270, 271, 273, and 274

[Docket No. RM 87-31-000, et al.; Order No. 479]

Procedures for Determining High-Cost Natural Gas Produced From Tight Formations

Issued July 29, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing a final rule describing procedures for determining high-cost natural gas produced from tight formations eligible for incentive prices pursuant to section 107(c)(5) of the Natural Gas Policy Act of 1978. Specifically, the Commission is revising its regulations to provide that a

jurisdictional agency recommendation that a natural gas formation qualifies as a tight formation will be reviewed by the Commission under Parts 274 and 275 of the Commission's regulations.

EFFECTIVE DATE: This rule is effective July 29, 1987, except for the information collection provisions in §§ 271.703(c)(3) and 271.703(c)(4) which have been submitted for OMB approval. When these provisions are approved, the Commission will issue a notice of their effective date.

FOR FURTHER INFORMATION CONTACT: Julia Lake White, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, DC 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

In the matter of Procedures for Determining High-Cost Natural Gas Produced From Tight Formations, Docket No. RM87-31-000, High-Cost Gas Produced From Tight Formations (Colorado-23), Docket No. RM79-76-101, High-Cost Gas Produced From Tight Formations (Kentucky-3), Docket No. RM79-76-225, High-Cost Gas Produced From Tight Formations (Colorado-39 Addition), Docket No. RM79-76-239, High-Cost Gas Produced From Tight Formations (Oklahoma-8), Docket No. RM79-76-248, High-Cost Gas Produced From Tight Formations (Virginia-4), Docket No. RM79-76-249, High-Cost Gas Produced From Tight Formations (Travis Peak), Docket No. RM79-76-250 and High-Cost Gas Produced From Tight Formations (Colorado-38 Addition), Docket No. RM79-76-255.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is changing its procedures for qualifying gas as high cost natural gas produced from tight formations [1] that is eligible for incentive prices pursuant to section 107(c)(5) of the Natural Gas Policy Act of 1978 (NGPA).[2] Specifically, the Commission is revising its regulations [3] to provide that such determinations must be made under the procedures prescribed by section 503 of the NGPA.[4]

[1] A "tight formation" is a sedimentary layer of rock cemented together in a manner that greatly hinders the flow of any gas through the rock. Because such a formation is characterized by low permeability, wells drilled into gas bearing formations of this kind usually produce at very low rates.

[2] 15 U.S.C. 3317(c)(5) (1982).

[3] 18 CFR 271.703 (1987).

[4] 15 U.S.C. 3413 (1982).

II. Background

Section 107(c) of the NGPA[5] provides that the Commission may by rule or order prescribe a maximum lawful price for natural gas determined to be high cost natural gas eligible for incentive prices under the procedures statutorily prescribed in section 503 of the NGPA.

In Order Nos. 99 and 99-A,[6] the Commission established rulemaking procedures for designating a natural gas formation as a tight formation and therefore eligibile for incentive prices under section 107 of the NGPA. The Commission established these procedures for designating tight formations pursuant to its broad rulemaking powers under section 501 of the NGPA[7] because the Commission did not believe that its authority to engage in the tight formation identification process was limited to an NGPA section 503 review of jurisdictional agencies' determinations.[8] Also, the Commission believed that NGPA section 503 described the Commission's review authority only with respect to well category determinations.

The Commission noted that section 501 of the NGPA provides authority to engage in any activity and to issue any rules it finds necessary to carry out its functions under the NGPA. The Commission also noted that one of its functions under section 107 of the NGPA is to identify natural gas produced under extraordinary risk or cost. Given its function under NGPA section 107 and its rulemaking authority under NGPA section 501, the Commission concluded that it was not constrained by NGPA section 503 procedures for jurisdictional agency determinations. Under the procedures established in Order Nos. 99 and 99-A,[9] a jurisdictional agency made a recommendation that certain areas be designated as tight formations. Upon receipt of the recommendation, the Commission published a notice of proposed rulemaking in the **Federal Register** and, after reviewing comments, issued a final rule approving or disapproving the jurisdictional agency's recommendation.[10] Since these procedures were established, the Commission processed over 200 local jurisdictional agency recommendations. Most of these recommendations were processed between 1980 and 1984.[11]

Recently, the U.S. Court of Appeals for the District of Columbia Circuit in *Williston Basin Interstate Pipeline Co. v. FERC*,[12] (*Williston Basin*) indicated that particular tight formation determinations may be made only through the procedural scheme of section 503 of the NGPA and not through procedures adopted under the Commission's broad rulemaking power under section 501 of the NGPA. Under NGPA section 503, the responsibility for applying the definition of high cost natural gas under section 107(c) is divided between the jurisdictional agency that governs the drilling of wells on the particular site for Docket No. RM87-31-000, *et al.* 5 which the high cost designation is requested, and the Commission. Unless the jurisdictional agency waives its role, it makes the initial determination of whether specific gas satisfies the Commission-set criteria for a particular category of incentive priced gas. Then the Commission reviews the jurisdictional agency's factual determinations to ensure that they are supported by substantial evidence.[13]

III. Discussion

The Commission is revising its regulations in response to the court's decision in *Williston Basin*. Under the revised procedures promulgated by this rule, the appropriate jurisdictional agency will make a determination that a natural gas formation is eligible as a tight formation pursuant to procedures currently used to make well category determinations in Part 274 of the Commission's regulations.[14] The

[5] 15 U.S.C. 3317(c) (1982).

[6] Regulations Covering High-Cost Natural Gas Produced From Tight Formations, 45 FR 56034 (Aug. 22, 1980), FERC Stats. & Regs. [Regulations Preambles 1977-1981] ¶ 30,183 (Aug. 15, 1980) (Order No. 99); High-Cost Natural Gas Produced From Tight Formations; Order Denying Rehearing and Clarifying Order No. 99, 45 FR 71563 (Oct. 29, 1980), FERC Stats. & Regs. [Regulations Preambles 1977-1981] ¶ 30,198 (Oct. 21, 1980) (Order No. 99-A).

[7] 15 U.S.C. 3411 (1982).

[8] *See* Interim Rule Covering High-Cost Natural Gas Produced From Tight Formations, 45 FR 13414 (Feb. 28, 1980), FERC Stats. & Regs. [Regulations Preambles 1977-1981] ¶ 30,130 (Feb. 20, 1980); High-Cost Natural Gas Produced From Tight Formations; Order Denying Rehearing and Clarifying Order No. 99, 45 FR 71563 (Oct. 29, 1980), FERC Stats. & Regs. [Regulations Preambles 1977-1981] ¶ 30,198 (Oct. 21, 1980) (Order No. 99-A).

[9] 18 CFR 271.703(c) (1987).

[10] 18 CFR 271.703(c) (4) (1987).

[11] There has been a marked decrease in tight formation recommendations by jurisdictional agencies. In 1985, the Commission received seven jurisdictional agency recommendations. In 1986, only two recommendations, and, to date for 1987, only one.

[12] 816 F.2d 777 (D.C. Cir. 1987).

[13] *Id.* at 780.

[14] Part 274 of the Commission's regulations provides the procedures for determinations by jurisdictional agencies, including requirements for

Continued

Commission will then review the jurisdictional agency's determination in accordance with the procedures provided in Part 275 of the Commission's regulations.[15] Therefore, once the jurisdictional agency tight formation determination becomes final, a producer may file for a well determination under § 274.205 of the Commission's regulations,[16] i.e., a determination that a specific well is producing from a tight formation. This well category determination is likewise made by the jurisdictional agency and then reviewed by the Commission pursuant to the procedures in NGPA section 503.

IV. Technical and Conforming Changes

This final rule makes technical conforming changes to Parts 270, 271, 273 and 274 to remove inconsistencies between the Commission's regulations and the NGPA, and updates the tight formation designation list in § 271.703 to reflect the two tight formation determinations recently approved under separate Commission orders.

This final rule also amends the Commission's regulations to update the addresses for jurisdictional agencies provided in § 274.507(a)(2).

V. Administrative Procedure Act

The Adminsitrative Procedure Act (APA)[17] requires that a notice of proposed rulemaking be published in the **Federal Register** and that an opportunity for comment be provided when an agency promulgates regulations. The APA provides exemptions to the notice and comment requirements if the rule is an interpretative rule, a general statement of policy, or a rule of Commisison organization, procedure or practice, or if the Commission for good cause finds that notice and comment procedures thereon are impracticable, unnecessary or contrary to the public interest.

An interpretative rule is one that explains the requirements of a statute. This rule modifies the Commission's regulations so that they conform with the requirements of section 503 of the NGPA, as interpreted by the court in *Williston Basin*. Consequently, it is an interpretative rule that simply sets forth and explains that which the NGPA requires.[18]

This is also a procedural rule that establishes procedures for seeking a tight formation determination. The Commission, therefore, finds good cause to dispense with notice and comment as unnecessary.

VI. Paperwork Reduction Act Statement

The Paperwork Reduction Act[19] and the Office of Management and Budget (OMB) regulations[20] require that OMB approve certain information collection requirements imposed by an agency. Because the Commission's revised tight formation determination procedures pursuant to Parts 274 and 275 of its regulations will bring these jurisdictional agency determinations into the information collection provisions provided by OMB in those parts, the Commission is submitting this final rule to OMB for its approval. Interested persons can obtain information on the information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 (Attention: Ellen Brown, Information Collection Analysis Branch, (202) 357–5311). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

VII. Effective Date

Generally, a rule becomes effective not less than 30 days after publication in the **Federal Register.** A rule may become effective sooner if it is an interpretative rule, a statement of policy, or if the agency finds good cause to make it effective sooner.[21] Since this rule is an interpretative rule, the 30-day restriction does not apply. In addition, the Commission finds good cause to make the technical and conforming changes needed to remove inconsistencies between the Commission's regulations and the NGPA, and to reflect recent orders to the Commission. For these reasons, except for the information collection provisions in §§ 271.703(c)(3) and 271.703(c)(4) of the Commission's regulations submitted for OMB approval, this rule becomes effective immediately upon the issuance date of this final rule. When these information collection provisions are approved by OMB, the Commission will issue a notice in the **Federal Register** with the effective date for these information collection provisions.[22]

List of Subjects

18 CFR Part 270

Natural gas, Price controls, Reporting and recordkeeping requirements.

18 CFR Part 271

Continental shelf, Natural gas, Price controls, Reporting and recordkeeping requirements.

18 CFR Part 273

Natural gas, Price controls, Reporting and recordkeeping requirements.

18 CFR Part 274

Natural gas, Price controls, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Parts 270, 271, 273 and 274, Chapter I, Title 18 of the Code of Federal Regulations, as set forth below. By direction of the Commission.

Kenneth F. Plumb,

Secretary.

PART 270—RULES GENERALLY APPLICABLE TO REGULATED SALES OF NATURAL GAS

1. The authority citation for Part 270 is revised to read as follows:

Authority: National Gas Act, 15 U.S.C. 717–717w (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Natural Gas Policy Act of 1987, 15 U.S.C. 3301–3432 (1982).

2. In § 270.101 paragraph (c)(1) is revised to read as follows:

§ 270.101 Application of ceiling prices to first sales of natural gas.

* * * * *

(c) *Maximum lawful prices requiring jurisdictional agency determinations.*

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filings with jurisdictional agencies, procedures for waivers by jurisdictional agencies, delegations to state agencies, and identification of state and Federal jurisdictional agencies.

[15] Part 275 of the Commission's regulations provides the procedures for Commission determinations and review of jurisdictional agency determinations.

[16] 18 CFR 274.205 (1987).

[17] 5 U.S.C. 553(b) (1982).

[18] *See* Legislative History of the APA, S. Doc. No. 248, 79th Cong., 2d. Sess. 200.

[19] 44 U.S.C. 3501–3520 (1982).

[20] 5 CFR 1320.12 (1987).

[21] 5 U.S.C. 553(d) (1982).

[22] The Commission is terminating the following dockets in this order: Docket No. RM79–76–250, *Travis Peak*; Docket No. RM79–76–101, *Colorado-23*; Docket No. RM79–76–248, *Oklahoma-8*; Docket No. RM79–76–239, *Colorado-39 Addition*; Docket No. RM79–76–225, *Kentucky-3*; Docket No. RM79–76–249, *Virginia-4*; and Docket No. RM79–76–255, *Colorado-38 Addition*. The Commission is remanding one pending jurisdictional agency recommendation and reversing five pending jurisdictional agency recommendation and reversing five pending jurisdictional agency recommendations. The Commission is also issuing an order approving one pending jurisdictional agency recommendation. This rule, therefore, also revises § 271.703(d) of the Commission's regulations to include these approved tight formations in the regulations.

(1) Any maximum lawful price under any of the following subparts of Part 271 applies to a first sale of natural gas only if a determination of a particular well or new OCS lease by a jurisdictional agency that such gas qualifies under such subpart has become final in accordance with Parts 274 and 275:

* * * * *

PART 271—CEILING PRICES

3. The authority citation for Part 271 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.* (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Administrative Procedure Act, 5 U.S.C. 553 (1982), unless otherwise noted.

4. In § 271.703, paragraph (b)(5) is revised to read as follows:

§ 271.703 Tight formations.

* * * * *

(b) * * *

(5) A "designated tight formation" is a natural gas formation as determined by the appropriate jurisdictional agency, pursuant to paragraph (c)(3) of this section. Appropriate jurisdictional agencies are identified in § 274.501 of this chapter.

* * * * *

5. In § 271.703, paragraph (c) is revised to read as follows:

§ 271.703 Tight formations.

* * * * *

(c) *Determination of tight formations.*

(1) *General.* Determinations by a jurisdictional agency must be made in the form and manner prescribed in Part 274 of this chapter.

(2) *Guidelines.* (i) The guidelines for tight formations are as follows:

(A) The estimated average *in situ* gas permeability, throughout the pay section, is expected to be 0.1 millidarcy or less.

(B) The stabilized production rate, against atmospheric pressure, of wells completed for production in the formation, without stimulation, is not expected to exceed the production rate determined in accordance with the following table:

If the average depth to the top of the formation (in feet)		The maximum allowable production rate (in thousand cubic feet per day) may not exceed—
Exceeds	But does not exceed	
0	1,000	44
1,000	1,500	51
1,500	2,000	59
2,000	2,500	68
2,500	3,000	79
3,000	3,500	91
3,500	4,000	105
4,000	4,500	122
4,500	5,000	141
5,000	5,500	163
5,500	6,000	188
6,000	6,500	217
6,500	7,000	251
7,000	7,500	290
7,500	8,000	336
8,000	8,500	388
8,500	9,000	449
9,000	9,500	519
9,500	10,000	600
10,000	10,500	693
10,500	11,000	802
11,000	11,500	927
11,500	12,000	1,071
12,000	12,500	1,238
12,500	13,000	1,432
13,000	13,500	1,655
13,500	14,000	1,913
14,000	14,500	2,212
14,500	15,000	2,557

(c) No well drilled into the recommended tight formation is expected to produce, without stimulation, more than five barrels of crude oil per day.

(D) If the formation or any portion thereof was authorized to be developed by infill drilling prior to the date of determination and the jurisdictional agency has information which in its judgment indicates that such formation or portion subject to infill drilling can be developed absent the incentive price established in paragraph (a) of this section then the jurisdictional agency shall not include such formation or portion thereof in its determination.

(ii) The jurisdictional agency may designate as a tight formation any formation which meets the guidelines contained in paragraph (c)(2)(i) (B) and (C) of this section, but does not meet the guideline contained in paragraph (c)(2)(i)(A) of this section, if the jurisdictional agency makes an adequate showing that the formation exhibits low permeability characteristics and the price established in paragraph (a) of this section is necessary to provide reasonable incentives for production of the natural gas from the determined formation due to the extraordinary costs associated with such production.

(3) *Notice to the Commission.* Any jurisdictional agency making a determination that a natural gas formation qualifies as a tight formation will provide timely notice in writing of the determination to the Commission. Such notice shall include substantiation provided in paragraph (4) of this section and be in the manner prescribed in § 274.104 of this chapter.

(4) *Content of determinations.* A determination that a formation qualifies as a designated tight formation shall contain the following information:

(i) Geological and geographical descriptions of the formation which is determined to qualify as a tight formation;

(ii) Geological and engineering data to support the determination and the source of that data;

(iii) A map which clearly locates wells which are currently producing from the determined tight formation or a list locating all wells which are currently producing natural gas from the determined tight formation;

(iv) A report of the extent to which existing State and Federal regulations will assure development of the determined tight formation will not adversely affect any fresh water aquifers (during both hydraulic fracturing and waste disposal operations) that are or are expected to be used as a domestic or agricultural water supply;

(v) If the formation is determined under paragraph (c)(2)(ii) of this section, the types and extent of enhanced production techniques which are expected to be necessary and the estimated expenditures necessary for employing those techniques; and the degree of increase in production to be expected from use of such techniques and engineering and geological data to support that estimate; and

(vi) Any other information which the jurisdictional agency deems relevant.

(5) *Commission review of determinations.* Upon receipt of a determination submitted in accordance with this section, the Commission will review the jurisdictional agency's determination in accordance with the procedures established in Part 275 of this chapter

* * * * *

6. Section 271.703 is amended by adding paragraphs (d) (199) and (200) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.* * * *

(199) *Dakota Formation in Colorado,* RM79–76 (Colorado-23).

(i) *Delineation of formation.* The Dakota Formation is located in Garfield and Mesa Counties, Colorado and underlies portions of Townships 7 through 13 South, Ranges 97 through 98 and 100 through 104 West, 6th P.M.; Township 1 North, Ranges 1 and 2 West,

Ute P.M.; Township 2 North Range 2 West, Ute P.M.; Township 1 North, Range 1 East, Ute P.M.; Township 1 South Range 1 West Ute P.M.; and Townships 1 through 3 South, Ranges 1 and 2 East, Ute P.M.

(ii) *Depth.* The average depth to the top of the Dakota formation is 2,815 feet.

(200) *Morrison Formation in Colorado,* RM79-76 (Colorado-23).

(i) *Delineation of formation.* The Morrison Formation is located in Garfield and Mesa Counties, Colorado and underlies portions of Township 7 through 13 South, Ranges 97 through 98 and 100 through 104 West, 6th P.M.; Townships 1 and 2 North, Ranges 1 and 2 West, Ute P.M.; Township 1 North, Range 1 East, Ute P.M.; Township 1 South, Range 1 West, Ute P.M.; and Townships 1 through 3 South, Ranges 1 and 2 East, Ute P.M.

(ii) *Depth.* The average depth to the top of the Morrison Formation is 3,005 feet.

PART 273—COLLECTION AUTHORITY; REFUNDS

7. The authority citation for Part 273 is revised to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982), unless otherwise noted.

8. In § 273.102, paragraph (a)(1) is revised to read as follows:

§ 273.102 Definition of final eligibility determination.

(a) * * *

(1) An affirmative or negative determination by a jurisdictional agency respecting eligibility for a particular well or new OCS lease to collect a deregulated price under Part 272 or a maximum lawful price under Subpart B, C, G or H of Part 271, and

* * * * *

PART 274—DETERMINATIONS BY JURISDICTIONAL AGENCIES

9. The authority citation for Part 274 is revised to read as follows:

Authority: Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982) unless otherwise noted.

10. In § 274.104, paragraph (a)(5) is revised to read as follows:

§ 274.104 Notice to the Commission.

(a) *Affirmative determinations.* * * *

(5) The information required to be filed under subpart B of Part 274 under § 274.207, or under § 271.703(c)(4), and in any case in which other materials in the record constitute portions of such information, a copy of those portions of the record; and

* * * * *

11. In § 274.501, paragraphs (a)(1)(i), (ii), (iii) and (iv) are revised to read as follows:

§ 274.501 Jurisdictional agency.

(a) *Definition.* * * *

(1) * * *

(i) For OCS wells located in the Gulf Coast Region: Area Oil & Gas Supervisor, 1201 Wholesalers Parkway, New Orleans, LA 70123.

(ii) For OCS wells located in the Atlantic Region: Area Oil & Gas Supervisor, Atlantic OCS Operations, 1951 Kidwell Drive, Vienna, VA 22180.

(iii) For OSC wells located offshore Alaska: Area Oil & Gas Supervisor, P.O. Box 101159, 800 A Street, Anchorage, AK 99510.

(iv) For OCS wells located offshore California: Area Oil & Gas Supervisor, 160 Federal Building, 1340 W. 6th Street, Room 200, Los Angeles, CA 90017.

* * * * *

12. In § 274.501(a)(2) in the table, the following entries are revised to read as follows:

State in which well is located	Jurisdictional agency for wells on	
	Federal lands	Other lands
Alaska:		
Only Alaska OCS region	Regional Supervisor for Field Operations, 800 A Street, Anchorage, AK 99510.	
Arizona (Only the Navajo and Hopi Indian Reservations)	District Manager, Bureau of Land Management, Albuquerque District Office (NGPA), 435 Montano Road, NE., Albuquerque, NM 87107.	
Colorado	Deputy State Director for Mineral Resources, Bureau of Land Managment, Colorado State Office (CO-920), 2850 Youngfield Street, Lakewood, CO 80215.	Oil and Gas Conservation Commission, 1580 Logan Street, Room 380, Denver, CO 80203.
Kansas	Deputy State Director for Mineral Resources, Bureau of Land Management, Colorado State Office (CO-920), 2850 Youngfield Street, Lakewood, CO 80215.	
Kentucky		Kentucky Public Service Commission, P.O. Box 615, Frankfort, KY 40602.
Louisiana		Office of Conservation, P.O. Box 94275, Baton Rouge, LA 70804.
Only Gulf of Mexico OCS Region.	Regional Supervisor for Field Operations, 1201 Wholesalers Parkway, New Orleans, LA 70123.	
Montana		Board of Oil and Gas Conservation, 2535 St. John's Ave., Billings, MT 59102, or 1520 East Sixth Ave., Helena, MT 59620.
New Mexico:		
Northern New Mexico.	District Manager, Bureau of Land Management, Albuquerque District Office (NGPA), 435 Montano Road, NE, Albuquerque, NM 87107.	
Oregon		Department of Geology & Mineral Industries, 910 State Office Bldg., Portland, OR 97201.
Pennsylvania:		
Northern Region.		Bureau of Oil & Gas Management, 1012 Water Street, Meadville, PA 16335.
Southern Region.		Bureau of Oil & Gas Management, Highland Bldg., 121 South Highland Ave., Pittsburgh, PA. 15206.
South Dakota		Department of Water and Natural Resources, 36 East Chicago, Rapid City, SD 57701.
Utah	Chief, Branch of Fluid Minerals, Bureau of Land Management, Utah State Office (U-922), 324 South State Street, Suite 301, Salt Lake City, UT 84111	Div. of Oil & Gas, 355 West North Temple, 3 Triads Center, Suite 350, Salt Lake City, UT 84180.
or		
Utah (Navajo and Hopi Indian Reservation).	Distict Manager, Bureau of Land Management, Albuquerque District Office (NGPA), 435 Montano Road, N.E., Albuquerque, NM 87107.	
Virginia		Department of Mines, Minerals & Energy, Division of Mines and Quarries, Oil & Gas Section, P.O. Box 1416, Abingdon, VA 24210.

State in which well is located	Jurisdictional agency for wells on	
	Federal lands	Other lands
West Virginia		Department of Mines, Oil & Gas Division, 1615 Washington Street, East Charleston, WV 25305.
Wyoming:		
Casper District	District Manager, Bureau of Land Management, 1701 East E Street, Casper, WY 82601.	
Rawlins District	District Manager, Bureau of Land Management, P.O. Box 670, Rawlins, WY 82301.	
Worland District	District Manager, Bureau of Land Management, P.O. Box 119, Worland, WY 82401.	

[FR Doc. 87-17538 Filed 8-4-87; 8:45 am]
BILLING CODE 6717-01-M

18 CFR Part 271

[Docket Nos. RM86-7-001 and 002]

Compression Allowances and Protest Procedures Under NGPA Section 110

Issued: July 30, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order granting rehearing solely for the purpose of further consideration.

SUMMARY: On June 3, 1987, the Federal Energy Regulatory Commission issued Order No. 473 revising regulations governing production related cost allowances. On June 30, 1987, and July 2, 1987, two applicants applied for rehearing of Order No. 473. In this order, the Commission grants rehearing solely for the purpose of further consideration.

EFFECTIVE DATE: July 30, 1987.

FOR FURTHER INFORMATION CONTACT: Arthur W. Iler, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, DC 20426, (202) 357-5275.

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

Order Granting Rehearing Solely for the Purpose of Further Consideration

On June 3, 1987, the Commission issued Order No. 473 [1] in Docket No. RM86-7-000 revising regulations governing production-related cost allowances in response to the court's mandate in *Texas Eastern Transmission Corp. v FERC.*[2] On June 30, 1987, Louisiana Intrastate Gas Corporation (LIG) requested in Docket No. RM86-7-001, clarification, or, in the alternative, rehearing of Order No. 473. On July 2, 1987, in Docket No. RM86-7-002, Indicated Producers requested rehearing and clarification of Order No. 473.

In order to afford sufficient time to consider the issues raised in these applications, the Commission grants rehearing of Order No. 473 solely for the purpose of further consideration. This order does not constitute a grant or denial of the applications on their merits, either in whole or in part. As provided in Rule 713 of the Commission's rules of practice and procedure,[3] no answer to these applications will be entertained by the Commission.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-17788 Filed 8-4-87; 8:45 am]
BILLING CODE 6717-01-M

[1] 52 FR 21660 (June 8, 1987); 39 FERC ¶ 61,260.

[2] 769 F.2d 1053 (5th Cir. 1985), *cert. denied*, 106 S. Ct. 1967 (1986).

[3] 18 CFR 385.713 (1987).

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Parts 193 and 561

[FAP 5H5470/R893; FRL-3242-4]

Pesticide Tolerances for Cyano(4-Fluoro-3-Phenoxyphenyl)Methyl-3-(2,2-Dichloroethenyl)-2,2-Dimethyl-Cyclopropanecarboxylate

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: These rules establish a temporary food additive and a temporary feed additive regulation to permit residues of the insecticide cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethyl-cyclopropanecarboxylate in or on certain tomato products in accordance with an experimental program. These regulations to establish maximum permissible levels of the insecticide in or on the tomato products were requested in a petition by Mobay Chemical Corp.

EFFECTIVE DATE: Effective on August 5, 1987.

ADDRESS: Written objections, identified by the document control number [FAP 5H5470/R893], may be submitted to the Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail:

George LaRocca, Product Manager (PM) 15, Registration Division (TS-767C), Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 200, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-2400).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of June 9, 1986 (51 FR 20893), which announced that Mobay Chemical Corp., Agricultural Chemicals Division, P.O. Box 4913, Hawthorn Rd., Kansas City, MO 64120, had filed a food/feed additive petition (FAP 5H5470), proposing that 21 CFR Parts 193 and 561 be amended by establishing regulations permitting tolerances for residues of the insecticide cyano(4-fluoro-3-phenoxyphenyl) methyl-3-(2,2-dichloroethenyl)-2,2-dimethyl-cyclopropanecarboxylate in or on the food commodity concentrated tomato products at 0.5 part per million (ppm) and in or on the animal feed commodities tomato pomace (dry) at 5.0 ppm and tomato pomace (wet) at 2.0 ppm resulting from application of the insecticide to tomatoes.

No comments were received by the Agency in response to the notice.

EPA has granted Mobay Chemical Corp. temporary tolerances for the pesticide in or on the food additive commodity concentrated tomato products and the feed additive commodities tomato pomace (dry) and tomato pomace (wet) in conjunction with FAP 5H5470 and Experimental Use Permit 3125-EUP-194.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the tolerances include a 90-day rat feeding study with a no-observed-effect level (NOEL) of 300 ppm; a 26-week feeding study in dogs with a NOEL of 6.00 mg/kg/day (200 ppm); a rat teratology study with a teratogenic and fetotoxic NOEL of 30 mg/kg/day (highest dose tested); and a rabbit teratogenicity study with a NOEL of 45 mg/kg/day for fetotoxicity and maternal toxicity. Studies on mutagenicity demonstrated negative potential.

Based on the 2-year chronic oncogenicity feeding study in rats with a 2.50 mg/kg/day NOEL and using a safety factor of 100, the acceptable daily intake (ADI) for man is 0.025 mg/kg/day. The theoretical maximum residue contribution (TMRC) resulting from the established temporary tolerance of 0.2

ppm for residues in or on tomatoes, 0.2 ppm in red meat, and in milk at 0.01 ppm is 0.008738 mg/day for a 60-kg person. The resulting percent Acceptable Daily Intake (ADI) occupied is 34.953800.

The pesticide may be safely used in the prescribed manners when such uses are in accordance with the label and labeling registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 751, 7 U.S.C. 135(a) et seq.). It has further been determined that since residues of the pesticide may result in concentrated tomato products and tomato pomace from the agricultural use provided for in the experimental use permit, the food and feed additive regulations should be established and should include tolerance limitations.

The metabolism of the insecticide is adequately understood for these uses, and the analytical method for enforcing these tolerances has been published in the Pesticide Analytical Manual, Volume II. No actions are currently pending against registration of the insecticide.

The scientific data reported and other relevant material have been evaluated, and the Agency concludes that the pesticide may be safely used in the prescribed manner when such use is in accordance with the label and labeling registered pursuant to FIFRA, as amended (86 Stat. 973, 89 Stat. 751, 7 U.S.C. 135(a) et seq.) and is established as set forth below.

Any person adversely affected by these regulations may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulations deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new food or feed additive levels, or conditions for safe use of additives, or raising such food or feed additive levels do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24945).

(Sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 346(c)(1)))

List of Subjects in 21 CFR Parts 193 and 561

Food additives, Feed additives, Pesticides and pests.

Dated: July 16, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 21 CFR Chapter I is amended as follows:

1. In Part 193:

PART 193—[AMENDED]

a. The authority citation continues to read as follows:

Authority: 21 U.S.C. 348.

b. New § 193.98 is added to read as follows:

§ 193.98 Cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate.

(a) [Reserved]

(b) A temporary tolerance of 0.5 part per million is established for residues of the insecticide cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate in concentrated tomato products resulting from application of the insecticide to tomatoes. Such residues may be present therein only as a result of the application of the insecticide in accordance with the provisions of the experimental use permit number 3125-EUP-194.

2. In Part 561:

PART 561—[AMENDED]

a. The authority citation continues to read as follows:

Authority: 21 U.S.C. 348.

b. New § 561.96 is added to read as follows:

§ 561.96 Cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate.

(a) [Reserved]

(b) A temporary tolerance of 2.0 parts per million is established for residues of the insecticide cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate in tomato pomace (wet) and 5.0 parts per million in tomato pomace (dry) resulting from application of the insecticide to tomatoes. Such residues may be present therein only as a result of the application of the insecticide in accordance with the provisions of the experimental use permit number 3125-EUP-194.

[FR Doc. 87-17737 Filed 8-4-87; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Hygromycin B

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the new animal drug regulations to reflect approval of a new animal drug application (NADA) filed for Mac Page, Inc., providing for use of a 2.4-gram-per-pound hygromycin B Type A medicated article for making a hygromycin B Type C medicated feed for swine for control of infestations of large roundworms, nodular worms, and whipworms, and for chickens for control of large roundworms, cecal worms, and capillary worms.

EFFECTIVE DATE: August 5, 1987.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1414.

SUPPLEMENTARY INFORMATION: Mac Page, Inc., 1600 South Wilson Ave., Dunn, NC 28334, is the sponsor of NADA 140-842 submitted on its behalf by Elanco Products Co. The NADA provides for the use of a 2.4-gram-per-pound hygromycin B Type A medicated article to make a 12-gram-per-ton hygromycin B Type C medicated swine feed for control of infestations of large roundworms (*Ascaris suis*), nodular worms (*Oesophagostomum dentatum*), and whipworms (*Trichuris suis*), and an 8- or 12-gram-per-ton chicken feed for the control of infestations of large

roundworms (*Ascaris galli*), cecal worms (*Heterakis gallinae*), and capillary worms (*Capillaria obsignata*). The NADA is approved and 21 CFR 558.274(a) is amended to reflect the approval.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a signifiant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

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

PARTY 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Part 558 is amended in § 558.274 by adding, in numerical sequence, drug labeler code "047427" to the "Sponsor" column in paragraphs (c)(1) (i) and (ii), and by revising paragraph (a)(7), to read as follows:

§ 558.274 Hygromycin B.

(a) * * *

(7) 2.4 grams per pound to 011790 and 047427 in § 510.600(c) of this chapter for use in chickens as in paragraph (c)(1)(i) and in swine as in paragraph (c)(1)(ii) of this section.

* * * * *

Dated: July 30, 1987.

Richard H. Teske,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 87–17757 Filed 8–4–87; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 885

[Docket No. R–87–1254; FR–1899]

Loans for Housing for the Elderly or Handicapped

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends HUD's regulations governing the direct loan program for elderly or handicapped housing (24 CFR Part 885) to incorporate statutory amendments made in the Housing and Urban-Rural Recovery Act of 1983 and the Housing and Community Development Technical Amendments of 1984, to subject Section 202 applications to the requirements of Executive Order 12372, "Intergovernmental Review of Federal Programs," and to clarify certain provisions applicable to Sponsors and Borrowers.

EFFECTIVE DATE: October 12, 1987.

FOR FURTHER INFORMATION CONTACT: Robert Wilden, Assisted Elderly and Handicapped Housing Division, Room 6118, Office of Elderly and Assisted Housing, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW. Washington, DC 20410–8000, telephone (202) 426–8730. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On April 10, 1986, the Department published in the **Federal Register**, an interim rule amending HUD's regulations governing the direct loan program under section 202 of the Housing Act of 1959 (51 FR 12308). This interim rule, effective May 12, 1986: (1) Imposed limitations on prepayment or transfer of Section 202 loans; (2) amended the definitions of "Borrower" and "Sponsor" to include conflict of interest provisions; (3) permitted the Borrower or Sponsor to award a negotiated construction contract under certain conditions; (4) deleted from § 885.416(c) of the regulation, the provision that for negotiated noncompetitive construction contracts, no change orders will be approved and no HUD loan proceeds may be used for costs arising from inadequacies in the plans and specifications; and (5) imposed requirements with respect to site acquisition and other matters. The interim rule also added requirements relating to intergovernmental review procedures. Most of the revisions contained in the interim rule implemented statutory changes to the section 202 Program enacted in the Housing and Urban-Rural Recovery Act of 1983 (HURRA) and in the Housing and Community Development Technical Amendments Act of 1984.

The interim rule sought public comment on the revisions. HUD received one comment in response to the interim rule. The commenter generally supported the interim rule but argued that the rule should be expanded to include certain additional provisions added by HURRA. These included: (1) Section 202(i)(1), which provides that, unless otherwise requested by the Sponsor, a maximum of 25 percent of the units in a project may be efficiency units, subject to a HUD determination that such units are appropriate for the elderly and handicapped population residing in the vicinity of the project; (2) Section 202(i)(2), which provides that the Secretary may require a Sponsor of a housing project to deposit an amount not to exceed $10,000 in a special escrow account to assure the commitment and long-term management capabilities of the Sponsor; (3) Section 202(i)(3), which requires the Secretary to take into account special design features necessary for housing for the elderly or handicapped in establishing unit cost limits and to adjust cost limits at least once annually to reflect changes in construction costs; and (4) Section 202(m), which permits the Sponsor to provide amenities or other design features, if the cost of the amenities and design features is not financed by the loan and is not taken into account when determining the amount of Federal subsidy or the rent contribution of tenants. In the interim rule (51 FR 12308), HUD indicated that it was not necessary to amend Part 885 to reflect these statutory changes because the provisions "apply only to the Secretary and in most instances reflect policies and procedures already in effect."

Except for the minimum capital investment requirements of Section 202(i)(2) which are fully implemented in the regulations at § 885.410(j), the cited statutory changes have not, as yet, been incorporated in Part 885. Rather, HUD's interpretation of these provisions has generally been explained in HUD's annual notice governing each fiscal year's program. (See FR–2326—Section 202 Loans for Housing for the Elderly or Handicapped—Announcement of Fund Availability—Fiscal Year 1987, published March 13, 1987 (52 FR 7936).

HUD agrees that all of the cited statutory changes have an impact on the

ability of an organization to develop housing and on the design and quality of housing provided under section 202 and should be incorporated in the regulations. While the FY 1987 NOFA stated that these changes would be included in the final rule in this rulemaking, HUD is currently preparing a proposed rule incorporating certain requirements that have been included in the text of the annual section 202 NOFA, and other amendments. To ensure that the implementation of the HURRA requirements will receive the benefit of public comment, the Department has decided to implement section 202 (i)(1), (i)(3) and (m) in the proposed rule.

As noted above, HUD believes that the existing regulations at § 885.410(j) fully implement the requirements of section 202(i)(2). This section provides: "The Secretary may require a sponsor of a housing project financed with a loan under this section to deposit an amount not to exceed $10,000 in a special escrow account to assure the commitment and long-term management capabilities of such sponsor." The commenter claimed that it is HUD's current procedure to require *all* sponsors to provide the full $10,000 escrow deposit and that this policy discourages small and minority nonprofit organizations from participating in the section 202 program.

Contrary to the commenter's allegation, § 885.410(j) does not require the full $10,000 escrow payment for all housing projects financed under section 202. Rather the escrow payment is set at one-half of one percent of the mortgage amount committed to be disbursed, *not to exceed $10,000.* This result is consistent with congressional intent regarding this provision. The House committee report concluded that the full $10,000 was "not so great as to limit the ability of small nonprofit organizations representing minority, handicapped and rural elderly from participating in the program." H.R. Rep. No. 123, 98th Cong. 1st Sess. 41 (1983). Indeed, this House report indicates that section 202(i)(2) was merely intended to codify HUD's existing escrow practices.

In addition to supplemental rules implementing HURRA, the commentor urged the Department to exercise discretion and flexibility in its implementation of § 885.210(b)(9). This provision prohibits Borrower corporations from including references to religion or religious purposes in their Articles of Incorporation. The commenter was concerned that this requirement, if carried to an extreme, could be interpreted to require the deletion of all references to religious denominations or specific churches, from documents describing the Borrower corporation.

HUD has applied and will continue to apply this requirement flexibly within Permissible First Amendment limits, as set forth in Supreme Court decisions. For example, HUD has determined that the mere recital in the Borrower's Articles of Incorporation or By-laws that the Borrower is organized exclusively for religious, charitible, scientific, literary or educational purposes within the meaning of section 501(c)(3) of the Internal Revenue Code is not a sufficient indication of a religious purpose to make a Borrower ineligible, in the absence of an additional indication of a specifically religious purpose or character, provided that the Articles of Incorporation also include a clause prohibiting the distribution of any corporate assets to a religious organization upon the dissolution of the Borrower. (52 FR 7938.)

This rule adopts the interim rule published on April 10, 1986 as final without change.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, Room 10278, 451 Seventh Street, SW., Washington, DC 20410–0500.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 11291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does (1) have an annual effect on the economy of $100 million or more; (2) cause major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic region; or (3) have a signficant 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.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned certifies that this rule does not have a significant economic impact on substantial number of small entities. Rather than imposing new requirements on Sponsors or Borrowers or causing the expenditure or more funds by Sponsors or Borrowers, this rule clarifies existing and statutorily mandated policies and procedures to facilitate the development of applications and ensure the proper processing of applications.

This rule was listed in the Department's Semiannual Agenda of Regulations publish April 27, 1987 (52 FR 14362 at 14389) as item number 971 under Executive Order 12291 and the Regulatory Flexibility Act.

The information collection requirements contained in this rule were submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520. All requirements have been approved and assigned an OMB control number. The OMB control number is 2502–0267.

The Catalog of Federal Domestic Assistance Program title and number is 14.157, Housing for the Elderly or Handicapped.

List of Subjects in 24 CFR Part 885

Aged, Grant programs: Housing and community development, Handicapped, Loan programs: Housing and community development, Low- and moderate-income housing.

Accordingly, the Department amends 24 CFR Part 885 as follows:

PART 885—LOANS FOR HOUSING FOR THE ELDERLY OR HANDICAPPED

1. The authority citation for 24 CFR Part 885 continues to read as follows:

Authority: Sec. 202, Housing Act of 1959 (12 U.S.C. 1701q); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. The interim rule published April 10, 1986 (51 FR 12308) is adopted without change as final.

Dated: July 28, 1987.

James. E. Schoenberger,

Acting General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 87–17716 Filed 8–4–87; 8:45 am]

BILLING CODE 4210–27–M

POSTAL SERVICE

39 CFR Part 111

Mail Disputes

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule deals with the situation in which two or more parties claim delivery of the same mail. Present regulations (which are changed by this final rule) provide that when the parties cannot agree about who should receive

the mail or who should act as a receiver, the postmaster may resolve the dispute based on evidence supplied by the parties. When doubtful, the postmaster may submit the case to the regional counsel for a ruling. The postmaster or the regional counsel resolve most such cases on an informal basis.

The Postal Service now changes these regulations to refer disputed cases to the Judicial Officer Department if no informal resolution of a dispute is achieved by the regional counsel within 5 working days, or within such additional agreed upon time, and the regional counsel has not ordered the mail returned to the sender. The rules of procedure of the Judicial Officer Department will also reflect these changes.

EFFECTIVE DATE: September 4, 1987.

FOR FURTHER INFORMATION CONTACT: William P. Bennett, (202) 268–2966.

SUPPLEMENTARY INFORMATION: On June 22, 1987, the Postal Service published for comment in the **Federal Register** (52 FR 23477) proposed changes of the Domestic Mail Manual that would amend postal regulations on the handling of disputes between two or more parties claiming delivery of the same mail. Interested persons were invited to submit comments on the proposed changes by July 22, 1987. Two comments were received. It was suggested it be made clear that regional counsel retained authority under Domestic Mail Manual Exhibit 159.14[22] to order the return of mail to sender. It was decided to emphasize that regional counsel retained the authority to order mail returned to sender inasmuch as such authority is a useful means to encourage settlement. Accordingly, the regulation is changed to indicate that disputes which are not resolved by returning mail to sender or by other means will be submitted to the Judicial Officer Department.

Secondly, it was suggested that postmasters may circumvent regional counsel by sending matters directly to the Judicial Officer Department. That is not a realistic observation inasmuch as the Department may assume jurisdiction of a mail dispute only after regional counsel has determined that no informal resolution can be made. Further, any transmission so as to confer jurisdiction to the Judicial Officer Department must come from regional counsel, not the postmaster. Nonetheless, in order to make it clear that regional counsel retains the flexibility to settle these matters prior to such transmission, the regulations are altered to state that transmission is to take place after 5 working days or such additional time as may be agreed upon by all parties. In that way, regional counsel need not transmit the dispute if it is on the verge of settlement or resolution of some type as the 5 days draw to a close, but instead may keep the matter for a reasonable further time as may be agreed by all concerned. Accordingly, the Postal Service adopts the proposal as altered, and makes the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal service

PART 111—[AMENDED]

1. The authority citation for Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

PART 153—CONDITIONS OF DELIVERY

2. In 153.7, revise .72 to read as follows:

153.7 Conflicting orders by two or more parties for delivery of same mail.

* * * * *

.72 Reference to Regional Counsel or Judicial Officer Department. Where the disputing parties are unable to select a receiver, they shall furnish the postmaster all available evidence on which they rely to exercise control over the disputed mail. In after receipt of such evidence the postmaster is still in doubt as to who should receive the mail, the postmaster will submit the case to the regional counsel for informal resolution. If after 5 working days, or such additional time as may be agreed to by all parties, no informal resolution is achieved and no order has been made by regional counsel to return the mail to sender, then regional counsel shall forward the case file to the Judicial Officer Department for decision in accordance with the rules of procedure of that department.

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided by 39 CFR 111.3.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 87–17708 Filed 8–4–87; 8:45 am]

BILLING CODE 7710–12–M

39 CFR Part 965

Rules of Practice in Proceedings Relative to Mail Disputes

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Judicial Officer of the Postal Service hereby issues the rules of practice in proceedings relative to mail disputes. Acting in accordance with authority delegated to him by 39 CFR 224.1(c)(4)(ii)(A), the Judicial Officer of the Postal Service adopts 39 CFR Part 965, the Rules of Practice in Proceedings Relative to Mail Disputes. The rules in this part apply to any hearing conducted pursuant to Domestic Mail Manual Sec. 153.7 regarding conflicting orders by two or more parties for the delivery of the same mail.

EFFECTIVE DATE: September 4, 1987.

FOR FURTHER INFORMATION CONTACT: Judge James D. Finn, Jr., 202–268–2133.

List of Subjects in 39 CFR Part 965

Administrative practice and procedure, Mail disputes, Postal Service.

Accordingly, 39 CFR is amended by adding the following new Part 965:

PART 965—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO MAIL DISPUTES

Sec.

965.1 Authority for rules.
965.2 Scope of rules.
965.3 Notice to parties.
965.4 Presiding officers.
965.5 Submittals by parties.
965.6 Comments by parties.
965.7 Default.
965.8 Hearings.
965.9 Evidence.
965.10 Transcript.
965.11 Initial decision.
965.12 Appeal.
965.13 Compromise and informal disposition.
965.14 Public information.

Authority: 39 U.S.C. 204, 401.

§ 965.1 Authority for rules.

These rules of practice are issued by the Judicial Officer of the U.S. Postal Service pursuant to authority delegated by the Postmaster General. [39 CFR 224.1(c)(4)].

§ 965.2 Scope of rules.

The rules in this part shall be applicable to mail dispute cases forwarded to the Judicial Officer Department by Regional Counsel pursuant to Domestic Mail Manual 153.72.

§ 965.3 Notice to parties.

Upon receipt of a mail dispute case from Regional Counsel, the Recorder, Judicial Officer Department, United States Postal Service, 475 L'Enfant Plaza West, SW., Washington, DC 20260–6100, will send a notice of docketing and submittal due date to the parties together with a copy of these rules.

§ 965.4 Presiding officers.

(a) The presiding officer shall be an Administrative Law Judge or an Administrative Judge qualified in accordance with law. The Judicial Officer assigns cases under this part. Judicial Officer includes Associate Judicial Officer upon delegation thereto. The Judicial Officer may, on his own initiative or for good cause found, preside at the reception of evidence.

(b) The presiding officer has authority to:

(1) Take such action as may be necessary to preside properly over the proceeding and render decision therein;

(2) Render an initial decision, if the presiding officer is not the Judicial Officer, which becomes the final agency decision unless a timely appeal is taken; the Judicial Officer may issue a tentative or a final decision.

§ 965.5 Submittals by parties.

Within 15 days after receipt of the Recorder's notice, each party shall file with the Recorder a sworn statement of the facts supporting its claim to receipt of the mail together with a copy of each document on which it relies in making such claim. All such submittals shall be in duplicate. Upon receipt of such evidence, the Recorder shall send a copy of each submittal to the opposing party.

§ 965.6 Comments by parties.

Within 10 days of receipt of the other party's evidence, each party may file with the Recorder a statement setting forth in detail its disagreements, if any, with its opponent's statement and documents. The Recorder will send to each party a copy of the other party's comments.

§ 965.7 Default.

A party who fails to file the submittal required by § 965.5 may be held in default and the presiding officer may issue an initial decision that mail be delivered to the other party.

§ 965.8 Hearings.

(a) In the discretion of the presiding officer an oral hearing may be granted at the request of either, or both, parties or on the presiding officer's own initiative if there is a dispute as to a material issue of fact which can only be resolved by examination of witnesses.

(b) Hearings are held at the headquarters of the U.S. Postal Service, 475 L'Enfant Plaza West, SW., Washington, DC, 20260–6100, or at such other place as may be designated by the presiding officer.

§ 965.9 Evidence.

(a) In general, admissibility will hinge on relevancy and materiality. However, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

(b) Testimony shall be given under oath or affirmation and witnesses are subject to cross-examination.

(c) Agreed statements to fact are encouraged and may be received in evidence.

§ 965.10 Transcript.

Testimony and argument at hearings shall be reported verbatim, unless the presiding officer otherwise orders. Transcripts or copies of the proceedings are supplied to the parties at such rate as may be fixed by contract between the reporter and Postal Service.

§ 965.11 Initial decision.

The presiding officer shall render an initial decision in writing, based on the record, as expeditiously as possible, but to the extent practicable within 10 working days of closing of the record. The decision will be brief, containing summary findings of fact, conclusions of law, and reasons therefor. If there has been a hearing the presiding officer may in his discretion render an oral decision. A typed copy of such oral decision will subsequently be furnished to the parties to establish the date for commencement of time for requesting review of the initial decision.

§ 965.12 Appeal.

The initial or tentative decision will become final 10 days after its issuance and receipt by the parties unless the Judicial Officer, or by delegation the Associate Judicial Officer, in his sole discretion, grants review upon appeal of either party filed within that period, or on his own motion within that period. If an appeal is denied, the initial or tentative decision becomes the final agency decision on the issuance of such denial. The judicial Officer's decision on appeal is the final agency decision with no further agency review or appeal rights.

§ 965.13 Compromise and informal disposition.

Nothing in these rules precludes the compromise, settlement, and informal disposition of proceedings initiated under these rules at any time prior to the issuance of the final agency decision.

§ 965.14 Public Information.

The Law Librarian of the Postal Service maintains for public inspection in the Law Library copies of all initial, tenatative, and final agency decisions and orders. The Recorder maintains the complete official record of every proceeding.

James A. Cohen,

Judicial Officer.

[FR Doc. 87–17709 Filed 8–4–87; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 6F3434/R880A; FRL–3242–2]

Exemption From the Requirement of a Tolerance for the Insect Pheromone Containing the Active Ingredients 3,7,11-Trimethyl-1-6,10-Dodecatriene 1–OL and 3,7,11-Trimethyl-2,6,10-Dodecatriene-3-OL; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This document corrects FR Doc. 87–8286, published in the **Federal Register** of April 15, 1987, which established an exemption from the requirement of a tolerance for residues of the insect pheromone containing the active ingredients 3,7,11-trimethyl-1,6,10-dodecatriene-1-o1 and 3,7,11-trimethyl-2,6,10-dodecatriene-3-o1, in or on all raw agricultural commodities. This action is necessary to correct the section number assigned to the rule.

EFFECTIVE DATE: Effective on April 15, 1987.

FOR FURTHER INFORMATION CONTACT: By mail: John A. Richards, Chief, Federal Register Staff (TS–788B), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. NE–G009, (202–382–3415).

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** on April 15, 1987 (52 FR 12165) which established an exemption from the requirement of a tolerance for residues of the insect pheromone

containing the active ingredients 3,7,11-trimethyl-1-6,10-dodecatriene 1-o1 and 3,7,11-trimethyl-2,6,10-dodecatriene-3-o1 in or on all raw agricultural commodities. In the amendatory paragraph, the heading for the added section for the insect pheromone "3,7,11-trimethyl-1-6-10-dodecatriene 1-o1 and 3,7,11-trimethyl-2,6,10-dodecatriene-3-o1" was inadvertently given as "§ 180.378."

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Accordingly, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. The heading for § 180.1086 is revised to read as follows:

§ 180.1086 3,7,11-Trimethyl-1,6,10-dodecatriene-1-ol and 3,7,11-trimethyl-2,6,10-dodecatriene-3-ol; exemption from the requirement of a tolerance.

* * * * *

Dated: July 28, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 87-17738 Filed 8-4-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA-6916]

Changes in Flood Elevation Determinations; Arkansas et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Interim rule.

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

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

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

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

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

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

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

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

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

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

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

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

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains.

PART 65—[AMENDED]

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

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

§ 65.4 [Amended]

Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arkansas: Pulaski	City of Little Rock	July 13, 1987 and July 20, 1987, *Arkansas Democrat*	The Honorable Marty Shackelford, Mayor of the City of Little Rock, City Hall, 500 West Markham, Little Rock, Arkansas 72201.	June 30, 1987	050181D
Florida: Pasco	Unincorporated Areas	July 23, 1987 and July 30, 1987, *St. Petersburg Times (Pasco Times).*	The Honorable John J. Gallagher, County Administrator, Pasco County, Pasco County Government Center, 7530 Little Road, New Port Richey, Florida 33553.	July 8, 1987	120230
Louisiana: East Baton Rouge	City of Baton Rouge	Feb. 19, 1987 and Feb. 26, 1987, *State Times*	The Honorable Patrick Screen, Mayor of the City of Baton Rouge and East Baton Rouge Parish, P.O. Box 1471, Baton Rouge, Louisiana 70821.	Feb. 10, 1987	220058C

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Louisiana: Orleans Parish	City of New Orleans	July 9, 1987 and July 16, 1987 *The Times-Picayune*	The Honorable Sidney J. Barthelemy, Mayor of the City of New Orleans, 1300 Perdido Street, New Orleans, Louisiana 70112.	July 2, 1987	225203E
Minnesota: Wright	City of DeLano	June 27, 1987 and July 3, 1987 *DeLano Eagle*	The Honorable Gordon Wetter, Mayor, City of DeLano, City Hall, 205 Bridge Avenue, Delano, Minnesota 55328.	June 19, 1987	270539
New Jersey: Monmouth	Aberdeen, Township	July 22, 1987 and July 29, 1987 *Asbury Park Press*	Mr. Mark Coren, Aberdeen Township Manager, One Aberdeen Square, Aberdeen, New Jersey 07747.	June 11, 1987	340312
Texas: Harris	Unincorporated areas	June 22, 1987 and June 29, 1987 *Houston Post*	The Honorable Jon Lindsay, Harris County Judge, Harris County Administration Building, 1001 Preston, Houston, Texas 77002.	June 10, 1987	480287

Issued: July 29, 1987.

Harold T. Duryee,

Administrotor, Federal Insurance Administration.

[FR Doc. 87-17713 Filed 8-4-87; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 65

Changes in Flood Elevation Determinations; California et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains.

PART 65—[AMENDED]

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

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

§65.4 [Amended]

Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California: Orange	Unincorporated areas	June 19, 1987 and June 26, 1987 *Orange County Register*	Mr. Larry Parrish, Orange County Administrative Officer, 10 Civic Center Plaza, Santa Ana, California 92701.	June 12, 1987	060212A
Florida: Santa Rosa (Docket No. FEMA-6908).	City of Gulf Breeze	Feb. 26, 1987 and Mar. 5, 1987 *The Sentinel*	The Honorable Ed Gray III, Mayor, City of Gulf Breeze, City Hall, P.O. Box 640, Gulf Breeze, Florida 32561.	Dec. 22, 1986	120275

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Minnesota: Washington (Docket No. FEMA-6908).	City of Bayport	Mar. 6, 1987 and Mar. 13, 1987 *Stillwater Gazette*	The Honorable Nathan R. Bliss, Mayor, City of Bayport, City Hall, 294 North Third Street, Bayport, Minnesota 55003.	Feb. 23, 1987	275229
Minnesota: Anoka (Docket No. FEMA-6910).	City of Coon Rapids	Mar. 20, 1987 and Mar. 27, 1987	The Honorable Robert Lewis, Mayor, City of Coon Rapids, 1313 Coon Rapids Boulevard, Coon Rapids, Minnesota 55433.	Mar. 13, 1987	270011
Minnesota: Washington (Docket No. FEMA-6908).	City of Lake St. Croix Beach	Mar. 6, 1987 and Mar. 13, 1987 *Stillwater Gazette*	The Honorable John E. Jansen, Mayor, City of Lake St. Croix Beach, City Hall, 1919 Quebec Avenue South, Lakeland, Minnesota 55043.	Feb. 23, 1987	275240
Minnesota: Washington (Docket No. FEMA-6908).	City of Lakeland	Mar. 6, 1987 and Mar. 13, 1987 *Stillwater Gazette*	The Honorable E. Craig Morris, Mayor, City of Lakeland, City Hall, 690 Quinnell Avenue North, Lakeland, Minnesota 55043.	Feb. 23, 1987	275238
Minnesota: Washington (Docket No. FEMA-6908).	City of Lakeland Shores	Mar. 6, 1987 and Mar. 13, 1987 *Stillwater Gazette*	The Honorable Leonard Boesel, Mayor, City of Lakeland Shores, 16755 Third Street North, Lakeland Shores, Minnesota 55043.	Feb. 23, 1987	275239
New Jersey: Atlantic	City of Brigantine (FEMA Docket No. 6908).	Feb. 13, 1987 and Feb. 20, 1987 *The Press*	The Honorable J. Edward Kline, Mayor of the City of Brigantine, 1417 West Brigantine Avenue, Brigantine, New Jersey 68203.	Feb. 4, 1987	345286C
Pennsylvania: Berks	Township of Cumru (FEMA Docket No. 6908).	Mar. 17, 1987 and Mar. 24, 1987 *Reading Times*	The Honorable Richard Venne, President of the Township of Cumru Board of Commissioners, Berks County, R.D. 3005, Mohnton, Pennsylvania 19540.	Mar. 6, 1987	4201308
Tennessee: Knox (Docket No. FEMA-6910).	Unincorporated areas	Apr. 6, 1987 and Apr. 13, 1987 *Knoxville News Sentinel*	The Honorable Dwight Kessel, Knox County Executive, City-County Building, Suite 651, 400 Main Street, Knoxville, Tennessee 37902.	Mar. 27, 1987	475433
Tennessee: Shelby	Unincorporated areas (Docket No. FEMA-6910).	Feb. 6, 1987 and Feb. 13, 1987 *Commercial Appeal*	The Honorable William N. Morris, Jr., Mayor, Shelby County, Shelby County Administration Building, 160 North Mid America Mall, Suite 850, Memphis, Tennessee 38103.	Feb. 2, 1987	470214
Texas: Bexar	Unincorporated areas (FEMA Docket No. 6908).	Feb. 27, 1987 and Mar. 6, 1987 *San Antonio Light*	The Honorable Tom Vickers, Bexar County Judge, Bexar County Courthouse, Commissioners Court, Suite 101, San Antonio, Texas 78205.	Feb. 19, 1987	480035
Texas: Dallas, Denton & Collin (FEMA Docket No. 6904).	City of Carrollton	Jan. 2, 1987 and Jan. 9, 1987 *Times-Chronicle*	The Honorable Milburn Gravley, Mayor of the City of Carrollton, P.O. Box 110535, Carrollton, Texas 75011-0535.	Dec. 23, 1986	480167
Texas: Tarrant (FEMA Docket No. 6910).	City of Keller	Mar. 27, 1987 and Apr. 3, 1987 *Fort Worth Star-Telegram*	The Honorable Bruce Lee, Mayor of the City of Keller, 158 South Main, P.O. Box 770, Keller, Texas 76248.	Mar. 16, 1987	480602B
Texas: Tarrant and Johnson	City of Mansfield (FEMA Docket No. 6908).	Jan. 22, 1987 and Jan. 29, 1987 *Mansfield News-Mirror*	The Honorable Wayne Wilshire, Mayor of the City of Mansfield, 1305 East Broad Street, Mansfield, Texas 76063-1896.	Jan. 13, 1987	480606B
Texas: Harris	City of Pasadena (FEMA Docket No. 6908).	Feb. 27, 1987 and Mar. 6, 1987 *Pasadena Citizen*	The Honorable John Ray Harrison, Mayor of the City of Pasadena, P.O. Box 672, Pasadena, Texas 77501.	Feb. 11, 1987	480307D
Texas: Bexar	City of San Antonio (FEMA Docket No. 6908).	Feb. 27, 1987 and Mar. 6, 1987 *San Antonio Light*	The Honorable Henry Cisneros, Mayor of the City of San Antonio, P.O. Box 9066, San Antonio, Texas 78285.	Feb. 19, 1987	480045B
Wisconsin: St. Croix (Docket No. FEMA-6910).	City of Hudson	Apr. 16, 1987 and Apr. 23, 1987 *Hudson Star Observer*	The Honorable Thomas Redner, Mayor, City of Hudson, City Hall, 505 Third Street, Hudson, Wisconsin 54016.	Apr. 6, 1987	555558
Wisconsin: St. Croix (Docket No. FEMA-6910).	Village of North Hudson	Apr. 16, 1987 and Apr. 23, 1987 *Hudson Star Observer*	The Honorable Wallace Gregerson, Village President, Village of North Hudson, 400 Seventh Street North, North Hudson, Wisconsin 54016.	Apr. 6, 1987	555568
Wisconsin: Pierce (Docket No. FEMA-6910).	City of Prescott	Apr. 16, 1987 and Apr. 23, 1987 *Prescott Journal*	The Honorable Dean Hauschildt, Mayor, City of Prescott, City Hall, 233 North Broad Street, Prescott, Wisconsin 54071.	Apr. 6, 1987	555574
Wisconsin: St. Croix (Docket No. FEMA-6910).	Unincorporated areas	Apr. 16, 1987 and Apr. 23, 1987 *Hudson Star Observer*	The Honorable Norman Anderson, Chairman, St. Croix County Board, 911 Fourth Street, Hudson, Wisconsin 54016.	Apr. 6, 1987	555578

Issued: July 29, 1987.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 87-17712 Filed 8-4-87; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

Final Flood Elevation Determinations; California et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

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

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

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

ADDRESSES: See table below:

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

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

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

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

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

Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been proposed. It does not involve any collection of information for purposes of The Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

PART 67—[AMENDED]

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

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

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

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

Source of flooding and location	±Depth in feet above ground. *Elevation in feet (NGVD), modified
CALIFORNIA	
Carlsbad (city), San Diego County (FEMA Docket No. 6907)	
Pacific Ocean:	
At a point 1,000 feet north along the shore from Pacific Avenue Extended	*11
At a point 500 feet north along the shore from Pacific Avenue Extended	*11
At Grand Avenue Extended	*10
At Cannon Road Extended	*9
At Cerezo Drive Extended	*10
At a point 400 feet north along the shore from Manzano Drive Extended	*11
At a point 200 feet north along the shore from Manzano Drive Extended	*12
Adjacent to the intersection of Carlsbad Boulevard and Palomar Airport Road	*13
Adjacent to a point on Carlsbad Boulevard 0.7 mile south of its intersection with Palomar Airport Road	*9
At Poinsettia Lane Extended	*13
Maps are available for review at the Engineering Department, 1200 Elm Street, Carlsbad, California.	
CONNECTICUT	
Plainville (town), Hartford County (FEMA Docket No. 6907)	
Pequabuck River:	
Just downstream of upstream CONRAIL crossing	*182
Approximately 250 feet upstream of upstream State Route 72 crossing	*194
Approximately 500 feet downstream of upstream corporate limits	*196
Maps available for inspection at the Town Hall, Plainville, Connecticut.	
FLORIDA	
Palm Beach Gardens (city), Palm Beach County (FEMA Docket No. 6911)	
C18 Canal: Within community	*18
Maps available for inspection at the City Manager's Office, 10500 North Military Trail, Palm Beach Gardens, Florida.	
IDAHO	
Bonner County, unincorporated areas (FEMA Docket No. 6907)	
Pend Oreille River:	
River Mile 90.2 at Albini Falls Dam	*2,063
River Mile 93	*2,064
River Mile 94	*2,065
River Mile 95	*2,066
River Mile 96	*2,067
River Mile 103	*2,068
River Mile 110	*2,069
Lake Pend Oreille: River Mile 120	*2,070
Priest River:	
Confluence of the Pend Oreille River	*2,066
6,000 feet above the confluence of Pend Oreille River	*2,067
6,500 feet above the confluence of Pend Oreille River	*2,068
7,000 feet above the confluence of Pend Oreille River	*2,069
7,500 feet above the confluence of Pend Oreille River	*2,070
Maps are available for inspection at the Bonner County Department of Public Works, 215 South First Street, Sandpoint, Idaho 83864.	
Priest River (city), Bonner County (FEMA Docket No. 6907)	
Pend Oreille River:	
River Mile 93.6 at City of Priest River corporate limits	*2,065
River Mile 95.2 at confluence of the Priest River	*2,066
Priest River:	
At confluence of Pend Oreille River	*2,066
At corporate limits	*2,066
Maps are available for inspection at the Office of the City Clerk, 209 High Street, Priest River, Idaho 83856.	
Sandpoint (city), Bonner County (FEMA Docket No. 6907)	
Pend Oreille River: River Mile 116.6 at Sandpoint corporate limits	*2,070
Lake Pend Oreille: River Mile 120	*2,070
Maps are available for inspection at the Sandpoint Planning Office, 110 Main Street, Sandpoint, Idaho 83864.	
MARYLAND	
Baltimore County (FEMA Docket No. 6911)	
Roland Run:	
Approximately 100 feet upstream of Business Entrance	*259
Approximately 90 feet downstream of Essex Farm Road	*266
Approximately 850 feet upstream of Essex Farm Road	*275
Maps available for inspection at the Baltimore County Department of Public Works, Towson, Maryland.	
Ocean City (town), Worcester County (FEMA Docket No. 6911)	
Atlantic Ocean:	
Intersection of North 15th Street and Baltimore Avenue	±1
Approximately 200 feet east of boardwalk at Talbot Street	*11
Maps available for inspection at the Town Hall, Ocean City, Maryland.	
NEW JERSEY	
Dunellen (borough), Middlesex County (FEMA Docket No. 6911)	
Green Brook:	
Upstream side of Madison Avenue	*52
Downstream side of North Washington Avenue	*53
Maps available for inspection at the Office of the Borough Clerk, 355 North Avenue, Dunellen, New Jersey.	
East Orange (city), Essex County (FEMA Docket No. 6911)	
Second River Tributary:	
Downstream corporate limits	*126
Upstream side of Dodd Street Culvert	*133
Downstream side of Brighton Avenue	*145
Upstream corporate limits	*149
Nishuane Brook:	
At confluence of Second River Tributary	*149
Upstream side of Hayward Street	*151
At centerline of Orange Road	*163
Maps available for inspection at 44 City Hall Plaza, East Orange, New Jersey.	
Ewing (township), Mercer County (FEMA Docket No. 6907)	
Delaware River:	
Approximately 450 feet downstream of I-95	*45
Approximately 0.6 mile downstream of confluence of Jacobs Creek	*48
Shabakunk Creek:	
Approximately 1,100 feet upstream of confluence of West Branch Shabakunk Creek	*65
Approximately 250 feet downstream of CONRAIL	*71
Approximately 200 feet downstream of Green Lane	*83
Upstream side of Lake Sylvia Dam	*95
Approximately 1,400 feet upstream of Ewingville Road	*100
Approximately 200 feet downstream of Bull Run Road	*112
West Branch Shabakunk Creek:	
Approximately 400 feet downstream of Spruce Street	*67
Approximately 175 feet upstream of Olden Avenue (downstream crossing)	*75
Approximately 200 feet downstream of Prospect Street	*76
At Parkside Avenue	*82
Approximately 150 feet upstream of Thurston Avenue	*89
Approximately 325 feet upstream of Carlton Avenue	*117
Jacobs Creek:	
Approximately 0.4 mile upstream of confluence with Delaware River	*48
Approximately 1,000 feet downstream of confluence of Ewing Creek	*63
Ewing Creek:	
Approximately 1,250 feet upstream of Jacobs Creek Road	*84
Approximately 250 feet upstream of Nursery Road	*121
Approximately 600 feet downstream of Scotch Road	*149
Approximately 125 feet upstream of Scotch Road	*154
Maps available for inspection at 1872 Pennington Road, Trenton, New Jersey.	
Waldwick (borough), Bergen County (FEMA Docket No. 6907)	
Ho Ho Kus Brook:	
Downstream corporate limits	*187
Approximately 500' upstream of Dam No. 2	*207
Approximately 900' upstream of Dam No. 2	*208

Source of flooding and location	±Depth in feet above ground. *Elevation in feet (NGVD), modified
Approximately 420' downstream of Wyckoff Avenue	*213
Maps available for inspection at the Borough Clerk's Office, 15 East Prospect Street, Waldwick, New Jersey.	
NEW YORK	
Greece (town), Monroe County (FEMA Docket No. 6907)	
Salmon Creek:	
At the confluence with Braddock Bay	*249
At Hogan Point Road (extended)	*249
At upstream corporate limits	*250
Maps available for inspection at 2505 West Ridge Road, Rochester, New York.	
Parma (town), Monroe County (FEMA Docket No. 6907)	
Salmon Creek:	
At the downstream corporate limits	*250
Approximately 1,900 feet downstream of Wilder Road	*256
At the most downstream Hilton corporate limits	*261
At the upstream Hilton corporate limits	*270
At Hill Road	*274
West Creek:	
At the downstream corporate limits	*250
Approximately 150 feet downstream of Bennett Road	*252
Approximately 2,350 feet upstream of Bennett Road	*262
Approximately 400 feet downstream of North Avenue	*269
Approximately 500 feet downstream of Collamer Road	*274
Downstream side of Parma- Hamlin Town Line Road	*277
Otis Creek:	
Approximately 158 feet upstream of confluence with Salmon Creek	*274
Approximately 53 feet downstream of Hill Road	*275
Approximately 53 feet upstream of Hill Road	*277
Approximately 53 feet downstream of Private Drive	*277
Approximately 160 feet upstream of Private Drive	*279
Approximately 1,640 feet downstream of the corporate limits	*284
Maps available for inspection at 1300 Hilton-Parma Corner Road, Hilton, New York.	
OHIO	
Hilliard (city), Franklin County (FEMA Docket No. 6911)	
Clover Groff Ditch:	
About 1.35 miles downstream of Scioto Darby Creek Road	*938
About 500 feet upstream of Scioto Darby Creek Road	*941
Hayden Run:	
Just upstream of Avery Road	*911
About 1,350 feet upstream of Avery Road	*916
Scioto River: Within community	*772
Maps available for inspection at the City Hall, 3800 Municipal Square, Hilliard, Ohio.	
OKLAHOMA	
Shawnee (city), Pottawatomie County (FEMA Docket No. 6911)	
Tributary # 1:	
Approximately 60 feet downstream of Wallace Street	*1,026
Approximately 740 feet upstream of Wallace Street	*1,037
Approximately 0.5 mile upstream of Bannock Avenue	*1,047
Rosedale Park Tributary:	
At confluence with Tributary # 1	*1,030
Approximately 1,050 feet upstream of the confluence with Tributary # 1	*1,038
Maps available for inspection at the City Engineer's Office, Shawnee, Oklahoma.	
OREGON	
Clatsop County, unincorporated areas (FEMA Docket No. 6907)	
Backwater from Columbia River: Confluence of Walluski and Young's Rivers to the confluence of Walluski and Little Walluski Rivers	*9
Maps are available for inspection at the Clatsop County Planning Department, P.O. Box 179, Astoria, Oregon.	
TEXAS	
Haltom City (city), Tarrant County (FEMA Docket No. 6911)	
Big Fossil Creek:	
Downstream corporate limits	*505
Upstream side of State Route 183	*511
Upstream side of Glenview Drive	*534
Upstream side of I-820	*545
Approximately 200 feet downstream of upstream corporate limits	*576
Stream BFC-1:	
Downstream corporate limits	*580
Approximately 1,650 feet upstream of corporate limits	*590
Approximately 150 feet upstream of Watauga Road	*599
Little Fossil Creek:	
Approximately 1,400 feet downstream of Chicago Rock Island and Pacific Railroad	*505
Upstream side of Midway Road	*522
Upstream side of Fincher Road	*543
Upstream corporate limits	*559
Maps available for inspection at the Haltom City Building and Zoning Department, 5024 Broadway Avenue, Haltom City, Texas.	
Harris County (FEMA Docket Nos. 6729 and 6911)	
Cypress Creek Unincorporated Areas:	
Approximately 900 feet downstream of confluence of Dry Gully	*113
At confluence of Pillot Gully	*118
Approximately 1.3 miles downstream of confluence of Snake Creek and Mound Creek	*180
Approximately 0.6 mile downstream of confluence of Snake Creek and Mound Creek	*182
Approximately 1,800 feet downstream of confluence of Snake Creek and Mound Creek	*184
Horsepen Creek:	
Approximately 0.6 mile downstream of West Little York Road	*110
Upstream side of FM 529	*117
Downstream side of State Route 6	*121
Tributary 32.23 to Greens Bayou:	
Upstream side of Spears Road	*103
Approximately 1,750 feet upstream of T.C. Jester Boulevard	*105
Williams Gully:	
Approximately 1.2 miles downstream of confluence of Tributary 2.01 to Williams Gully	*57
At confluence of Tributary 2.01 to Williams Gully	*57
Approximately 2.3 miles upstream of confluence of Tributary 2.01 to Williams Gully	*62
Spring Gully (K131-00-00):	
Approximately 2,200 feet upstream of Spring Creek Oak Drive	*119
Approximately 400 feet downstream of Spring-Cypress Road	*132
Tributary 2.1 to Spring Gully (K131-03-00):	
Upstream side of drop structure located approximately 0.6 mile upstream of confluence with Spring Gully	*120
Approximately 0.9 mile upstream of Spring-Cypress Road	*134
*Elevation in feet NGVD 1973 Releveling	
Maps available for inspection at the Harris County Engineering Department, Sweeny Building, 301 Main Street, Houston, Texas.	
Missouri City (city), Fort Bend and Harris Counties (FEMA Docket No. 6909)	
Mustang Bayou: Approximately .30 mile upstream of Turtle Creek Drive	*75
Fondren Division Channel:	
At downstream corporate limits	*61
Approximately 1,700 feet upstream of McLain Boulevard	*65
Brazos River: West side of Missouri Pacific Railroad at southernmost corporate limits	*64
Oyster Creek: At upstream corporate limits	*66
Maps available for inspection at the City Hall, 1522 Texas Parkway, Missouri City, Texas (hours 9-5 Monday-Friday).	
Montgomery County (FEMA Docket No. 6907)	
Panther Branch:	
Approximately 110 feet upstream of Woodlands Parkway	*128
Approximately 1,900 feet downstream of Unimproved Road	*133
Maps available for inspection at 326½ North Main, Conroe, Texas.	
Issued: July 29, 1987.	

Harold T. Duryee,
Administrator, Federal Insurance Administration

[FR Doc. 87-17715 Filed 8-4-87; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 31 and 32

[CC Docket 86-322; FCC 87-238]

Common Carrier Services; Expensing of Installation and Removal Costs for Payphones

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has waived the provisions of §§ 31.235 and 31.607 to permit carriers to expense installation and removal costs relating to payphone equipment, and the Commission has amended Section 32.2351 to require carriers to expense installation and removal costs relating to payphone equipment.

EFFECTIVE DATES: The waiver to §§ 31.325 and 31.607 shall be effective July 1, 1987. The amendment to Part 32 shall be effective on January 1, 1988.

ADDRESS: Federal Communications Commission Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John T. Curry, Accounting Systems Branch, Accounting and Audits Division, Common Carrier Bureau, (202) 634-1861.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* adopted July 15, 1987, and

released July 27, 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 contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC.

Summary of Report and Order

On August 8, 1986, the Commission released a *Notice of Proposed Rulemaking* (NPRM) CC Docket 86-322 summary at 51 FR 45915 (December 23, 1986), wherein the Commission proposed to amend §§ 31.235 and 31.607 of the Rules and Regulations to allow the expensing of costs related to the installation and removal of coin operated telephone equipment in semipublic locations. The proposal would have established new subclasses within accounts 235 and 607 for "semi-public telephone equipment—coin-operated" and "Semi-public telephone equipment—coinless." Conforming amendments would also have been made in the new Uniform System of Accounts (USOA) in Part 32 of our Rules and Regulations, which will become effective January 1, 1988.

Interested parties were requested to file comments on the issues set forth in the NPRM on or before February 6, 1987 and reply comments on or before February 23, 1987. Eight carriers and two state commissions filed comments and three carriers filed comments and reply comments.

Most of the commenting parties believed that the Commission should amend its Rules to permit the expensing of costs related to the installation and removal of all payphones regardless of type or location. The carriers provided persuasive statistics showing a rapid displacement of coin and coinless payphones in both public and semi-public locations. The Michigan Public Service Commission (Michigan) agreed that no distinction should be made between public and semi-public or coin operated and coinless telephone equipment.

The current rules prescribe a practice of capitalizing and depreciating these costs to spread them over the expected useful life of the payphone instrument and match them with revenues to be recorded in the future. The rapid displacement and churn of payphone equipment in public and semi-public locations cast doubt on the wisdom of continuing to capitalize all costs associated with payphone installations. Over time, this could produce unwarranted growth in Account 235 investment and burden ratepayers in future periods. Accordingly, the Commission decided to amend its rules to require that installation and removal costs including labor costs and minor materials for the telephone equipment, and premises wiring for all payphones be expensed on a prospective basis. The Commission decided to amend Part 32, which will become effective January 1, 1988, and waive the provisions of §§ 31.235 and 31.607 to permit all carriers to begin expensing these costs under Part 31 effective July 1, 1987. As stated in the NPRM, carriers will be required to continue to capitalize the costs of installing lines to a demarcation point and the costs of the telephone company provided pay stations and related enclosures.

A review of the carriers' comments show that their investment in payphone premises wiring vary. Accordingly, the Commission concluded that it would be difficult to prescribe a single amortization period for these embedded costs that would be appropriate for all carriers. Instead the Commission decided to rely on depreciation life adjustments as an appropriate mechanism to recognize individual circumstances and that the carriers should seek relief in their depreciation filings.

Accordingly, it is ordered, That the provisions of §§ 31.235 and 31.607 are waived to permit carriers to expense installation and removal costs relating to payphone equipment effective July 1, 1987.

It is further ordered, That under the authority contained in sections 4(i), 4(j) and 220 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j) and 220, Part 32, Uniform System of Accounts for Telecommunications Companies, of the Commission's Rules is amended as shown below effective January 1, 1988.

List of Subjects in 47 CFR Part 32

Communications common carriers, reporting and recordkeeping requirements, Telephone, Uniform system of accounts.

William J. Tricarico,

Secretary.

Part 32 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 32—UNIFORM SYSTEM OF ACCOUNTS FOR TELECOMMUNICATIONS COMPANIES

1. The authority citation for Part 32 continues to read as follows:

Authority: 47 U.S.C. 154, 219 and 220.

2. Section 32.2351, Public telephone terminal equipment is amended by revising paragraph (c) to read as follows:

§ 32.2351 Public telephone terminal equipment.

* * * * *

(c) The original cost of installing public telephone equipment shall not include the labor and minor materials costs of installing the public telephone equipment or premises wiring. These costs as well as the cost of replacing a public telephone shall be charged to Account 6351 Public Telephone Terminal Equipment Expense. The labor and minor materials costs of removal of public telephones will also be charged to Account 6351.

[FR Doc. 87-17543 Filed 8-4-87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 70845-7085]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

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

ACTION: Notice of inseason adjustments and request for comments.

SUMMARY: NOAA announces inseason adjustments to recreational ocean salmon management measures from Cape Falcon, Oregon, to the U.S.-Canada border. The Director, Northwest Region, NMFS (Regional Director), has determined in consultation with representatives of the Pacific Fishery Management Council (Council), the Oregon Department of Fish and Wildlife (ODFW) and the Washington Department of Fisheries (WDF), that the adjustments are necessary to conform to the recreational chinook quota established in the preseason announcement of 1987 management measures. These actions are intended to slow the harvest of chinook salmon and extend the recreational seasons.

EFFECTIVE DATE: This notice is effective at 0001 hours (Pacific Daylight Time) time, July 31, 1987. Comments on this notice will be received until August 14, 1987.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, NMFS, BIN C15700, 7600 Sand Point Way NE., Seattle, WA 98115–0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the same address.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten (Regional Director) at 206–526–6150.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries are codified at 50 CFR Part 661. Management measures for 1987 were effective on May 1, 1987 (52 FR 17264, May 6, 1987). The 1987 recreational fishery for all salmon species north of Cape Falcon, Oregon, is divided into three subareas. The recreational season in all three subareas began on June 28 and will continue through whichever occurs first (1) September 24, (2) attainment of subarea chinook or coho quotas, or (3) attainment of overall troll and recreational chinook or coho quotas for the area between Cape Falcon, Oregon, and the U.S.-Canada border.

Recreational subarea quotas for chinook and coho salmon were established at preseason and have been adjusted once (52 FR 27560, July 22, 1987). The following recreational quotas for chinook and coho salmon currently are in effect for subareas north of Cape Falcon:

Subarea	Current chinook quota	Current coho quota
U.S.-Canada Border to Queets River (northern area)	3,200	25,650
Queets River to Leadbetter Point (central area)	27,750	74,300
Leadbetter Point to Klipsan Beach; Red Buoy Line to Cape Falcon (southern area)	13,650	100,950

Based on the best available information, the recreational fishery in all three subareas is estimated to have caught a higher proportion of chinook than anticipated at preseason. Most chinook off the Washington coast migrate from north to south, thus the problem of too high a proportion of chinook in the catch is most severe in the northern area at this time.

In the northern area, an estimated 84 percent of the current chinook quota, but only 44 percent of the coho quota have been harvested through July 26. Fishery representatives from all three subareas have agreed to transfer chinook from the southern and central subareas to the northern subarea to extend the recreational season in the northern subarea.

Therefore, NOAA issues this notice to adjust the recreational salmon fisheries north of Cape Falcon, Oregon, by modifying the subarea quotas as follows:

Subarea	Revised chinook quota	Revised coho quota
U.S.-Canada Border to Queets River (northern area)	3,400	25,650
Queets River to Leadbetter Point (central area)	27,675	74,300
Leadbetter Point to Klipsan Beach; Red Buoy Line to Cape Falcon (southern area)	13,525	100,950

This notice does not apply to treaty Indian fisheries or to other fisheries which may be operating in this or other areas.

The Regional Director consulted with representatives of the Council, ODFW, and WDF regarding these inseason adjustments for the recreational fisheries north of Cape Falcon, Oregon. The ODFW and WDF representatives confirmed that Oregon and Washington will manage the recreational fisheries in State waters adjacent to these areas of the EEZ in accordance with this Federal action.

Other Matters

This action is authorized by 50 CFR 661.21(b) and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

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

Dated: July 31, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 87–17772 Filed 7–31–87; 4:28 pm]

BILLING CODE 3510-22-M

50 CFR Part 661

[Docket No. 70845-7085]

Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California; Correction

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

ACTION: Notice of inseason adjustment and request for comments; correction.

SUMMARY: This document corrects a geographic coordinate and an erroneous citation in the preamble of a notice of inseason adjustment for the Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California, which appeared in the Federal Register on July 10, 1987 (52 FR 26013).

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten, Regional Director, 206–526–6150.

In rule document 87–75726 beginning on page 26013, the following corrections are made: On page 26014, under "**SUPPLEMENTARY INFORMATION,**" column 1, paragraph 3, line 8, the coordinate for Point Brown is corrected to read "(40°55'42"N. latitude),". On the same line "(July 2, 1987)," is corrected to read "(52 FR 25605, July 8, 1987)."

Dated: July 31, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

[FR Doc. 87–17775 Filed 8–4–87; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 674

[Docket No. 70619-7119]

High Seas Salmon Fishery off Alaska

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

ACTION: Notice of closure.

SUMMARY: NOAA issues this notice closing for 10 days the U.S. exclusive economic zone (EEZ) off Southeastern Alaska to commercial fishing for all salmon species. This action is necessary to allow coho salmon to escape the ocean fishery so they can move into the bays and inlets where the harvests can be managed more closely on a stock-by-stock basis. It complements similar actions taken by the State of Alaska for the commercial salmon fisheries in its waters. The intent of this action is to achieve better control over the numbers of each stock that are harvested and that reach the spawning grounds.

DATE: This notice is effective at 0001 hours (12:01 am) Alaska Daylight Time (ADT), Monday, August 3, 1987, and will expire at 2400 hours (midnight), Wednesday, August 12, 1987. Public comments are invited until September 3, 1987.

ADDRESS: Send comments to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802–1668. During the 30-day public comment period, the data upon which this notice is based will be available for public inspection during the hours of 0800 to 1630 ADT Monday through Friday at the NMFS Regional Office, Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Aven M. Andersen (Fishery

Management Biologist, NMFS) 907–586–7228.

SUPPLEMENTARY INFORMATION: Salmon fishing in the EEZ off Alaska is managed under the Fishery Management Plan for the High Seas Salmon Fishery Off the Coast of Alaska East of 175 Degrees East Longitude (FMP). This FMP was developed and amended by the North Pacific Fishery Management Council (Council) and is implemented by NOAA through regulations appearing at 50 CFR Part 674.

The Alaska Board of Fisheries (Board) requires that the commercial salmon troll fisheries in Alaskan waters be closed "for approximately 10 days" unless "the coho salmon runs are larger than the last 10-year average and . . . acceptable numbers of coho salmon are moving into the in-shore salmon fishing areas" (5 AAC 33.365(b)(3)).

In 1980, the Council amended section 8.3.1.4 of the FMP to provide for an area-wide closure of the entire troll fishery for 10 days to stabilize or reduce coastal and offshore fishing effort on coho salmon unless an evaluation of the coho runs and harvests indicated a "well above average magnitude and good movement inshore." The Council took this action in cooperation with the Board so that the troll fishery in the EEZ and in State waters would be under consistent management. The Council intended that if the State issued a closure for coho, a similar closure should be instituted for the EEZ, under the procedures outlined in section 8.3.1.5. of the FMP and specified in § 674.23 of the regulations.

Regulations implementing the FMP (at § 674.23(a)) provide that the Secretary of Commerce (Secretary) may modify the fishing times and areas whenever he determines that the condition of any salmon species in any part of the management area is substantially different from the condition anticipated in the FMP. In making such a determination, he may consider the following factors:

(1) The effect of overall fishing effort within any part of the management area; (2) The catch per unit of effort and the rate of harvest; (3) The relative abundance of salmon stocks within the management area; (4) The condition of salmon stocks throughout their ranges; and (5) Any other factors relevant to the conservation of salmon.

As of July 31, 1987, analyses of coho harvests by the commercial troll, gill net, purse seine, and sport fisheries in Southeastern Alaska indicate that the 1987 coho run is probably below average (or quite late). Harvests by commercial trollers in offshore waters have been light and spotty. Trollers in inside waters have been harvesting approximately at the long-term average. Gill net, purse seine, and sport harvests are average or below average. Overall, the coho run appears to be a bit below average.

Having reviewed the evidence of the coho harvest in the EEZ off Alaska and in Alaskan waters, the Secretary has determined that the effect of overall fishing effort, the catch per unit of effort, and the below average rate of harvest throughout the management area indicate that the condition of coho stocks is substantially different from the condition anticipated in the FMP. He has also found that this difference reasonably requires a modification of fishing times or areas if coho stocks are to be conserved and managed adequately. Thus, according to the Board's guidelines and the Council's FMP, the troll fishery should be closed for 10 days. Accordingly, on July 31, 1987, the Alaska Department of Fish and Game and the National Marine Fisheries Service issued a joint announcement that the commercial troll fishery would close for 10 days, beginning at 0001 hours on Monday, August 3, 1987.

The Secretary, therefore, is implementing the 10-day closure prescribed by this action. The closure will become effective after this notice has been filed for public inspection with the Office of the Federal Register and the closure has been publicized for 48 hours through procedures of the Alaska Department of Fish and Game.

Other Matters

The Assistant Administrator for Fisheries, NOAA, has determined that the coho salmon stocks harvested in Southeastern Alaska will be subject to harm unless this notice takes effect promptly. He finds, therefore, that it would be impracticable and contrary to the public interest to provide advance notice and a prior opportunity for public comment or to delay for 30 days the effective date of this notice under the provisions of 5 U.S.C. 553 (b) and (c).

This action is authorized by 50 CFR Part 674 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 674

Fisheries, Fishing, Reporting and recordkeeping requirements.

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

Dated: July 31, 1987.

[FR Doc. 87–17773 Filed 7–31–87; 4:28 pm]

BILLING CODE 3510–22–M

50 CFR Part 675

[Docket No. 61225–7052]

Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Notice of inseason adjustment.

SUMMARY: NOAA announces the apportionment of amounts of Alaska groundfish to the joint venture processing (JVP) portion of the domestic annual harvest (DAH) and to the total allowable level of foreign fishing (TALFF) under provisions of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). Groundfish are apportioned according to the regulations implementing the FMP. The intent of this action is to assure optimum use of these groundfish by allowing the domestic and foreign fisheries to proceed without interruption.

DATES: Effective July 31, 1987. Comments will be accepted through August 17, 1987.

ADDRESS: Comments should be mailed to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802, or be delivered to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker (Resource Management Specialist, NMFS), 907–586–7230.

SUPPLEMENTARY INFORMATION: The FMP governs the groundfish fishery in the exclusive economic zone under the Magnuson Fishery Conservation and Management Act. The FMP was developed by the North Pacific Fishery Management Council (Council) and implemented by rules appearing at 50 CFR 611.93 and Part 675. The total allowable catches (TACs) for various groundfish species are apportioned initially among DAH, reserves, and TALFF. The reserve amount, in turn, is to be apportioned to DAH and/or TALFF during the fishing year, under 50 CFR 611.93(b) and 675.20(b). As soon as practicable after April 1, June 1, August 1 and on such other dates as are necessary, the Secretary of Commerce apportions to DAH all or part of the reserve that he finds will be harvested by U.S. vessels during the remainder of the year, except that part or all of the reserve may be withheld if an apportionment would adversely affect the conservation of groundfish resources or prohibited species. No action was scheduled for the April 1 date because

no need for adjustment to the initial specifications was apparent at that time. On May 15, JVP was supplemented by 100,000 mt from the 271,590 mt non-specific reserve (52 FR 18367). On June 10, JVP was supplemented by 75,000 mt from the non-specific reserve (52 FR 21958). On June 30, JVP was supplemented by 23,050 mt and TALFF by 22,000 mt from the non-specific reserve, reducing the non-specific reserve to 51,540 mt (52 FR 24297).

Reapportionment (See Table 1)

The following actions are taken by this notice to reapportion specifications in the BSA fisheries.

To the BSA JVP

In the Aleutian Islands subarea, about 30 U.S. catcher boats delivering fish to 20 foreign processors are conducting directed fisheries on pollock and Atka mackerel. In the Bering Sea subarea, about 20 U.S. catcher boats delivering to ten foreign processors are conducting directed fisheries on "other flatfish" and Pacific cod. The current JVPs for Greenland turbot, Pacific ocean perch (POP), and "other rockfish" in the Aleutian Islands area are insufficient to provide the necessary bycatch for continued JVP fishing in the Bering Sea and Aleutian Islands subareas. To allow continued JVP fishing, the following amounts are apportioned to JVP from the non-specific reserve: 30 mt to Greenland turbot; 250 mt to Aleutian Islands subarea POP; and 90 mt to Aleutian Islands subarea "other rockfish".

These apportionments do not result in overfishing of any of the three stocks, as the resulting TACs for each species are below the original TACs established prior to subtraction of the 15 percent reserve amounts.

To the BSA TALFF

At its May 1987 meeting, the Council agreed that the TALFF for Pacific cod should be increased to provide the Japanese longliners with a directed fishery on cod of 44,000 mt. This was accomplished in the June 30 apportionment. However, that action did not provide any amounts needed for bycatch. To provide bycatch, the following amounts of the non-specific reserve are apportioned to TALFF: 100 mt to arrowtooth flounder, 40 mt to "other flatfish," 3 mt to Bering Sea POP, and 1,500 mt to "other species."

These apportionments do not result in overfishing of any of the four stocks, as the resulting TACs for each species are below the original TACs established prior to subtraction of the 15 percent reserve amounts.

Comments and Responses

In accordance with 50 CFR 611.93(b) and 675.20(b), aggregated reports on U.S. catches of Alaska groundfish and the processing of those groundfish were available for public inspection to facilitate informed public comment. In addition, those provisions afforded the public an opportunity to submit comments on the extent to which U.S. fishermen will harvest and the extent to which U.S. processors will process Alaska groundfish. One comment was received.

Comment: Additional amounts of bycatch species must be made available to TALFF to allow the Japanese longline fleet to take the 22,000 mt of Pacific cod made available in June.

Response: The bycatch amounts apportioned to TALFF by this notice should be sufficient to allow the Japanese longline fleet to take its Pacific cod quota.

Classification

This action is taken under the authority of 50 CFR 675.20(b) and complies with Executive Order 12291.

The Assistant Administrator for Fisheries finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment. Immediate effectiveness of this notice is necessary to benefit fishermen who otherwise would have to forego substantial amounts of other groundfish species if fishing were closed as a result of achieving previously specified JVPs or TACs. However, interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

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

Dated: July 31, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

TABLE 1—BERING SEA/ALEUTIANS REAPPORTIONMENTS OF TAC, ALL IN METRIC TONS

		Current	This action [1]	Revised totals
Greenland turbot TAC 20,000; EY 20,000.	DAP	15,213		15,213
	JVP	37	+30	67
	TALFF	1,750		1,750
Arrowtooth flounder TAC 9,795; EY 30,900.	DAP	830		830
	JVP	3,363		3,363
	TALFF	4,133	+100	4,233
Other flatfish TAC 148,300; EY 193,300.	DAP	23,103		23,103
	JVP	88,472		88,472
	TALFF	14,480	+40	14,520
Pacific ocean perch (Bering Sea subarea) TAC 2,850; EY 3,800.	DAP	2,423		2,423
	JVP	120		120
	TALFF	12	+3	15
Pacific ocean perch (Aleutian Is. subarea) TAC 8,175; EY 10,900.	DAP	6,786		6,786
	JVP	120	+250	370
	TALFF	0		0

TABLE 1—BERING SEA/ALEUTIANS REAPPORTIONMENTS OF TAC, ALL IN METRIC TONS

		Current	This action [1]	Revised totals
Rockfish (Aleutian Is. subarea) TAC 1,430; EY 1,430.	DAP	1,001		1,001
	JVP	214	+90	304
	TALFF	0		0
Other species TAC 148,300; EY 193,300.	DAP	500		500
	JVP	10,000		10,000
	TALFF	2,250	+1,500	3,750
Total (TAC 2,000,000)	DAP	416,018		416,018
	JVP	1,446,090	+370	1,446,460
	TALFF	86,352	+1,643	87,995
	RESERVES	51,540	−2,013	49,527

[1] Reapportionments from non-specific reserve.

[FR Doc. 87-17771 Filed 7-31-87; 4:28 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 52, No. 150
Wednesday, August 5, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

Rule on the Submission and Management of Records and Documents Related to the Licensing of a Geologic Repository for the Disposal of High-Level Radioactive Waste; Establishment of an Advisory Committee for Negotiated Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of establishment of an advisory committee to negotiate a proposed rule, and notice of first meeting.

SUMMARY: The Nuclear Regulatory Commission is establishing an advisory committee, under the authority of Federal Advisory Committee Act (FACA), to develop recommendations for revision of the Commission's Rules of Practice in 10 CFR Part 2 related to the adjudicatory proceeding for the issuance of a license for a geologic repository for the disposal of high-level waste (HLW). Specifically, the committee will attempt to negotiate a consensus on proposed revisions related to the submission and management of records and documents for the HLW licensing proceeding. The committee will be composed of organizations representing the major interests likely to be affected by the rulemaking. This notice announces the establishment of the committee and the time and place of the first committee meeting. The title of the committee will be the HLW Licensing Support System Advisory Committee ("negotiating committee").

DATE: The first meeting of the HLW Licensing Support System Advisory Committee will be held on September 16 and 17, 1987, beginning at 10:00 a.m. The meeting will be open to the public.

ADDRESSES: The September 16–17, 1987 meeting of the HLW Licensing Support System Advisory Committee will be held at the Conservation Foundation, 1250 24th Street, Washington, DC 20037. Obtain single copies of the feasibility report prepared by the Conservation Foundation and the LSS Background Paper from Francis X. Cameron, Office of the General Counsel, Washington, DC 20555, telephone (301) 492–8689.

FOR FURTHER INFORMATION CONTACT:

NRC Staff—Francis X. Cameron, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington DC 20555, telephone: 301–492–5889

Kenneth L. Kalman, Office of Nuclear Material Safety and Safeguards, Washington DC 20555, Telephone: 301–427–4071.

Facilitators—Howard S. Bellman, Timothy J. Mealey, and Matthew A. Low, Conservation Foundation, 1250 24th Street, Washington, DC 20037, 202–293–4800

SUPPLEMENTARY INFORMATION:

Background

Section 114(d) of the Nuclear Waste Policy Act (NWPA), 42 U.S.C. 10134, requires the Commission to issue a final decision on the issuance of a construction authorization for the HLW repository within three years after DOE submits the license application (with a one year extension for cause). The HLW licensing proceeding will not only involve novel and complex technical issues, but will also involve millions of documents, a substantially larger number than the volume of documents involved in the average nuclear power reactor licensing proceeding. In view of this, the Commission does not believe that the use of traditional licensing procedures will enable the Commission to meet the statutory timetable, or will provide all parties with an opportunity for the most effective review of the license application. In order to meet the statutory schedule, and to provide for the most effective review of the license application by the Commission and other parties, the Commission is initiating measures to streamline the licensing process.

One of these measures is the development of an information management system that would contain all of the data supporting the DOE license application, as well as all of the potentially relevant documents generated by the NRC and other parties to the licensing proceeding, in a standardized electronic format. All parties would then have access to this system. Because all relevant information would be readily available through access to the system, the initial time-consuming interrogatory discovery process involving the physical production and on-site review of documents by parties to a NRC licensing proceeding would not be necessary.

Implementation of this system is intended to accomplish the following objectives—

- To facilitate discovery by providing comprehensive and easy access to potentially relevant licensing information;
- To establish the information base for the licensing proceeding, to the extent practicable, before the DOE license application is submitted and the three year statutory time period begins;
- To facilitate review of the relevant licensing information by all parties and eventually the boards through the provision, to the extent practicable, of full text search capability;
- To reduce the time associated with the physical submission of motions and other documents associated with the licensing proceeding by providing for the electronic transmission of these documents;

The Commission intends to develop this rulemaking through the process of negotiated rulemaking. In negotiated rulemaking, the representatives of parties who may be affected by a proposed rule, including the Commission, convene as a group over a period of time to try to reach consensus on the proposed rule. The agency then uses this consensus as the basis for a proposed rule which the agency issues for notice and comment. The consensus is not the basis per se for the final rule which the agency will develop after traditional notice and comment procedures. The Commission, however may ultimately find it useful to rely on, or to refer to, the consensus in connection with its adoption of the final rule.

The negotiated rulemaking process facilitates the comprehensive treatment of the rulemaking issues because those groups that may be affected by the rulemaking are present at the discussions and can react directly to each other's concerns and positions. The Commission believes that negotiated rulemaking is an appropriate process for this rulemaking because it will help to

establish the credibility of the LSS, i.e., the belief that all relevant documents will be entered into the system and that the system is free from tampering. In addition, because the LSS will constitute a new process for managing a Commission licensing proceeding, it is important that affected and knowledgeable organizations directly participate in establishing the rules for system operation, particularly because individual parties to this proceeding will possess substantial research data that should be placed into the LSS.

On December 18, 1986, the Commission's intent to conduct a negotiated rulemaking was published in the **Federal Register** (51 FR 45338). Comments were due by February 17, 1987. The **Federal Register** Notice invited expressions of interest from those who might want to participate in the negotiations. The Notice also solicited comment on the feasibility of negotiation, and on a preliminary list of rulemaking issues associated with the LSS.

Twenty-four comments were received. The comments came from State governments (six from first round repository States, two from second round repository States); Tribal governments (three from first round repository Tribes, one from a nonprofit organization representing second round repository Tribes and those Tribes affected by the transportation of HLW to a first or second round repository); three national environmental groups; three industry organizations; two Federal agencies (the Department of Energy, and the Bureau of Land Management, Department of Interior); the National Association of Regulatory Utility Commissioners; and three individuals.

The Commission has retained the Conservation Foundation, a nonprofit organization with expertise in the area of mediation and negotiated rulemaking, to assist the Commission in conducting the negotiation. The Foundation will provide the Commission with support in the areas of convening (assessing the feasibility of the negotiated rulemaking), facilitating (chairing the negotiating sessions and assisting the participants in arriving at consensus), training for participants on the negotiating committee (on the principles of negotiated rulemaking), and technical and administrative support to the negotiating committee on the rulemaking issues. The Conservation Foundation's initial responsibility was to evaluate the feasibility of conducting the negotiated rulemaking based on discussions with potential participants. The Foundation submitted its feasibility report on May 27, 1987.

Based on the public comments, and the Conservation Foundation's feasibility report, the Commission has decided to establish the negotiating committee for this rulemaking.

Feasibility

The Conservation foundation recommended that the Commission proceed with the negotiated rulemaking. The Foundation concluded that—

> with certain cautious reservations, . . . it is feasible for the NRC to form an advisory committee to negotiate revisions to its . . . rules to support the development of a Licensing Support System (LSS). Our recommendations regarding both procedural and substantive issues are grounded upon the judgments of the potential committee participants. There is already a broadly held view among them that genuine efforts by all concerned made within such a committee structure should yield a superior proposal. They also genuinely believe that the proposed regulatory negotiation process can contribute very positively not only to improvements in the licensing procedure, but also to their many other working relationships. We concur in these judgments and look forward to the committee's initiation.

Although in the judgment of the Foundation it would be unrealistic to expect an ultimate consensus on all matters in issue, it believes that—

> even where consensus is not reached a valuable report can be developed identifying areas of agreement and disagreement, narrowing the issues in dispute, identifying the information necessary to resolve remaining issues, and setting priorities for potentially acceptable solutions.

The comments submitted in response to the Commission's **Federal Register** Notice were generally supportive of the negotiated rulemaking concept. These favorable comments came from both the supporters of repository siting and also from those groups who have been critical of the siting process. The comments on the advisability of developing the LSS were primarily directed towards specific aspects of the LSS, rather than on the general feasibility of establishing such a system. However, several commenters, again from both sides of the repository siting issue, expressed support for the LSS.

Participants

In the **Federal Register** Notice announcing the Commission's intent to conduct a negotiated rulemaking, the Commission identified several interests that might be affected by this particular rulemaking. These interests included Indian Tribes, State governments, local governments, and public interest groups affected by repository siting, utilities, ratepayers, and Federal agencies such as the NRC and DOE.

The Commission stated that it would consider parties for membership on the negotiating committee on the basis of (1) whether they have a direct, immediate, and substantial stake in the rulemaking, (2) whether they may be adequately represented by another party on the committee, and (3) whether their participation is essential to a successful negotiation. However, the Commission welcomed expressions of interest from all groups potentially affected by the rulemaking and stated that it would use the selection criteria to exclude interested parties only as a last resort. The Commission also noted its concern that the negotiating committee be kept to a manageable size in order to maximize the potential for arriving at a consensus, and that the Commission would encourage the consolidation of groups with similar interests in order to achieve this goal.

The Conservation Foundation has recommended that the Commission establish three tiers of participation in the negotiated rulemaking proceeding. The first tier would be composed of committee "members," i.e., those participants whose views will constitute any consensus or disagreement. The first tier would include not only individuals acting as a representative of a single party but also individuals acting as representatives of a coalition of parties. A coalition would collectively only hold a single seat, in the first tier of committee membership.

The second tier would consist of individuals representing entities that, for specific reasons, were not invited to the first tier but whose views are important to the negotiations. These second tier participants would have a seat at the negotiating table, but their views would not consititute any consensus or disagreement.

The third tier would be comprised of any members of the general public who have an interest in the proceeding but who are not included in tiers one and two. The third tier will not have a seat at the negotiating table. As with the meetings of any advisory committee chartered under FACA, 5 U.S.C. App., the meeting will be open to the public and members of the public will be able to offer written comments to the committee, and if practicable, to offer oral comments at appropriate times during the meetings. Further, any individual or group and the public generally, will be provided with an opportunity to comment on any

proposed rule developed as a result of the negotiating process.

The Commission has invited the following groups, each to have one seat, to participate in the first tier of the negotiating committee—

(1) State of Nevada;

(2) State of Washington;

(3) State of Texas, representing itself and affected Texas local governments;

(4) Yakima Indian Nation;

(5) Nez Perce Indian Tribe;

(6) Confederated Tribes of the Umatilla Indian Reservation;

(7) Department of Energy;

(8) National Congress of American Indians, representing all tribes affected by the siting of the second repository and by the transportation of HLW;

(9) Utah, Oregon, and Mississippi (jointly), representing a coalition of all other states affected by the siting of the first repository;

(10) Minnesota and Wisconsin (jointly), representing a coalition of all states affected by the siting of the second repository, and by the transportation of HLW;

(11) The Sierra Club, Environmental Defense Fund, and Friends of the Earth (jointly), representing a coalition of nonprofit environmental groups;

(12) Nuclear Waste Task Force, representing a coalition of local Texas nongovernmental groups;

(13) Edison Electric Institute and the Utility Nuclear Waste Management Group (jointly), representing the nuclear industry;

(14) Nuclear Regulatory Commission.

There are a total of fourteen first tier participants including the NRC.

Those invited to participate in the second tier of the negotiating committee are—

(1) U.S. Council for Energy Awareness;

(2) National Conference of State Legislatures;

(3) National Association of Regulatory Utility Commissioners.

The Conversation Foundation also recommended that the Commission invite any other tribes or states affected by the siting of a repository or the transportation of HLW to the repository, and not specifically included as a member of the coalitions in the first tier of committee membership, to participate as second tier members of the committee. The Commission agrees, and is extending an invitation for second tier participation to affected tribes and states that are not specifically named in the first tier coalitions (Groups 8, 9, or 10). Membership in these first tier coalitions was based on a timely request for participation in response to the Commission's December 18, 1986 **Federal Register** Notice. To the extent that any affected tribe or state may wish to participate as a named member of a first tier coalition, a reqeust should be made to the appropriate coalition. It is within the discretion of the coalition as to whether it wants to accept any additional members.

The Commission emphasizes that the groups invited to participate as a member of the negotiating committee are those who might be broadly affected by the LSS rulemaking. These groups do not necessarily correspond to the groups or persons who might have standing to participate as a party to the Commission's HLW licensing proceeding. Participation in the HLW proceeding is governed by the Commission's regulations set forth in 10 CFR 2.714 and 2.7115.

Convenor/Facilitators

As noted above, the Commission has retained the Conservation Foundation to oversee the negotiated rulemaking process. The Conservation Foundation has had extensive experience in multi-party dispute resolution, including experience in negotiated rulemaking, but has not had any prior involvement with the substantive content of this particular rulemaking.

Howard S. Bellman of the Conservation Foundation will serve as the senior facilitator for the negotiated rulemaking, assisted by Timothy J. Mealey, also of the Conservation Foundation, and Matthew A. Low of TLI Systems. The facilitator will chair the negotiating sessions, assist individual parties in forming and presenting their positions, and offer suggestions and alternatives to help the negotiating committee reach consensus. Support to the facilitators and the negotiating committee on the technical and legal aspects of the rulemaking will be provided by TechLaw, a subcontractor to the Conservation Foundation.

Funding

Two interests—local non-governmental groups and national environmental public interest groups requested funding by the Commission in order to participate in the negotiations. The Commission reiterates the position set forth in the **Federal Register** Notice announcing its intent to negotiate that it is unable to provide any direct funding to individual participants on the negotiating committee. The Commission's inability to do so derives from a specific provision in the NRC appropriations legislation. For example, section 502 of the Energy and Water Development Appropriations Act for Fiscal Year 1986 provides that—

> None of the funds in this Act shall be used to pay the expenses of, or otherwise compensate, parties intervening in regulatory or adjudicatory proceedings funded in this Act. Pub. L. No. 99-141, 98 Stat. 578.

In addition, the Continuing Appropriations Act, Fiscal Year 1987, Pub. L. No. 99-591, contains the same provision, as do the NRC Appropriations Acts for previous fiscal years. The legislative history of this provision indicates that the prohibition would apply to rulemaking proceedings. *See* Energy and Water Development Appropriations for 1982, Part 4, Nuclear Regulatory Commission, Hearings before the Subcommittee on Energy and Water Development of the House Subcommittee on Appropriations, 97th Cong., 1st Sess. 210 (1981); S. REP. NO. 767, 96th Cong., 2d Sess. 13 (1980); 126 CONG. REC. 20665 (1980); Public Participation in Agency Proceedings, Hearings on H.R. 3361 before the Subcommittee on Administrative Law and Government Relations of the House Judiciary Committee, 95th Cong., 1st Sess. 114 (1977). Although each negotiated rulemaking must be evaluated to determine whether the negotiating phase of the rulemaking would constitute a "proceeding" within the intent of section 502, the better view is that this provision applies to this particular negotiated rulemaking. In this case, the stated objective of the negotiating committee is not merely to exchange information, but to also reach consensus on the text of a proposed rule. Furthermore, the Commission, within certain stated limitations, has agreed to use the consensus as the basis for a proposed rule. The Commission believes that, in this context, the negotiating phase would constitute the beginning of a rulemaking "proceeding" for purposes of section 502.

However, the Conservation Foundation advised the Commission that the negotiating committee will not provide a representative sample of LSS users if the groups who requested funding do not participate. Therefore, the Foundation recommended that the NRC, the convenors, and the affected organizations explore ways to develop funding for the participation of these interests. The Commission agrees that it is important to facilitate the participation of environmental groups and local nongovernment groups in this negotiated rulemaking. Accordingly, the Commission has requested the Conservation Foundation, its convenor, to seek funding assistance from such organizations as the National Institute for Dispute Resolution (NIDR).

The Commission anticipates that the other participants will either be able to cover their own expenses through funds provided by DOE under the NWPA or through their own financial resources. The Commission is providing complete support for the operation of the negotiating committee, including funding for the professional facilitator to assist the negotiating committee in reaching consensus, funding for the training of participants on the principles of negotiation, provision of background information to the negotiating committee on the technical and legal aspects of the rulemaking, provision of administrative support for committee operations, and provision of Commission legal and technical staff to assist the committee.

Federal Advisory Committee Act (FACA)

In accordance with the requirements of FACA, and the Commission's regulations in 10 CFR Part 7, the Commission is, by the notice, indicating its intent to charter the negotiating committee as an advisory committee. The draft charter will be reviewed by the General Services Administration (GSA) under 41 CFR Part 101–6.

In accordance with the Commission's regulations in 10 CFR Part 7, advance notice of negotiating committee meetings will be provided in the **Federal Register**, the meetings of the full negotiating committee will be open to the public, members of the public will be allowed to submit written statements to the committee, and detailed minutes of each meeting will be made available for public review and copying.

Committee Procedures and Meetings

Under the general guidance of the facilitator, the negotiating committee will establish detailed procedures for conducting committee meetings. To assist the committee, the facilitator is preparing draft procedures for committee review and approval. These draft procedures will address such issues as the definition of consensus and the use of working groups and caucuses.

The Commission anticipates that approximately nine two-day meetings will be required to complete the negotiating process. This series of meetings will take place over a period of nine months beginning in September 1987. Approximately one-half of the meetings will be held in Washington, DC, and the remaining meetings will be held at regional locations. The first meeting of the negotiating committee will be organizational in nature, focusing on dates, times, locations, and procedures for future meetings. The Commission also intends to sponsor a one-day training session on the principles of negotiation for the committee as part of this first meeting. The second meeting will be devoted to familiarizing the participants with the legal and technical aspects of the rulemaking. The actual negotiating sessions would begin approximately one month after the second organizational meeting and will continue monthly thereafter through May 1988.

Notice of Proposed Rulemaking

The negotiating committee's specific objective will be to reach consensus on the terms of a notice of proposed rulemaking. To the extent that the negotiations are successful, the facilitator will prepare a report describing the basis on which the committee developed its proposals. If consensus is not reached on some issues, the report should identify the areas of consensus, the areas in which consensus could not be reached, and the reasons for non-agreement.

The Commission agrees to issue for comment any proposed rule resulting from a consensus of the negotiating committee unless the Commission finds that the proposed rule is inconsistent with its statutory authority or is not appropriately justified. In that event, the Commission would explain the reasons for its decision. Adoption of any final rule will be based on consideration of any comments received on the proposed rule and other materials constituting the rulemaking record.

Failure To Reach Consensus

The Commission anticipates that the potential for reaching consensus will be demonstrated by the conclusion of the eighth meeting of the negotiating committee (April 1988) and will dissolve the negotiating committee if it does not appear that consensus is possible. The Commission retains the discretion to dissolve the committee at an earlier time if the Commission determines that the committee's activities are not being carried out in the public interest. In the absence of consensus, the Commission has directed the NRC Staff to develop a proposed rule on an expedited basis.

Comments on the Negotiated Rulemaking

The public comments on the Commission's **Federal Register** Notice announcing its intent to conduct a negotiated rulemaking are summarized below. The comments have been organized into the categories of "feasibility," "participants," "funding," "consensus," "timing," and "procedural issues."

Feasibility

As noted earlier, most commenters were generally supportive of using negotiated rulemaking. However, several commenters were concerned that the Commission is focusing too much attention on meeting the NWPA three year deadline, and thereby may be sacrificing a thorough review of the license application. The Commission does not intend to sacrifice a thorough review of the DOE license application to meet the statutory deadline. The legislative intent, and the Commission's efforts to satisfy that intent, are to accomplish a thorough and effective review of the license application within the statutory time period. The Commission is pursuing various initiatives, such as the development of the LSS, to achieve this objective. The Commission emphasizes that the LSS is intended not only to facilitate the discovery process, but to provide for a comprehensive and effective review of the license application by all parties, and ultimately by the boards.

Other commenters supported the development of the LSS, and also recommended that the LSS be established as soon as possible. The Commission is working expeditiously, with DOE and all affected parties, towards the establishment of the LSS. The intent of the negotiated rulemaking is to provide for the most efficient method of establishing a credible and effective LSS. In this regard, the DOE, in its comments on the negotiated rulemaking, emphasized its commitment to coordinate the LSS design with the negotiated rulemaking and to make any changes that may be required as a result of the negotiated rulemaking.

Another commenter was concerned over the need to ensure the validity of any rule resulting from the negotiated rulemaking even though potential parties to the licensing proceeding had not participated in the negotiated rulemaking. As with any other rulemaking, the Commission will ensure that any rule resulting from the negotiated rulemaking process meets all applicable legal requirements, including the Administrative Procedure Act, 5 U.S.C. 553, requirements for notice and comment rulemaking. The Commission intends to publish any rule based on a consensus of the negotiating committee for notice and comment unless the Commission finds that the proposed rule is inconsistent with its statutory authority or is not appropriately justified. The Commission will also ensure that there is an adequate rationale for any provisions contained in

such a rule. The final rule will be generally applicable to all parties to the HLW licensing proceeding witin the limits of the Commission's jurisidiction, and will apply to any party to the licensing proceeding regardless of whether it participated in the negotiated rulemaking.

The Bureau of Land Management in the Department of Interior questioned the basic authority of an advisory committee to "develop rulemaking under FACA." The negotiated rulemaking mechanism has been used several times by various agencies to develop recommendations on a proprosed rule. The consensus recommendations form the basis for a notice and comment rulemaking proceeding. Any such negotiating committee would constitute a committee established by an agency for the purpose of obtaining advice or recommendations on issues or policies that are within the scope of agency responsibilities, and therefore would be subject to FACA. Thus, the Commission believes it is within the authority of the negotiating committee to provide this type of advice to the Commission.

Participants

One commenter urged the Commission to define "affected states" broadly. As is apparent from the groups invited to participate on the negotiating committee, the Commission has defined "affected states" broadly to include all first round and second round states that may be potentially affected by the siting of a repository. Another commenter requested that second round repository Indian Tribes and those Indian Tribes affected by the transportation of HLW, be represented on the committee. The Commission has invited the National Congress of American Indians to represent these Tribes. Another commenter recommended that the Commission consider participation by local groups. In addition to the Commission's original **Federal Register** Notice, which invited expressions of interest from local groups and other organizations, the convenor made several inquiries regarding the interest of local governments and local non-governmental groups in participating in the negotiated rulemaking. Based on the response to these inquiries, local government and local non-governmental groups have been invited to participate in the negotiated rulemaking.

An environmental public interest group stated that the negotiating committee must have more than one participant from the public interest sector. Three environmental public interest groups requested participation. In response, the Commission has invited these three groups to participate as a coalition on the negotiating committee.

An industry group suggested that the committee have broader industry participation, e.g., the U.S. Council for Energy Awareness, a trade association, reactor vendors and other suppliers. In response to requests for participation, the Commission has invited the Edison Electric Institute and the Utility Nuclear Waste Management Group to participate in the first tier of the negotiating committee. The U.S. Council for Energy Awareness has also been invited to participate as part of the second tier of participants.

One commenter suggested that the Commission needs to select participants carefully to keep the committee balanced and manageable. The Commission agrees and, based on the convenor's report, has structured participation on the committee to ensure not only broad participation, but also a manageable number of participants.

Several commenters addressed the FACA requirement of balanced membership. One commenter was concerned that it may be impossible to achieve the FACA requirement of balanced membership because of many opposing interests. Another commenter suggested that the balanced membership requirements of FACA would best be achieved by having numerically equal representatives from energy and environmental interests, utilities and ratepayers, federal government and state/local/tribal government. On a related point, one commenter asked how the membership on the committee would be weighted to reflect degrees of interest.

Section 5(b)(2) of FACA requires "the membership of the advisory committee to be fairly balanced in terms of the points of view to be represented and the functions to be performed by the advisory committee." 5 U.S.C. App., The courts have held that the "balanced membership" provision must be interpreted in terms of the function to be performed by the advisory committee. *National Anti-Hunger Coalition* v. *Executive Committee of the Private Sector Survey on Cost Control*, 557 F. Supp 524 (D.D.C. 1983), *aff'd.*, 711 F.2d 1071 (D.C. Cir. 1983). In regard to the LSS, the function of the advisory committee is to reach consensus on the rules governing the use of an information management system in the Commission's HLW proceeding. This directly affects the potential parties to that proceeding, and also those individuals and groups that are not parties to the HLW proceeding but who would traditionally seek access to the document data base as concerned citizens, as well as those groups who may be contributing to the cost of developing such a system. In order to ensure that the design and operation of the LSS, to the extent practicable, accommodates the needs of all those who will have to use it, the Commission extended a broad invitation to those groups. The Commission believes that this is consistent with the FACA requirements for "balanced membership," and that the composition of the committee does reflect equal representation of affected interests.

Furthermore, the groups invited to participate represent a wide spectrum of interests with different viewpoints, not only on the procedural issues of concern in this rulemaking, but also on the substantive repository siting issues. This will inevitably involve some opposing interests. However, the Commission disagrees with the commenter who suggested that the presence of opposing interests would make it "impossible" to achieve balanced membership. In fact, it may be one indication that the committee does have balanced membership. Although no formal appeal of the Commission's choice of participants is being provided, the Commission will accept comments from any group that believes its interests are not already represented on the negotiating committee. The Commission anticipates that additional requests for participation will be evaluated by the negotiating committee itself.

The Nez Perce Indian Tribe emphasized that although the Tribal representative has the full confidence of the Nez Perce, only the Tribal Executive Committee can bind the tribe. The Commission recognizes that the individual representatives of participants on the negotiating committee will need to confirm proposed consensus positions with their organization. The Commission would also take this opportunity to reiterate that it is important to the success of the negotiation for each participant to be represented by a senior individual within the organization. Although the representative will not be required to "bind" the party he or she represents in terms of making an "on the spot" commitment on any issue that may arise at a particular negotiating session, the representative must have sufficient seniority and delegated responsibility to represent authoritatively the views of the organization. In this regard, the Commission has designated William J. Olmstead, Assistant General Counsel for Hearings, as its representative.

Funding

Two commenters suggested that the NRC provide broad funding to interested participants. Another commenter stated that the Nuclear Waste Fund established under section 302 of the NWPA can be used for State participation. The Commission would refer these commenters to the discussion on "Funding", *supra*.

Consensus

One commenter suggested that the Commission consider the difficulty of reaching consensus before embarking on negotiations. Another commenter suggested that the NRC should address the nature of the consensus, including the ability of a participant to seek judicial review. Another commenter suggestged that the NRC commitment to issue the consensus rule should be clear.

The Commission has considered the difficulty of reaching consensus. The Commission's intent in issuing the December 18, 1986 **Federal Register** Notice on negotiated rulemaking and initiating the Conservation Foundation's feasibility report was to evaluate the feasibility of reaching consensus. As noted above, based on the public comments on the **Federal Register** Notice, and the Conservation Foundation's feasibility report, the Commission believes that consensus is possible on at least some matters, and is proceeding with the negotiated rulemaking. As stated in the **Federal Register** Notice announcing the Commission's intent to negotiate, the Commission agrees to issue for public comment any proposed rule resulting from a consensus of the negotiating committee unless the Commission funds that the proposed rule is inconsistent with its statutory authority or is not appropriately justified. Any judicial review would follow a final rulemaking on the LSS in accordance with the traditional procedures for challenging final agency rules.

Timing

A few commenters believed that eight months is too short a time for the committee to reach consensus. Other commenters believed that there should be fewer negotiating committee meetings over a shorter timeframe. Several commenters recommended that the negotiating committee be terminated if no consensus is reached by a certain date, and that the Commission be prepared to terminate the negotiating committee if the participants are using it to delay the licensing process.

The Commission believes that the time allotted for the negotiations is appropriate for the complexity of the rulemaking and the need to establish the LSS as expeditiously as possible. Although the Commission anticipates that all participants will negotiate in good faith, the Commission has stated that it retains the discretion to dissolve the committee at an earlier time if the Commission determines that the committee's activities are not being carried out in the public interest. Furthermore, considering that a time limit has been specified for achieving consensus, and that the Commission intends to proceed with a rulemaking on the LSS if consensus is not achieved, the Commission does not believe that the activities of the negotiating committee could be used to "delay the licensing process."

Procedural Issues

Several comments addressed the process of negotiated rulemaking. For example, one commenter stated that the NRC should follow notice and comment rulemaking procedures. Another comment requested that the Interagency Coordinating Committee (ICC), whose purpose was to provide a primlimary evaluation of LSS issues, be disbanded. Another commenter suggested that subcommittee meetings of the full negotiating committee be open to the public. Another commenter suggested that negotiating committee deliberations should be part of the rulemaking record. Finally, one commenter requested that parties should be able to comment on the choice of facilitator.

The Commission will follow notice and comment procedures on any proposed rule issued as a result of a consensus reached by the negotiating committee. The ICC will be disbanded. The negotiating committee will determine to what extent subcommittees will be used, and whether these meeting will be open or closed. The Commission anticipates however that all formal committee and subcommittee meetings will be open. Consistent with the need to provide an adequate rationale for any rule that is issued, the Commission intends to make the negotiating committee deliberations part of the rulemaking record. As for the choice of facilitator, it was necessary for the Commission to make its selection of the facilitator early in the negotiating rulemaking process, and, therefore, it could not invite comment on this matter.

Comments on LSS Issues

In the **Federal Register** Notice announcing its intent to conduct a negotiated rulemaking, the Commission identified a number of issues appropriate for consideration by the committee. The Commission staff has prepared a background paper that summarizes the existing framework for the disclosure of documents relevant to a Commission licensing proceeding, and provides more detail on the preliminary rulemaking issues. Copies of the background paper will be provided to the groups invited to participate on the negotiating committee and will be available on request from the NRC contact listed at the beginning of this Notice. The Commission anticipates that the negotiating committee will supplement the list of preliminary issues, as appropriate. The public comments on the LSS are summarized below.

Several commenters address the coverage of the LSS. One commenter recommended that the LSS be limited to HLW licensing at this time. Another commenter suggested that the Commission should evaluate the implications for other Commission activities of changing the rules on privileged information, particularly insofar as they relate to drafts and handwritten annotations. Another recommended that the Commission consider whether it is appropriate to have discovery rules for the HLW proceeding different from those for other NRC licensing proceedings.

The Commission has considered the implications of the proposed revisions for other Commission licensing proceedings, and is limiting them to the HLW proceeding at this time because of the novel and complex issues involved, the volume of documents, and the statutory deadline for the Commission's decision. However, if implementation of the LSS for the HLW proceeding is successful, the Commission may explore its feasibility for use in other types of licensing proceedings.

On a related point, one recommended that the negotiating committee follow a rigid set of issues, i.e., it would be undesirable to have a wholesale rewriting of NRC adjudicatory principles. The Commission does not intend to have a "wholesale rewriting" of Commission adjudicatory principles. The preliminary issues indentified by the Commission are confined to the implementation of the LSS in the HLW licensing proceeding, and any related changes that may be necessary to allow for effective operation of the LSS.

One commenter recommended that the Commission should establish an interim system as soon as feasible and that this should be an issue for discussion by the negotiating committee. The Commission recognizes the importance of establishing an interim

system to ensure the capture of all relevant documents. Both the NRC and DOE are developing procedures for us in the interim period until the LSS is established. The negotiating committee will be kept informed of these efforts and the interim system will also be an appropriate issue for discussion by the negotiating committee. Any interim procedures will be revised to conform to the rule emerging from the negotiated rulemaking process.

One commenter recommended that the LSS should be evaluated to determine whether it is cost-beneficial compared to traditional procedures. Another commenter emphasized the need to consider technology and funding constraints in developing the rules for the LSS. This same commenter recommended that the committee avoid setting specific technical characteristics in order to allow DOE to obtain the best system available for the purpose to be served. Finally, another commenter recommended that the committee limit the consensus to broad guidance on requirements involving the nature and use of the LSS rather than detailed design specifications.

Althought the Commission has not prepared a detailed cost/benefit analysis of the LSS, the Commission believes that the technology exits to implement the LSS at a reasonable cost. Furthermore, the Commission believes that the LSS will be more cost-effective than conducting the HLW licensing proceeding under the traditional hard copy approach. The Commission recognizes that the resolution of certain issues will be dependent on the cost and availability of the technology. These constraints will need to be considered by the negotiating committee. The Commission staff and other participants, as well as the technical and legal advisor to the facilitator, will assist the committee in determining the costs and benefits of various options. Although it may not be necessary or advisable to set detailed design specifications, the Commission believes that the resolution of some LSS issues will neeed to be explicit and detailed. The negotiating committee will have the responsibility for determining the extent of detail necessary. To assist the negotiating committee in its deliberations on the level of detail needed, the Commission staff will prepare a sample regulatory text to illustrate the options available.

Several comments were submitted on the relationship of traditional discovery techniques to the LSS. A few commenters recommended that traditional discovery techniques be used in addition to the LSS and suggested that the LSS should enhance, not detract from a party's traditional rights of discovery. Another commenter believed that DOE will not provide all of the necessary information and therefore, asserted that discovery should not be eliminated. Still another commenter was concerned about whether the LSS would be the sole information base for discovery purposes. Another commenter recommended that the LSS at least provide for discovery by interrogatories and depositions. In contrast, one commenter recommended that the Commission eliminate all aspects of the traditional discovery process.

The extent of discovery under the LSS is an issue for the negotiating committee. However, the Commission would emphasize that the goal of this rulemaking is to develop an information management system that would contain all of the data supporting the DCE license application, as well as all of the potentially relevant documents generated by the NRC and other parties to the licensing proceeding, in a standardized electronic format. All parties would then have access to this system. Because all relevant information would be readily available through access to the system, the initial time-consuming interrogatory discovery process involving physical production and on-site review of documents by parties to a NRC licensing proceeding would not be necessary.

One commenter suggested that all parties use uniform procedures for assuring the accuracy of the information submitted and that all relevant documents have been entered. On a related point, another commenter recommended that there be strong sanctions to ensure that all data is entered. Another commenter was concerned over the accuracy of information submitted and how to keep spurious documents out. One of the issues for negotiating committee consideration is what sanctions and procedures should be used to ensure the capture of all relevant documents. Another issue for committee consideration will be potential techniques for eliminating duplicative material and for minimizing the problem of "document dumping."

One commenter did not believe that privileged documents should be placed in the LSS. Another commenter recommended that there should be very little privileged information. Both the NRC Rules of Practice and the Federal Rules of Civil Procedure allow parties to claim certain privileges from discovery. The application of these privileges to the LSS, and the administration of privileged material, will be issues for discussion by the negotiating committee.

Other commenters were concerned over what type of administrative framework would be appropriate to control LSS input and output. Several commenters did not believe that DOE should develop or administer the LSS. One commenter suggested that NRC should administer the system. The Commission recognizes the importance of this issue and has identified it as an issue for consideration by the negotiating committee.

Finally, several comments addressed the issue of access to the LSS. One commenter recommended that the Commission establish procedures to allow latecomers sufficient access to the data base. Another commenter was concerned about cost of access to the LSS for local governments, environmental groups, and concerned citizens. Another commenter recommended that access should be provided at no charge. The Commission's intent is that all parties to the HLW licensing proceeding will have access to the data base, as well as an obligation to place documents in the system. The Commission supports the principle of providing low cost and easy access to the LSS. These issues will be subject for discussion by the negotiating committee.

Dated at Washington, DC, this 31st day of July, 1987.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 87-17797 Filed 8-4-87; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 522

[No. 87-821]

Issuance and Form of Stock in Federal Home Loan Banks

Date: July 29, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") is proposing to amend its Federal Home Loan Bank System Regulations ("Regulations") to authorize the capital stock of a Federal Home Loan Bank ("Bank") to be put in uncertificated or book entry form. Currently, the Regulations provide for Bank stock to be issued in certificated form only, but on the basis of an earlier

legal opinion by the Board's Office of General Counsel some Banks are now using uncertificated stock. The amendment would clarify a Bank's authority both to issue uncertificated stock and to convert certificated stock to book entry form. Any member, however, would be entitled to stock in certificated form upon written request.

DATE: Comments must be received on or before October 5, 1987.

ADDRESS: Send comments to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

FOR FURTHER INFORMATION CONTACT: William J. Carey, Director, Bank Liaison Division, Office of the District Banks, at (202) 377-6656; or Richard L. Little, Associate General Counsel, Corporate and Securities Division, Office of General Counsel, at (202) 377-6447, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: Under section 6(c) of the Federal Home Loan Bank Act ("Act"), every institution that becomes a Bank member must make an "original stock subscription . . . [in] an amount equal to 1 per centum of the subscriber's aggregate unpaid loan principal, but not less than $500." 12 U.S.C. 1426 (c) (1982 and Supp. I 1983). Thereafter, the amount of Bank stock that the member is required to hold is adjusted annually by the Bank in accordance with the original subscription formula. *Id.*

While the Act establishes the minimum amount of a member's Bank stockholdings, it does not explicitly prescribe the manner in which existence of such interests may be evidenced. Under modern corporate practice, securities can be either certificated—*i.e.*, represented by a physical instrument—or uncertificated—*i.e.*, evidenced by an entry on the books of the issuer. *See* U.C.C. 8-102 (a) and (b) (1979). Despite the widespread acceptance of uncertificated securities by corporations generally, the Banks for a number of years have been directed by § 522.10 of the Regulations to issue a "certificate" to each new member in the amount of its initial stock subscription. 12 CFR 522.10 (1986). The regulatory language had generally been construed to mean that Banks could fill initial stock subscriptions and make subsequent annual stockholding adjustments solely through the use of certificated shares.

In 1979, a legal opinion of the Board's Office of General Counsel reviewed the statutory authority underlying § 522.10 and concluded that nothing in the Act prohibited issuance of uncertificated Bank stock. On the basis of this ruling at least two Banks began using uncertificated stock. Due to an oversight, however, the text of § 522.10 was never changed to incorporate the revised legal position.

Recently, in reviewing a request by a Bank to formalize its use of uncertificated stock through adoption of a bylaw amendment, the Board's staff became aware of the absence of an express regulatory authorization. After being informed about the shortcomings of the regulatory langauge and the prior uneventful experiences of the Banks with uncertificated stock, the Board is proposing to amend § 522.10 of the Regulations explicitly to provide for issuance of uncertificated stock and conversion of outstanding stock to book entry form, both at the discretion of the issuing Bank. In the Board's view, the proposal would not present any material administrative drawbacks and could significantly enhance a Bank's ability to deal with a routine aspect of its operations in a cost-effective manner. Since the proposal would ensure that any member could retain certificated stock upon written request, the Board expects that any disruption of the internal affairs of individual institutions upon final adoption would be minimal.

Initial Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is providing the following initial regulatory flexibility analysis:

1. *Reasons, objectives, and legal bases underlying the proposed rules.* These elements have been discussed elsewhere in the **SUPPLEMENTARY INFORMATION** regarding the proposal.

2. *Small entities to which the proposed rule would apply.* The Small Business Administration defines a small financial institution as "a commercial bank or savings and loan association, the assets of which, for the preceding fiscal year, do not exceed $100 million." 13 CFR 121.13(a). Therefore, small entities to which the proposed rule would apply would be the 1,651 insured members of the Bank System with assets totaling $100 million or less as of December 31, 1986.

3. *Impact of the proposed rule on small entities.* The rule would impose no new recordkeeping or reporting requirements on any insured institution. The Board believes that the proposed rule would not have a significant economic impact on small institutions.

4. *Overlapping or conflicting federal rules.* Other than the current rule relating to issuance of certificated stock, which would be amended by the proposal, the Board has no rules prescribing the manner in which the existence of Bank stock may be evidenced.

5. *Alternatives to the proposed rule.* There are no feasible alternatives that would achieve the Board's principal goal of correcting a flaw in existing regulatory procedures.

The Board is providing a 60-day comment period for this rule. Comment is invited on all aspects of the proposal, including the appropriateness and effect of the proposed changes, and any additional or alternative measures that would serve the goals of the Board as outlined in the proposal.

List of Subjects in 12 CFR Part 522

Federal home loan banks, Conflict of interests.

Accordingly, the Federal Home Loan Bank Board hereby proposes to amend Part 522, Subchapter B, Chapter v, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

PART 522—ORGANIZATION OF THE BANKS

1. The authority citation for Part 522 continues to read as follows:

Authority: Sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); secs. 6-7, 47 Stat. 727, 730, as amended (12 U.S.C. 1426-1427); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1464); secs. 402-403, 407, 48 Stat. 1256-1257, 1260, as amended (12 U.S.C. 1725-1726, 1730); sec. 207, 62 Stat. 692, as added by sec. 1a, 76 Stat. 1123, as amended (18 U.S.C. 207); sec. 602, 92 Stat. 2115, as amended (42 U.S.C. 8101 *et seq.*); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp., p. 1071; Reorg. Plan No. 6 of 1961, *reprinted in* 12 U.S.C.A. 1437 App. (West Supp. 1986).

2. Section 522.10 is amended by revising the heading and the text of the section to read as follows:

§ 522.10 Issuance and form of stock.

A Bank shall issue to each new member, as of the effective date of membership, stock in the member's name for the amount of its stock subscription but the Bank shall not transfer stock so issued until it has received full payment therefor. Stock may be issued in certificated or uncertificated form at the discretion of the Bank, but a member shall be issued certificated stock upon written request. A Bank may convert all outstanding certificated stock to uncertificated form, but a member may retain certificated stock upon written request. If a member with stock in certificated form changes

its name, a new certificate shall be issued.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87-17701 Filed 8-4-87; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-53-AD]

Airworthiness Directives; Short Brothers PLC Model SD3-30 and SD3-60 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD), applicable to certain Short Brothers PLC Model SD3-30 and SD3-60 series airplanes, that would require further insulation of certain electrical contactor bodies. This proposal is prompted by reports of in-service failure of the insulation of the bodies of the contactors, which, if not corrected, could lead to grounding of the contactors and possible electrical fires.

DATES: Comments must be received no later than September 28, 1987.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-53-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Short Brothers PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-53-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition that may exist on Short Brothers PLC Models SD3-30 and SD3-60 airplanes. There have been reports of in-service failures of the insulation of the bodies of certain ECE electrical contactors. Such failures of the insulation, if not corrected, could lead to grounding of the contactors, and possible electrical fires.

Short Brothers has issued Service Bulletins SD330-24-21, Revision 1, dated October 1986, and SD360-24-06, dated August 1986, which describe procedures to further insulate the ECE contactors by installing shrink-on sleeving on bodies of the contactors. The CAA has classified the service bulletins as mandatory.

These airplane models are manufactured in the United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on airplanes of these models registered in the United States, an AD is proposed that would require modification of the electrical contactors in accordance with the previously mentioned service bulletins.

It is estimated that 124 airplanes of U.S. registry would be affected by this AD, that it would take approximately 14 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $69,440.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($560). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Short Brothers PLC: Applies to Short Brothers PLC Model SD3-30 series airplanes, serial numbers SH3002 through SH3107, SH3109 through SH3121, and SH3123 through SH3125 inclusive; and Model SD3-60 series airplanes, serial numbers SH3601 through SH3695 inclusive; certificated in any category. Compliance required within the next 180 days after the effective date of this AD, unless previously accomplished.

To prevent fire caused by grounding of certain electrical contactors, accomplish the following:

A. For Model SD3-30 series airplanes modify the ECE electrical contactors on panels 1C and 2C in accordance with the

Accomplishment Instructions of Shorts Service Bulletin SD330-24-21, Revision 1, dated October 1986.

B. For Model SD3-60 series airplanes, modify the ECE electrical contactors on panels 1C and 2C in accordance with the Accomplishment Instructions of Short Service Bulletin SD360-24-06, dated August 1986.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Short Brothers PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on July 28, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-17692 Filed 8-4-87; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 239

[Release No. 33-6726; File No. S7-28-87]

Employee Benefit Plans and Compensation Contracts

AGENCY: Securities and Exchange Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is reproposing for comment a new Rule 701, new temporary Rules 702 and 703, and the new Form 701 which would, if adopted, provide an exemption from the registration requirements of the Securities Act of 1933 (the "Securities Act") for offers and sales of securities pursuant to certain employee benefit plans or written contracts with employees relating to compensation.

DATE: Comments must be received on or before September 15, 1987.

ADDRESSES: All communications on this matter should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments should refer to File No. S7-28-87 and will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Richard K. Wulff or John D. Reynolds, (202) 272-2644, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: On January 16, 1987, the Commission published for comment [1] a proposed new rule, designated Rule 701, to be promulgated pursuant to the exemptive authority provided by section 3(b) of the Securities Act, [2] which would exempt from the registration requirements of such Act offers and sales of securities made in accordance with the terms of compensatory employee benefit plans or compensation agreements by issuers that are not subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934 (the "Securities Exchange Act") [3] ("non-reporting companies of issuers"). The notice of proposed rulemaking also published for comment a proposed temporary Rule 702 which conditioned the availability of the exemptive rule upon the filing of a brief notification Form 701 with the Commission.

Certain revisions to the initial proposals have been made. Because of the substantive nature of these revisions, the Commission has decided to republish revised proposals for public comment. [4] This release focuses principally on the revisions to the initial proposal.

I. The Revised Proposals

The essential concern addressed by this series of proposals remains the same—many privately-held companies have found the costs of complying with the registration requirements of the Securities Act and the subsequent reporting obligations under section 15(d) of the Exchange Act so burdensome that employee incentive arrangements are not being provided by them. As a consequence, employees must forego potentially valuable means of compensation. The Commission historically has recognized that when transactions of this nature are primarily compensatory and incentive oriented, some accommodation should be made under the Securities Act.

A. Preliminary Notes

Four preliminary notes continue to preface proposed Rule 701. These notes are the same as those initially proposed. The first note indicates that the antifraud provisions of the federal securities laws may require that certain disclosure be provided to employees purchasing securities even though Rule 701 does not, and that exemption in the rule only pertains to the registration requirements of the Securities Act. The second note acknowledges the applicability of state law to securities transactions including the ones governed by Rule 701 and reminds issuers to consider the provisions of such laws. The third note states that reliance on the rule does not constitute an election; any other available exemption may also be relied upon. The fourth note indicates that the Rule 701 exemption is only available to the issuer of the securities offered and sold and not to affiliates or other persons for resale.

Commenters on the initial proposal recommended that additional preliminary notes be added to indicate the limited scope of the rule which only encompasses compensatory transactions, and to explain the application of Rule 701 with regard to foreign offerings. In view of changes made to the proposals, it does not appear that ny additional explanatory notes are needed.

B. Proposed Rule 701

The exemption to be provided by proposed Rule 701(a) would permit offers of securities by a non-reporting company pursuant to the terms of compensatory employee arrangements (either by virtue of an employee benefit plan or a written contract relating to compensation) between that issuer and its employees, directors, general partners, trustees (if the issuer is a business trust) and officers, or the employees, directors, general partners, trustees and officers of the issuer's parents or majority-owned subsidiaries. As originally proposed the rule would have provided an aggregate lifetime

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[1] Release No. 33-6683 (January 16, 1987) [52 FR 3015]. That release also proposed certain revisions to the Commission's Regulation D [17 CFR 230.501-506]. Those revisions will be the subject of a separate release in the future.

[2] 15 U.S.C. 77a *et seq.*

[3] 15 U.S.C. 78a *et seq.* Issuers submitting home country reports pursuant to Rule 12g3-2 [17 CFR 240.12g3-2] would be eligible.

[4] The Commission received 26 comment letters regarding the initial proposed Rules 701, 702 and Form 701. The comment letters and a summary of comments (File No. S7-28-87) are available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

exemption of $5 million for offers and sales, with sales being limited to $1 million in any 12-month period. The new proposal eliminates these provisions.

The Commission believes that the lifetime limitation unduly restricted the utility of the rule, particularly for larger non-public companies that may have a large number of employees. To accommodate the needs of these larger issuers, while assuring that the exemption does not provide a threshold that small issuers could use to raise substantial capital from employees, the revised rule defines the annual sales exemption as the lesser of $5 million or 15% of the issuer's total assets measured at the end of its last fiscal year. The revised rule would continue to permit offers of $5 million to be outstanding whatever the size of the issuer.

The Commission solicits comment on the appropriateness of the asset test and request comments on whether the 15% ceiling sould be higher or lower, as well as whether the test should be defined in terms of stockholders' equity or some other capital account.

The Commission is proposing no change in the provisions that make the exemption available to transactions within the description of the rule commenced prior to its adoption, as long as ultimate sales occur after the effective date of Rule 701. Similarly, offers made by a company before it becomes subject to the reporting requirements of the Exchange Act may be consummated afterwards in reliance upon the rule. Companies registered or required to be registered under the Investment Company Act of 1940 [5] would not be eligible to use Rule 701.

The revised rule would permit sales up to $5 million (regardless of total assets) in any fiscal year in which the issuer had an effective registration statement or the public announcement of an agreement in principle to effect a business combination. Thus, if a business combination was announced in the first month of the fiscal year, the issuer would have 11 months to sell up to the $5 million limit. On the other hand, if the announcement was made in the elevent month, there would be only one month in which to sell up to the newly-created $5 million ceiling. The revised rule specifically provides that if the agreement in principle is terminated in the same fiscal year as it is announced, the Rule 701 ceiling for sales reverts to 15% of total assets, although sales already made in reliance upon the increased ceiling would be deemed to be in compliance with the rule. In the previous proposal, the issuer would have had 90 days after certain specified events to sell up to the $5 million ceiling. Since under the revised proposal the measuring period is a fiscal year rather than a 12-month period, the 90-day provision could result in the ceiling limit being $5 million for each of two fiscal years and, therefore has been deleted. Comments are specifically requested, however, on whether the 90-day provision should be included. Comments on other ways to handle year-end announcements are also requested.

A number of commenters on the initial proposal noted that frequently, especially with stock option plans, exercises are accelerated because of the death or disability of an employee. The proposed rule provides that sales to a disabled participant, or to the beneficiaries or estate of a participant, as a result of termination of employment because of disability or death of such participant, will not reduce the available ceiling for sales by an issuer whose ceiling would be less than $5 million. In no event, however, may sales in any fiscal year exceed $5 million.

The aggregation principles applicable to Rule 701 have been revised. The revised rule no longer requires a reduction in offers or sales as a result of offers or sales made in violation of Section 5. Given the compensatory nature of the transactions under Rule 701, it does not appear necessary to reduce the potential benefits available to employees because of an issuer's prior unrelated violations of the statute.

The revised rule defines the manner of calculating the aggregate offering price and specifically indicates that services rendered or to be rendered by an employee or other eligible participant are not a part of the calculation.

The definitions of the appropriate compensatory arrangements within the ambit of Rule 701 have been modified from those originally proposed. The rule incorporates the simpler definition provided in Rule 405,[6] instead of the one contained in Rule 16b–3.[7] As a result, Rule 701 does not dictate any formal requirements for the employee benefit plan, except that it be in writing. The revision also makes clear that interests which constitute separate securities in such plans [8] are also to be exempted. Securities issued pursuant to employment compensation agreements would come within the Rule 701 exemption, as originally proposed.

With regard to eligible participants, the rule provides that the compensatory arrangements specified must be between the issuer and its (or its parents' or its majority-owned subsidiaries') employees, directors, general partners, trustees (if a business trust) or officers. Unlike the initial proposal, eligible participants would include employees of any majority-owned subsidiary of the issuer, rather than wholly-owned subsidiaries.

No special accommodation is made under the proposed rule for consultants and independent agents. While a number of comments were offered in support of the proposal to include these persons within the scope of the rule, the Commission believes such a change could lead to an exemption broader than the compensatory employee benefit purpose intended. In defining employee benefit plans both for registration purposes and for exemption from section 16(b) of the Exchange Act [9] the Commission traditionally has limited the transactions to those involving employees. There does not appear to be a compelling reason to distinguish proposed Rule 701.[10] It is likely that other exemptions will be available for sales to consultants, i.e., one of the exemptions under Regulation D or the private offering exemption provided by section 4(2) of the Securities Act.[11] Nonetheless, comments are requested as to whether consultants should be included perhaps on a selective basis, such as limiting their participation to some percentage of the dollar amount of securities being offered each year pursuant to employment compensation arrangements, or limiting the number of consultants that might participate each year.

C. Proposed Temporary Rules 702 and 703

Proposed temporary Rule 702 requires the filing of Form 701, a brief notification form, with the Commission no later than 30 days following the first sale of the issuer's securities that brings aggregate

[5] 15 U.S.C. 80a–1 *et seq.*

[6] 17 CFR 230.405.

[7] 17 CFR 240.16b–3.

[8] *See* Release Nos. 33–6281 (January 15, 1981) [46 FR 8446], 33–6188 (February 1, 1980) [45 FR 8960].

[9] 17 CFR 240.16b–3.

[10] Registration exemptions for benefit plans at the state level generally are limited to employees and do not extend to consultants. *See* Uniform Securities Act, section 401(b)(12). It is understood that on a case-by-case basis, some state regulators may permit the exemption to be available where a few consultants are participating in a particular benefit plan.

[11] The Division of Corporation Finance has taken the position in interpretive letters that offerings under employee plans need not be integrated with other offers by an issuer for which a valid exemption is available. *E.g., Tallgrass Technologies Corporation* (March 20, 1986), *Pacific Physician Services, Inc.* (July 22, 1985).

sales in reliance upon Rule 701 over $50,000. Thereafter, the form should be annually amended within 30 days following the close of the issuer's fiscal year. These features are the same as originally proposed. Failure to file within the periods stated would constitute a violation of Rule 702. Unlike the earlier proposal, however, revised Rule 702 does not establish the filings of Form 701 as a condition to the Rule 701 exemption.

The public comments were strongly opposed to conditioning the exemption on the filing of Form 701. A number of alternatives were suggested in lieu thereof in order to satisfy the Commission's need to monitor the usefulness of the exemption as well as to oversee possible misuse of the provision. Certain of these alternatives, such as a fine for late filing, were not within the Commission's authority. Other suggestions, such as to eliminate the filing of the form as a condition to the exemption and obtain the information when the company becomes public, were not responsive to the Commission's concern with monitoring the utility of the exemption and with oversight of the transactions to determine whether the exemption is being used for capital-raising rather than incentive purposes.

To provide a disincentive for noncompliance with the filing requirements of Form 702, the Commission is proposing new temporary Rule 703, which would disqualify an issuer from use of Rule 701 if it has been found to have violated Rule 702. The proposed Rule 703 is patterned on Rule 252.[12] As with Rule 252, the Commission will have the authority to waive such disqualification upon a showing of good cause by the issuer that the Rule 701 exemption should not be denied.

Given the substantial increase in the dollar amount available for exempted transactions, by virtue of the use of a 12-month definition of the scope of the issue, and the elimination of the filing condition to the exemption, the temporary period for Rule 702, and Rule 703 as well, has been extended from three to five years. At the end of five years, Form 701 would cease to be a required filing and the disqualification provision would lapse, unless the Commission takes further action to establish such provisions on a permanent basis or extends their lives as temporary requirements.

Several commenters suggested that Rule 702 provide that Form 701 would be deemed filed with the Commission on the date received by the Commission or on the mailing date, if mailed by registered or certified mail. Recognizing a filing date other than the date the form is actually received places a substantial burden on the Commission's mail processing and filing units. This burden does not appear to be justified if the filing of the Form is no longer a condition to the exemption.

D. Proposed Form 701

Form 701 as proposed, continues as a brief notification provision which identifies the issuer, the types of the plans and/or contracts pursuant to which securities are being offered and sold in reliance upon the Rule 701 exemption, and the amount of securities offered and the amount sold. The form also requests information about the issuer's total assets at the end of its last fiscal year and the various events which allow additional sales to be consummated in any particular fiscal year.

II. Summary of Initial Regulatory Flexibility Analysis

An initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding Rules 701, 702, 703 and Form 701 has been prepared. The analysis notes that the proposals are a result of public inquiry as well as the Commission's own experience. Except for Rule 702, the proposals impose no new reporting, recordkeeping or other compliance requirements and in fact may eliminate the need to provide certain information. Members of the public who wish to obtain a copy of the Initial Regulatory Flexibility Analysis should contact Eloise A. Green in the Office of Small Business Policy, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

III. Cost-Benefit Analysis

No specific data was provided on the Commission's original request for costs and benefits of the proposals. While many of the commenters suggested that significant cost savings could result from the proposals with concomitant benefits to employees who are not presently being offered plans for their employer's securities because of the registration requirements of the Securities Act, more specific data would be helpful. The Commission believes the exemption will not have a negative impact upon the protection of these investors.

IV. Statutory Basis and Text of the Proposed Rules

The new rules and Form are being proposed pursuant to sections 3(b) and 19(a) of the Securities Act.

List of Subjects in 17 CFR Parts 230 and 239

Reporting and recordkeeping requirements, Securities.

Text of Proposals

Accordingly, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read, in part, as follows:

Authority: Sections 230.100 to 230.174 issued under Sec. 19, 48 Stat. 85 as amended; 15 U.S.C. 77s, * * *

2. By adding a new § 230.701 to read as follows:

§ 230.701 Exemption for offers and sales of securities pursuant to certain compensatory employee benefit plans and contracts relating to compensation.

Preliminary Notes

(1) Nothing in this rule is intended to be or should be construed as in any way relieving issuers or persons acting on behalf of issuers from providing disclosure to employees or other persons within the scope of the rule adequate to satisfy the antifraud provisions of the federal securities laws. The rule only provides an exemption from the registration requirements of the Securities Act of 1933 (the "Act") [15 U.S.C. 77a et seq.].

(2) Nothing in the rule obviates the need to comply with any applicable state law relating to the offer and sale of securities.

(3) Attempted compliance with the rule does not act as an exclusive election; the issuer can also claim the availability of any other applicable exemption.

(4) The rule is only available to the issuer of the securities and not to any affiliate of the issuer or to any other person for reselling the securities. The rule provides an exemption only for the transactions in which the securities are offered or sold by the issuer, not for the securities themselves.

(a) *Exemption.* Offers and sales of securities that satisfy the conditions of paragraph (b) of this § 230.701 by an issuer that is not subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. 78a et seq.] and is not an investment company registered or required to be registered under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.] shall be exempt from the provisions of section 5 of the Act by virtue of section 3(b) of the

[12] 17 CFR 230. 252.

Act. Offers made prior to the adoption of this § 230.701 if in accordance with this section had it been in effect, or offers made pursuant to this § 230.701 prior to the issuer becoming subject to the reporting requirements of section 13 or 15(d) of the Exchange Act are within the purview of this rule and sales in relation to such offers may be consummated thereafter in reliance upon this provision.

(b) *Conditions to be met.* (1) An exemption under this § 230.701 applies only to offers and sales of (i) an issuer's securities pursuant to a written employee benefit plan established by that issuer for the participation of its employees, directors, general partners, trustees (where the issuer is a business trust) or officers, or the employees, directors, general partners, trustees or officers of its parents or majority-owned subsidiaries, and interests in such employee benefit plans, or (ii) an issuer's securities pursuant to a written contract relating to compensation involving such persons.

(2) For purposes of §§ 230.701 and 230.702, an employee benefit plan means any purchase, savings, option, bonus, stock appreciation, profit sharing, thrift, incentive, pension or similar plan.

(3) The aggregate offering price for the securities being offered hereunder shall not exceed $5,000,000 in any one of the issuer's fiscal years, reduced by sales made pursuant to this § 230.701 during that fiscal year. No adjustment to the aggregate offering price in this section shall be made for other offerings made in reliance upon other rules or regulations adopted pursuant to section 3(b) of the Act. The aggregate offering price under other rules and regulations adopted pursuant to section 3(b) shall not be reduced by offerings made under this § 230.701. Aggregate offering price means the sum of all cash, property, notes, cancellation of debt or other consideration to be received by the issuer for the issuance of the securities. Generally, the services rendered or to be rendered by the employee would not be a part of the consideration for purposes of this provision. Non-cash consideration should be valued in reference to bona fide sales of that consideration made within a reasonable time, or, in the absence of sales, on the fair value as determined by an accepted standard.

(4) Sales of securities under this § 230.701 in each of an issuer's fiscal years shall not exceed the lesser of 15 per centum of the issuer's total assets measured at the end of its last fiscal year, or $5,000,000; *Provided, however:*

(i) The limitation on sales shall be $5,000,000 for any issuer in any fiscal year in which either of the following events occur:

(A) The effectiveness of a registration statement under the Act; or

(B) The public announcement of an agreement in principle to effect a business combination involving the issuer, provided that, if the agreement is terminated at any time during the fiscal year in which it is announced, the limitation on sales would thereafter be as provided in § 230.701(b)(4) except that sales made in excess of that limit before the termination of the agreement would be considered to have been made in compliance with this § 230.701.

(ii) Sales made to a participant or to the beneficiaries or estate of a participant upon termination of employment as a result of disability or death of such participant shall not reduce the level of permitted sales pursuant to this subsection in a fiscal year, provided that, in no event shall sales exceed $5,000,000 in any fiscal year.

(c) *Resale Limitations.* (1) Securities acquired in a transaction pursuant to this § 230.701 shall have the status of securities acquired in a transaction under section 4(2) of the Act.

(2) Resales of such securities must be in compliance with the registration requirements of the Act or an exemption therefrom.

(3) In the event that the issuer becomes subject to the reporting requirements of section 13 or 15(d) of the Exchange Act, the status as securities acquired in a transaction under section 4(2) of the Act shall lapse 90 days after the issuer becomes subject to such reporting requirements.

3. By adding a new temporary § 230.702(T) to read as follows:

§ 230.702(T) Notice of sales pursuant to an exemption under § 230.701.

(a) The issuer shall file with the Commission five copies of a notice on Form 701 [17 CFR 239.701] not later than 30 days after the first sale of securities which brings the aggregated sales pursuant to employee benefit plans and/or contracts relating to compensation exempt from the registration requirements of the Act by § 230.701 above $50,000 and thereafter annually within 30 days following the end of the issuer's fiscal year.

(b) One copy of every notice on Form 701 shall be manually signed by a person duly authorized by the issuer.

(c) New filings and annual amendments must contain all the information requested on Form 701. Corrected filings need only report the name of the issuer and plan and the information being corrected. A separate filing is not required for each plan or contract relating to compensation.

(d) A notice on Form 701 is considered filed with the Commission under paragraph (a) of this § 230.702 on the date of its receipt at the Commission's principal offices in Washington, DC.

(e) This section shall be effective until [5 years from the effective date of the final rule].

4. By adding a new temporary § 230.703(T) to read as follows:

§ 230.703(T) Disqualifying provision relating to an exemption under § 230.701.

(a) No exemption under § 230.701 shall be available for an issuer if such issuer, any of its predecessors or affiliates have been subject to any order, judgment, or decree of any court of competent jurisdiction temporarily, preliminarily or permanently enjoining such person for failure to comply with § 230.702.

(b) Paragraph (a) of this section shall not apply if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption be denied.

(c) This section shall be effective until [5 years from the effective date of the final rule].

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

5. The authority citation for Part 239 continues to read, in part, as follows:

Authority: The Securities Act of 1933, 15 U.S.C. 77a *et seq.*

6. By adding § 239.701 (Form 701) to read as follows:

§ 239.701 Form 701, report of sales of securities pursuant to a compensatory employee benefit plan or contract relating to compensation.

This form shall be used for the report of sales of securities pursuant to a compensatory employee benefit plan or contract relating to compensation under Rule 701 (§ 230.701 of this chapter).

By the Commission.

Jonathan G. Katz,

Secretary.

July 30, 1987.

[Editorial Note: Form 701 does not appear in the Code of Federal Regulations.]

BILLING CODE 8010-01-M

FORM 701

OMB APPROVAL
OMB NUMBER: 3235-0347
Expires: March 31, 1990

U.S. Securities and Exchange Commission
Washington, D.C. 20549

REPORT OF SALES OF SECURITIES PURSUANT TO A
COMPENSATORY EMPLOYEE BENEFIT PLAN OR CONTRACT RELATING TO COMPENSATION

(INSTRUCTIONS ON REVERSE)

1. Name of Issuer:

2. Address of Principal Executive Offices: (Number, Street, City, State, Zip Code) | 3. Telephone No. (Incl. Area Code):

4. Type of Business Organization:

a.[ ] Corporation b.[ ] Limited Partnership c.[ ] Business Trust d.[ ] Other (Please specify): _____

5. Type of Filing:

a.[ ] New Filing b.[ ] Annual Amendment c.[ ] Corrected Filing

6. Full Title of the Plan: 7. Description of Contract(s):

8. Type of Plan: (Check all applicable plans)

a.[ ] Profit Sharing b.[ ] Stock Appreciation c.[ ] Retirement d.[ ] Option e.[ ] Thrift

f.[ ] Incentive Or g.[ ] Savings h.[ ] Bonus i.[ ] Other (Please Specify): _____

9.[ ] Employment Contract

10. Issuer's Total Assets last fiscal year:

11. Dollar Amount and Number of Securities Sold to Date:

	Dollar Amount	Number of Securities
a. Plans - $		
b. Contracts - $		

12. Dollar Amount and Number of Securities Sold this fiscal year:

	Dollar Amount	Number of Securities
a. Plans - $		
b. Contracts - $		

13. What is the aggregate offering price for all securities offered pursuant to Rule 701 during this fiscal year?

	Dollar Amount
a. Plans - $	
b. Contracts - $	

14. Have any of the following events occurred during this fiscal year?

a.[ ] Business Combination Announcement: Date: _____

b.[ ] Registration of Securities Under the Securities Act of 1933: Date: _____

c.[ ] Sales by virtue of Participant Deaths and/or Disability: $: _____

The Issuer has duly caused this Notice to be signed by the undersigned duly authorized person.

Issuer (Print or Type):	Signature:	Date:
Name of Signer (Print or Type):	Title of Signer (Print or Type):	

ATTENTION

Intentional misstatements or omissions of fact constitute federal criminal violations. (See 18 U.S.C. 1001.)

BILLING CODE 8010-01-C

Instructions

All responses should be typed or printed

Who Must File: All issuers making an offering of securities pursuant to an employee benefit plan or contract relating to compensation in reliance upon the exemption provided by Rule 701, 17 CFR 230.701.

When To File: A notice must be filed no later than 30 days after the first sale of securities pursuant to employee benefit plans or contracts relating to compensation which cause aggregate sales to exceed $50,000, and thereafter annually within 30 days after the issuer's fiscal year end. A notice is deemed filed with the U.S. Securities and Exchange Commission on the date it is received by the Commission at the address below.

Where To File: U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549

Copies Required: Five (5) copies of this notice must be filed with the Commission, one of which must be manually signed. Any copies not manually signed must be photocopies of the manually signed copy or bear printed signatures.

Information Required: New filings and annual amendments must contain all information requested. Corrected filings need only report the name of the issuer and plan and the informaton being corrected. A separate filing is not required for each plan or contact relating to compensation.

WHOLE DOLLAR AMOUNTS ARE REQUESTED; CENTS SHOULD BE ROUNDED TO THE NEAREST DOLLAR AMOUNT.

Filing Fee: There is no filing fee.

[FR Doc. 87-17776 Filed 8-4-87; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Part 115

[Docket No. N-87-1711; FR-2378]

Recognition of Substantially Equivalent Laws

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Request for comments on recognition of substantially equivalent laws.

SUMMARY: Title 24, Part 115 of the Code of Federal Regulations describes the procedure for recognition of State and local fair housing laws that provide rights and remedies, for alleged discriminatory housing practices, that are substantially equivalent to those provided by the Federal Fair Housing Act (Title VIII of the Civil Rights Act of 1968) ("the Act"). This notice advises that determinations have been made that the fair housing laws of the named localities, on their face, are substantially equivalent to the Act. The notice seeks public comment on these determinations and on present or past performance of the agency administering and enforcing each of these local laws. The Department will consider all comments submitted in making its determination as to whether each local law provides rights and remedies which are substantially equivalent to the Act.

DATE: Comments due: September 4, 1987.

ADDRESS: Interested persons are invited to submit comments to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Kenneth Holbert, Acting Director, Office of Fair Housing Enforcement and Section 3 Compliance, Room 5208, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 755-6836 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: On August 9, 1984 (49 FR 32042), the Department published a final rule that revised 24 CFR Part 115 to enable the Department to add or withdraw recognition of substantially equivalent laws through publication of a rule-related notice in the **Federal Register.** The purpose of this Notice is to advise the public, in accordance with 24 CFR 115.6(b), that the laws of the following jurisdictions have, on their face, been determined to be substantially equivalent. The jurisdictions are: (1) Gainesville, Florida; (2) Fort Dodge, Iowa; (3) Webster County, Iowa; and (4) Albany, New York.

The evaluation of the laws of these jurisdictions has been conducted in accordance with 24 CFR 115.3. Under section 115.3(c), analysis of the adequacy of a State or local fair housing law "on its face" is intended to focus on the meaning and intent of the text of the law as distinguished from the effectiveness of its administration. Accordingly, the analysis is not limited to the literal text of the law, but must take into account necessary relevant matters of State or local law, or interpretations of the fair housing law by competent authorities.

Section 115.2 provides for two separate inquiries: (a) Whether the State or local law, on its face, provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in the Act, and (b) whether the current practices and past performance of the appropriate State or local agency charged with administration and enforcement of such law demonstrates that in operation, the State or local law in fact provides rights and remedies which are substantially equivalent to those provided in the Act.

Today's notice invites interested persons and organizations, during the next 30 days, to file written comments relevant to the determination whether the current practices and past performance of the local agency charged with administration and enforcement of the fair housing law of each of these jurisdictions demonstrate that, in operation, the law in fact provides rights and remedies substantially equivalent to those provided in the Act. This notice also invites comments on the Department's determination as to the adequacy of the law on its face.

In accordance with 24 CFR 50.20(k), this notice is not subject to the environmental assessment requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4332.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this notice would not have a significant economic impact on a substantial number of small entities. The rule only carries out the Department's statutory responsibility as set out in section 810(c) of the Fair Housing Act, 42 U.S.C. 3610(c).

Accordingly, public comment is solicited in accordance with 24 CFR 115.6(b) with respect to the following jurisdictions: Localities: Gainesville, Florida, Fort Dodge, Iowa, Webster County, Iowa, Albany, New York.

Dated: July 28, 1987.

Judith Y. Brachman,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 87-17755 Filed 8-4-87; 8:45 am]

BILLING CODE 4210-28-M

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 103

Collective-Bargaining Units in the Health Care Industry

AGENCY: National Labor Relations Board.

ACTION: Proposed rule; notice of change of hearing location and additional hearing date.

SUMMARY: The National Labor Relations Board gives notice that it is changing a previously announced hearing location, and adding an additional hearing in Washington, DC, to commence on October 7, 1987, for the purpose of receiving further oral testimony from interested witnesses about its proposed rule for collective-bargaining units in the health care industry.

DATES: The hearing scheduled for August 17, 1987, at 9 a.m. has been relocated.

The October 7, 1987, hearing will be in Washington, DC, commencing at 9 a.m. All persons who wish to testify at this October 7th hearing should notify the Office of the Executive Secretary (see address section of this notice) no later than August 28, 1987. Thereafter, all witnesses for this hearing should submit to the Executive Secretary at the above address eight copies of either the written text or a summary of their presentations no later than September 30, 1987.

The comment period still ends at the close of business on October 30, 1987.

ADDRESSES: The hearing scheduled for August 17, 1987, at 9 a.m. has been moved from the Board's Hearing Room, Sixth Floor, 1717 Pennsylvania Avenue, NW., to The General Services Administration Auditorium, First Floor, 18 and F Streets, NW., Washington, DC.

The October 7, 1987 hearing will be held in the Board's Hearing Room, Sixth Floor, 1717 Pennsylvania Avenue, NW., Washington, DC 20570. Persons wishing to present oral testimony at this location on this date should notify the office of the Executive Secretary, 1717 Pennsylvania Avenue, NW., Washington, DC 20570, telephone number (202) 254–9430, no later than August 28, 1987.

FOR FURTHER INFORMATION CONTACT: Curtis A. Wells, Associate Executive Secretary, Telephone (202) 254–9430.

SUPPLEMENTARY INFORMATION:

Background:

The Board's notice of proposed rulemaking and original notice of hearing was published in the Federal Register (52 FR 25142) on July 2, 1987. That notice provided for three hearings: on August 17, 1987, in Washington, DC; on August 31, 1987, in Chicago, Illinois; and on September 14, 1987, in San Francisco, California.

Thereafter, upon being contacted by large numbers of individuals and organizations who wished to testify, and at the specific request of the AFL–CIO, the Board has decided to add a fourth hearing date, Wednesday, October 7, 1987, in Washington, DC. All persons who wish to testify at this fourth hearing should notify the Office of the Executive Secretary (see address section of this notice) no later than August 28, 1987. Thereafter, all witnesses for this hearing should submit to the Executive Secretary at the above address eight copies of either the written text or a summary of their presentations no later than September 30, 1987.

Furthermore, the hearing scheduled for August 17, 1987, has been moved to a larger facility, The General Services Administration Auditorium at the address noted above.

Dated, Washington, DC, July 31, 1987.

By direction of the Board.

National Labor Relations Board.

Joseph E. Moore,

Deputy Executive Secretary.

[FR Doc. 87–17753 Filed 8–4–87; 8:45 am]

BILLING CODE 7545–01–M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 223

Regulations Governing Surety Companies Doing Business With the United States

AGENCY: Financial Management Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of the Treasury intends to amend its regulations governing surety companies doing business with the United States, at 31 CFR Part 223 (also appearing as Department Circular 297, Revised). This notice invites comments on the proposed revision. In evaluating comments, Treasury will give more weight to those comments which include a practical means of accomplishing the desired end, and less weight to those responses which merely object to the revision, without offering a workable alternative. In addition, more weight will be given to alternatives which include supporting data.

DATES: The proposed revision would become effective December 31, 1987.

Comment Deadline: All comments or inquiries received on or before October 4, 1987 will be given due consideration.

ADDRESS: Comments or inquiries may be mailed to Surety Bond Branch, US Treasury Dept.—FMS, 1725 I St., NW., Rm. 1008A, Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT: Terry L. Boyer, Telephone—(202) 634–2214.

SUPPLEMENTARY INFORMATION:

Executive Order 12291—5 U.S.C. 601 nt . . .

The Department of the Treasury has determined that this proposal is not major for purposes of E.O. 12291. Therefore, no regulatory impact analysis is required.

Background

The Secretary of the Treasury is authorized by 31 U.S.C. 9305 to decide whether each surety company that wishes to do business with the United States is able to carry out its contracts. There is a need to strengthen the regulations which must be adhered to by insurance companies authorized under 31 U.S.C. 9305, to provide assurance to the Treasury that an authorized company is financially capable of carrying out its contracts.

The proposed rule includes several substantive changes as well as editorial changes and a realignment of sections. All sections referenced throughout this narrative are the section numbers as stated in the proposed Revision, unless indicated otherwise. Substantive changes are as follows:

1. It is proposed to revise § 223.5 to require companies applying for Treasury certification to have been actively engaged in writing surety bonds for a minimum period of three years prior to the date of application. Certain exceptions may be allowed.

This revision is proposed because Treasury's statutory authority provides that the Secretary of the Treasury may authorize a corporation to provide federal surety bonds if the Secretary decides that the corporation is able to carry out its contracts. Operationally, this decision is based upon a company's overall financial position, with special emphasis placed upon a company's experience in the business for which it requires certification. Surety is a specialty line of insurance. Success in other property/casualty lines is not necessarily a basis for determining that success is likely in the surety business.

Treasury has found little basis on which to certify newly formed surety companies unless management is affiliated with another surety company currently certified by Treasury. Under such circumstances, Treasury could make a determination concerning the financial soundness of the applicant company, based on the results of the affiliated Certified Company, combined with certain indemnifications.

2. Proposed revision to § 223.8 indicates that the Treasury quarterly financial statement form has been abolished and that the NAIC form should be used for quarterly reporting purposes.

3. Proposed revision of § 223.9 deletes the last sentence of the section. The information in this sentence is generally referred to in the first sentence of the section. Specific information is referenced in Treasury's Annual Letter to Executive Officers of Surety Companies.

4. It is proposed that § 223.11(c) of the current CFR (1978 Revision) be deleted. This section allows any Treasury admissible asset to be pledged as security for excess risks in lieu of reinsurance. (This section does not apply to risks on bonds written under the Miller Act.) When risks are secured under the provisions of this section, the administrative burden of determining that pledged assets have been valued properly and pledged free of any other encumbrances, is unreasonable as related to the benefits derived.

5. Proposed revision to § 223.11(d) provides a more specific definition of what Treasury considers to be the liability on a contract bond.

6. Proposed revision to § 223.12 reflects a change in reinsurance form numbers.

7. Proposed revision to § 223.13 limits the reporting of excess risks and allows companies to report such risks on a form other than TFS Form 285–A. This revision does not change Treasury's requirement that a company write or assume no risk in excess of its Treasury limit without obtaining acceptable reinsurance as defined by § 223.12. The revised section limits the reporting of these risks to surety and fidelity excess risks only. Failure to obtain acceptable reinsurance on excess risks that are written but not required to be reported, is a violation of Treasury regulations and could result in termination of a company's Treasury Certificate of Authority.

8. It is proposed to add § 223.14 to the current regulations. The purpose of this section is to eliminate "fronting" on federal bonds. Fronting is an arrangement whereby one insurer issues a policy on a risk for and at the request of one or more other insurers with the intent of passing the majority of the risk, by way of reinsurance to the other insurer(s). Exceptions made to this regulation will be based on whether the purpose of such an arrangement is to circumvent Treasury minimum financial requirements, and the potential financial impact on the direct writing company.

9. Proposed revision to § 223.15 requires a company recognized as an Admitted Reinsurer to have net assets of $2,000,000 over and above all liabilities. This increase in Treasury's surplus requirement is designed to encourage financial and managerial responsibility on the part of recognized reinsurers and to bring Treasury requirements in line with State Insurance Department regulations.

10. Proposed revisions to § 223.17(a) are being made to clearly indicate Treasury's expectation that each company writing federal surety bonds should promptly honor its obligations under such bonds.

Extensive editorial changes have been made throughout the text of Part 223. Treasury feels that these changes are not substantive. These changes were made to reflect the recodification of 6 U.S.C. 6–8 to 31 U.S.C. 9304–9308, to place sections in better alignment, and to include other minor cosmetic editorial changes. Anyone requiring a copy of the current 31 CFR Part 223, for comparison purposes, should contact the address or telephone number mentioned above. The text of the proposed revision to 31 CFR Part 223 is as follows:

PART 223—SURETY COMPANIES DOING BUSINESS WITH THE UNITED STATES

Sec.

223.1 Certificate of authority.
223.2 Application for certificate of authority.
223.3 Issuance of certificate of authority.
223.4 Deposits.
223.5 Business.
223.6 Investment of capital and assets.
223.7 Paid up capital and surplus for Treasury rating purposes; how determined.
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223.9 Valuation of assets and liabilities.
223.10 Limitation of risk.
223.11 Full penalty of the obligations regarded as the liability; exceptions.
223.12 Limitation of risk; protective methods.
223.13 Schedule of single risks.
223.14 Federal risks not exceeding underwriting limitation.
223.15 Recognition as reinsurer.
223.16 Revocation.
223.17 Performance of obligations.
223.18 Informal hearing on agency complaints.
223.19 Final decisions.
223.20 Reinstatement.
223.21 Fees for services of the Treasury Department.
223.22 List of certificate—holding companies.

Authority: 31 USC 9301–9309.

§ 223.1 Certificate of authority.

The regulations in this Part will govern the issuance by the Secretary or the Treasury of Certificates of Authority to bonding companies to do business with the United States as sureties on, or reinsurers of surety bonds, under the provisions of the Act of July 30, 1947 (61 Stat. 646, as amended: 31 U.S.C. 9304–9308), and the acceptance of such surety bonds from such companies so long as they continue to hold said Certificates of Authority. Every company now or hereafter authorized to do business under the above mentioned Act shall be subject to the regulations contained in this Part.

§ 223.2 Application for certificate of authority.

Every company wishing to apply for a Certificate of Authority shall notify the Surety Bond Branch, Finance Division, Financial Management Service, U.S. Department of the Treasury, Washington DC 20226, who will advise the company of the data which the Secretary of the Treasury determines from time to time to be necessary to make application. In accord with 31 U.S.C. 9304, data will include a copy of the applicant's charter or articles of incorporation and a statement, signed and sworn to by its president and secretary, showing its assets and liabilities. A fee shall be transmitted with the application in accordance with the provisions of § 223.21(a)(1).

§ 223.3 Issuance of certificate of authority.

(a) If, from the evidence submitted in the manner and form herein required, subject to the guidelines referred to in § 223.9, the Secretary of the Treasury is satisfied that such company has authority under its charter or articles of incorporation to do the business provided for by the Act referred to in § 223.1, and if the Secretary of the Treasury is satisfied from such company's financial statement and from any further evidence or information that may be required, and from such examination of the company, at its own expense, as the Secretary may cause to be made, that such company has a capital fully paid up in cash (or its equivalent) of not less than $250,000, is solvent and financially and otherwise qualified to do the business provided for in said Act, and is able to carry out its contracts, the Secretary may, subject to the further conditions herein contained, authorize the company to provide surety bonds under the provisions of said Act. The company will receive notice of such authorization through the issuance of a Certificate of Authority, under the seal of the Treasury Department, for a term expiring on the last day of June next

following. The Certificate of Authority shall be renewed annually on the first day of July, so long as the company remains qualified under the law and the regulations in this Part, and transmits to the Surety Bond Branch by March 1 each year the fee in accordance with the provisions of § 223.21(a)(3).

(b) If a company meets the requirements for a Certificate of Authority as an acceptable surety on federal bonds in all respects except that it is a United States branch of an alien company (a company not incorporated under the laws of the United States or of any State), or it is limited by its articles of incorporation or corporate charter to reinsurance business only, it may be issued a Certificate of Authority as a reinsuring company on federal bonds. For purposes of this Part, the state of incorporation of a U.S. Branch of an alien company, is considered to be the State in which the company was first licensed. The fee for initial application and renewal of a Certificate as a reinsuring company shall be the same as the fees for a Certificate of Authority as an acceptable surety on Federal bonds.

§ 223.4 Deposits.

No such company will be granted authority to do business under the provisions of the Act referred to in § 223.1 unless it shall have and maintain on deposit with the Insurance Commissioner, or other proper financial officer, of the State in which it is incorporated, or of any other State of the United States, for the protection of claimants, including all its policyholders in the United States, legal investments having a current market value of not less than $100,000.

§ 223.5 Business.

(a) The company must be currently engaged in the business of suretyship, whether or not also making contracts in other classes of insurance, but shall not be engaged in any type or class of business not authorized by its charter or the laws of the State in which the company is incorporated. It must be the intention of the company to engage actively in the business of providing surety bonds required by a law of the United States.

(b) (1) A company seeking Treasury authority to issue surety bonds required by Federal Statute, shall have been actively engaged in writing such class of bonds for a minimum period of three years next preceding the date of its application for such certificate.

(2) This subsection shall not apply to a company affiliated with a company authorized under § 223.3 of this Part, provided an indemnity, acceptable to the Secretary of the Treasury, is submitted with the application.

(c) No bond is acceptable unless it has been provided by a company or its agent in a State where it has obtained that State's license to do surety business. Although a company must be licensed in the State or other area in which it provides a bond, it need not be licensed in the State or other area in which the principal resides or where the contract is to be performed. The term "other area" includes American Samoa, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

§ 223.6 Investment of capital and assets.

The capital and other funds of every such company must be safely invested in accordance with the laws of the State in which it is incorporated and will be valued on the basis set forth in § 223.9. The Secretary of the Treasury will periodically issue instructions for the guidance of companies with respect to investments and other matters. These guidelines may be updated from time to time to meet changing conditions in the industry.

§ 223.7 Paid up capital and surplus for Treasury rating purposes; how determined.

The amount of paid up capital and surplus of any such company shall be determined on an insurance accounting basis under the regulations in this Part, from the company's financial statements and other information, or by such examination of the company at its own expense as the Secretary of the Treasury may deem necessary or proper.

§ 223.8 Financial reports.

(a) Every such company will be required to file with the Surety Bond Branch, on or before the last day of January of each year, a statement of its financial condition made up as of the close of the preceding calendar year upon the annual statement blank adopted by the National Association of Insurance Commissioners, signed and sworn to by its president and secretary. On or before the last days of April, July, and October of each year, every such company shall file a financial statement with the Surety Bond Branch, as of the last day of the preceding month. The quarterly statement form of the National Association of Insurance Commissioners should be used for this purpose. The quarterly statement should be signed and sworn to by the company's president and secretary or their authorized designees.

(b) Every such company shall furnish such other exhibits or information, and in such manner, as the Secretary of the Treasury may at any time require.

§ 223.9 Valuation of assets and liabilities.

In determining the financial condition of every such company, its assets and liabilities will be computed in accordance with the guidelines contained in the Treasury's current Annual Letter to Executive Officers of Surety Companies. However, the Secretary of the Treasury may value the assets and liabilities of such companies at the Secretary's discretion.

§ 223.10 Limitation of risk.

Except as provided in § 223.12, no company holding a Certificate of Authority shall underwrite any risk on any bond or policy on behalf of any individual, firm, association, or corporation whether or not the United States is interested as a party thereto, the amount of which is greater than ten percent of the paid up capital and surplus of such company, as determined by the Secretary of the Treasury. That figure is hereinafter referred to as the underwriting limitation.

§ 223.11 Full penalty of the obligations regarded as the liability; exceptions.

In determining the limitation prescribed in § 223.10, the full penalty of the obligation will be regarded as the liability, and no offset will be allowed on account of any estimate of risk which is less than such full penalty, except in the following cases:

(a) Appeal bonds; in which case the liability will be regarded as the amount of the judgment appealed from, plus ten percent of said amount to cover interest and costs.

(b) Bonds of executors, administrators, trustees, guardians, and other fiduciaries, where the penalty of the bonds or other obligation is fixed in excess of the estimated value of the estate; in which case the estimated value of the estate, upon which the penalty of the bond was fixed, will be regarded as the liability. Credit will also be allowed for indemnifying agreements executed by sole heirs or beneficiaries of an estate releasing the surety from liability.

(c) Contract bonds; where a performance and a payment bond are issued in connection with a contract, the penal sum of the larger shall be regarded as the liability. For purposes of this Section, bonds are not aggregated in determining the liability.

(d) Bonds for banks or trust companies as principals, conditioned to repay moneys on deposit, where by law or decree of a court the amount to be

deposited shall be less than the penalty of the bond; in which case the maximum amount on deposit at any one time will be regarded as the liability.

§ 223.12 Limitation of risk: Protective methods.

The limitation of risk prescribed in § 223.10 may be complied with by the following methods:

(a) *Coinsurance.* Two or more companies may underwrite a risk on any bond or policy, the amount of which does not exceed their aggregate underwriting limitations. Each company shall limit its liability upon the face of the bond or policy, to a definite specified amount which shall be within its underwriting limitation.

(b) *Reinsurance.* (1) In respect to bonds running to the United States, liability in excess of the underwriting limitation shall be reinsured within 45 days from the date in which the bond was provided with one or more companies holding a Certificate of Authority from the Secretary of the Treasury. Such reinsurance shall not be in excess of the underwriting limitation of the reinsuring company. Where reinsurance is contemplated, federal agencies may accept a bond from the direct writing company in satisfaction of the total bond requirement even though it may exceed the direct writing company's underwriting limitation. Within the 45 day period, the direct writing company shall furnish to the federal agency the required reinsurance agreements. However, a federal agency may, at its discretion, require that reinsurance be obtained within a lesser period than 45 days, and may require completed reinsurance agreements in hand before making a final determination that any bond is acceptable. Use of reinsurance or coinsurance to protect federal bonds is at the discretion of the direct writing company. Reinsurance shall be provided using reinsurance agreement forms; Standard Form 273 for Miller Act Performance bonds, Standard Form 274 for Miller Act Payment bonds, and Standard Form 275 for other types of federal bonds.

(2) In respect to risks covered by bonds or policies not running to the United States, liability in excess of the underwriting limitation shall be reinsured within 45 days from the date the bond or policy is provided, with:

(i) One or more companies holding a Certificate of Authority from the Secretary of the Treasury as an acceptable surety on federal bonds or one or more companies holding a Certificate of Authority as an acceptable reinsuring company on such bonds, or

(ii) One or more companies recognized as an admitted reinsurer in accord with § 223.15, or

(iii) A pool or association, to the extent that it is composed of such companies, or

(iv) An instrumentality or agency of the United States which is permitted by federal law or regulation to enter into reinsurance contracts.

(3) No certificate-holding company may cede to a reinsuring company recognized under § 223.15 any risk in excess of ten percent of the latter company's paid up capital and surplus.

§ 223.13 Schedules of single risks.

By the fifteenth day of February, May, August, and November of each year, every company will be required to report to the Secretary of the Treasury every surety and fidelity obligation which it has written or assumed during the quarter immediately preceding, the penal sum of which is greater than its underwriting limitation, together with required supporting data, on TFS Form 285–A, Schedule of Excess Risks. Companies may use other forms for such purpose so long as all information required on the TFS Form 285–A is included on such form.

§ 223.14 Federal risks not exceeding underwriting limitation.

Reinsurance obtained by direct writing companies for federal risks not exceeding such companies' underwriting limitation, must in all cases be placed with companies recognized in accord with § 223.3 or § 223.15. Exceptions may be made to this regulation at the Secretary of the Treasury's discretion. Exceptions will be based on (a) whether the purpose of the reinsurance is to allow the reinsurer(s) to circumvent Treasury's minimum financial regulations and (b) the potential financial impact on the direct writing company.

§ 223.15 Recognition as reinsurer.

(a) *Application by a United States Company.* Any company organized under the laws of the United States or of any State thereof, wishing to apply for recognition as an admitted reinsurer (except on excess risks running to the United States) of surety companies doing business with the United States, shall file the following data with the Surety Bond Branch and shall transmit therewith the fee in accordance with the provisions of § 223.21(a)(2).

(1) A certified copy of its charter or articles of incorporation,

(2) A certified copy of a license from any State in which it has been authorized to do business,

(3) A copy of a current (within the last three years) report of its examination by a State Insurance Department,

(4) A statement of its financial condition, as of the close of the preceding calendar year, on the annual statement form of the National Association of Insurance Commissioners, signed and sworn to by two qualified officers of the company, showing that it has net assets of not less than $2,000,000 over and above all liabilities.

(5) Such other evidence as the Secretary of the Treasury may determine necessary to establish that it is solvent and able to carry out its contracts.

(b) *Application by a United States Branch.* A United States branch of an alien company applying for such recognition shall file the following data with the Surety Bond Branch, and shall transmit therewith the fee in accordance with the provisions of § 223.21(a)(2):

(1) The submission listed in paragraphs (a) (1) through (5) of this section, except that the financial statement of such branch shall show that it has net assets of not less than $2,000,000 over and above all liabilities, and

(2) Evidence satisfactory to the Secretary of the Treasury to establish that it has on deposit in the United States not less than $250,000 available to its policyholders and creditors in the United States.

(c) *Financial Reports.* Each company recognized as an admitted reinsurer shall file with the Surety Bond Branch on or before the first day of March each year its financial statement and such additional evidence as the Secretary of the Treasury determines necessary to establish that the requirements of this Section are being met. A fee shall be transmitted with the foregoing data, in accordance with the provisions of § 223.21(a)(4).

§ 223.16 Revocation.

Whenever it appears that a company is not complying with the requirements of 31 U.S.C. 9304–9308 and of the regulations in this Part, the Secretary of the Treasury will (a) in all cases notify the company of the facts or conduct which indicate such failure, and provide opportunity to the company to respond, and (b) in those cases where the public interest in the constant financial stability of such company allows, also provide opportunity to the company to demonstrate or achieve compliance with those requirements. The Secretary shall revoke a company's Certificate of Authority with advice to it if (c) the

company does not respond satisfactorily to the notification of noncompliance, or (d) the company, provided an opportunity to demonstrate or achieve compliance, fails to do so.

§ 223.17 Performance of obligations.

(a) Every company shall promptly honor its bonds naming the United States or one of its agencies or instrumentalities as obligee. If an agency's demand upon a company on behalf of the agency or laborers, materialmen or suppliers (on payment bonds), for payment of a claim against it is not settled to the agency's satisfaction, and the agency's review of the situation thereafter establishes that the default is clear or the company's refusal to respond adequately is not based on reasonable grounds, the agency may make a report to the Secretary of the Treasury, including a copy of the subject bond, the basis for the complaint against the company, a chronological resume of efforts to obtain performance under the bond, a statement of all reasons offered for nonperformance, and a statement of the agency's views on the matter.

(b) On receipt of such report from the federal agency, the Secretary will, if the circumstances warrant, notify the company concerned that the agency report may demonstrate that the company is not carrying out its contracts and that, in the absence of a satisfactory explanation, the company's actions may preclude the renewal of the company's Certificate of Authority, or warrant prompt revocation of the existing Certificate. This notice will provide opportunity to the company to demonstrate its qualification for continuance of its Certificate of Authority.

§ 223.18 Informal hearing on agency complaints.

(a) *Request for informal hearing.* If a company determines that the opportunity to make known its views, as provided for under § 223.17(b), is inadequate, it may, within 20 business days of the date of the notice required by § 223.17(b), request, in writing, that the Secretary of the Treasury convene an informal hearing.

(b) *Purpose.* As soon as possible after a written request for an informal hearing is received, the Secretary of the Treasury shall convene an informal hearing, at such time and place as the Secretary deems appropriate, for the purpose of determining whether revocation of the company's Certificate of Authority is justified.

(c) *Notice.* The company shall be advised, in writing, of the time and place of the informal hearing and shall be directed to bring all documents, records and other information it may find necessary and relevant to substantiate its refusal to settle the claims made against it by the federal agency making the report under § 223.17(a).

(d) *Conduct of Hearings.* The hearing shall be conducted by a hearing officer appointed by the Secretary. The company may be represented by counsel and shall have a fair opportunity to present any relevant material and to examine the agency's evidence. Formal rules of evidence will not apply at the informal hearing.

(e) *Report.* Within 30 days after the informal hearing, the hearing officer shall make a written report to the Secretary setting forth the officer's findings, the basis for such findings, and the officer's recommendations. A copy of the report shall be sent to the company.

§ 223.19 Final decisions.

If, after review of the case file, it is the judgment of the Secretary that the complaint was unfounded, the Secretary shall dismiss the complaint by the federal agency concerned and shall so notify the company. If, however, it is the judgment of the Secretary that the company has not fulfilled its obligations to the complainant agency, the company shall be notified of the facts or conduct which indicate such failure and allow the company 20 business days from the date of such notification to demonstrate or achieve compliance. If no showing of compliance is made within the period allowed, the Secretary shall either preclude renewal of the company's Certificate of Authority or revoke it without further notice.

§ 223.20 Reinstatement.

If, after one year from the date of the expiration or the revocation of the Certificate of Authority under § 223.19, a company can show that the basis for the non-renewal or revocation has been eliminated and that it can comply with the requirements of 31 U.S.C. 9304–9308 and the regulations in this Part, a new Certificate of Authority shall be issued without prejudice.

§ 223.21 Fees for services of the Treasury Department.

(a) Fees shall be imposed and collected, for the services listed in paragraphs (a)(1)–(a)(4) of this section which are performed by the Treasury Department, regardless of whether the action requested is granted or denied. The payee of the check or other instrument shall be the Financial Management Service, Treasury Department. The amount of the fee will be based on the following categories of service:

(1) Examination of a company's application for a Certificate of Authority as an acceptable surety or reinsurer on federal bonds (see § 223.2);

(2) Examination of a company's application for recognition as an admitted reinsurer (except on excess risks running to the United States) of surety companies doing business with the United States (see § 223.15);

(3) Determination of a company's continuing qualification for annual renewal of its Certificate of Authority (see § 223.3); or

(4) Determination of a company's continuing qualification for annual renewal of its recognition as an admitted reinsurer (see § 223.15).

(b) In a given year a uniform fee will be collected from every company requesting a particular category of service. However, the Treasury Department reserves the right to re determine the amounts of fees annually. Fees are determined in accordance with Office of Management and Budget Circular A–25, as amended.

(c) Specific fee information may be obtained from the Surety Bond Branch at the address shown in § 223.2. In addition a notice of the amount of a fee referred to in this Section will be published in the **Federal Register** as each change in such fee is made.

§ 223.22 List of certificate-holding companies.

A list of qualified companies is published annually as of July 1 in Department Circular 570, Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies, with information as to underwriting limitations, areas in which licensed to transact surety business, and other details. If the Secretary of the Treasury shall take any exceptions to the annual financial statement submitted by a company, the Secretary shall, before issuing Department Circular 570, give a company due notice of such exceptions. Copies of the Circular are available from the Surety Bond Branch upon request. Selection of a particular qualified company from among all companies holding Certificates of Authority is discretionary with the principal required to furnish a bond.

Superseded Regulations. The foregoing regulations supersede all

previous regulations relating to the same subject.

Mitchell A. Levine,

Assistant Commissioner, Comptroller Financial Management Serivce.

Dated: July 28, 1987.

[FR Doc. 87-17508 Filed 8-4-87; 8:45 am]

BILLING CODE 4810-35-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8-R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Demonstration Projects

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends the comprehensive CHAMPUS regulation to specifically provide that the Director of the Office of CHAMPUS may waive or alter the normally applicable provisions of the CHAMPUS regulations when necessary to conduct a demonstration project required or authorized by law. The proposed rule, however, would not allow the waiver or alteration of any requirement that may not be waived or altered under applicable law. The proposed rule is necessary to establish a specific regulatory counterpart to existing statutory authorities for demonstration projects to develop improved methods to finance and deliver health care services under CHAMPUS. It is intended to expedite the administrative processing associated with initiating healthcare demonstration projects.

DATE: Written public comments must be received on or before September 4, 1987.

ADDRESS: Office of the Assistant Secretary of Defense for Health Affairs, OCHAMPUS Office of Demonstrations, Room 1D511, The Pentagon, Washington, DC 20301-1200.

FOR FURTHER INFORMATION CONTACT: LTC David J. Fant, United States Air Force (202) 695-3331.

SUPPLEMENTARY INFORMATION: The purpose of this proposed rule is to establish an appropriate regulatory counterpart to the current statutory authority for the conduct of demonstration projects relating to CHAMPUS.

One such statutory is 10 U.S.C. 1092, which authorizes studies and demonstration projects relating to delivery of health and medical care. This section authorizes demonstrations of alternative methods for financing and delivery health and medical care services, including those under CHAMPUS. The purpose and effect of this statute is to provide for the waiver or alteration of normally applicable requirements as part of a project to test alternative methods.

In addition to this general statutory authority to conduct demonstration projects, Congress from time to time enacts requirements for DoD to conduct specific demonstration projects. For example, in section 702(a) of the National Defense Authorization Act for Fiscal Year 1987, Congress directed DoD to conduct a demonstration of the CHAMPUS Reform Initiative. This initiative involves alternative methods of financing and delivering CHAMPUS health care services under regional umbrella contracts with competitively-selected contractors. DoD issued a request for proposals for the CHAMPUS Reform Initiative in February 1987.

These two rather recent legislative actions are only part of the urging DoD has received from Congress to actively pursue innovative strategies for improving DoD health care programs. Related Congressional actions include authority for resource sharing agreements (10 U.S.C. 1096), special contracts for delivery of medical care services (10 U.S.C. 1097) and incentives for participation in cost-effective health care plans (10 U.S.C. 1098). The common theme of all of these provisions is the desire to try new approaches to bring about needed improvements in the Military Health Services System, especially CHAMPUS.

Against this backdrop of clear Congressional encouragement for developing innovative methods to finance and deliver health care services, this proposed rule would establish for CHAMPUS a regulatory counterpart to the applicable statutory demonstration provisions. The proposed rule simply provides that the normally applicable provisions of the CHAMPUS regulation may be waived or altered by the Director of OCHAMPUS in connection with the conduct of a demonstration project required or authorized by law. "Demonstration project" is defined to include projects based on the full applicable range of legislatively required or authorized activities designed to test potential program innovations. However, the proposed rule would not allow waiver or alteration of requirements that may not under the applicable statutory authorities be waived or altered.

This proposed rule is somewhat analogous to paragraph 199.1(n). That section authorizes the waiver of any provision of the part, except for requirements that may not be waived under the law, under very special circumstances when it would be in the best interest of the program. Like the current paragraph 199.1(n), the proposed new paragraph (o) is limited to special circumstances, namely demonstration projects, and does not allow waiver of requirements of law that may not be waived.

Thus, the effect of this proposed rule is to assure that normally applicable provisions of the CHAMPUS regulation that are within the administrative discretion of the agency not inhibit the ability of OCHAMPUS to conduct demonstrations consistent with the far-reaching intent of Congress to develop meaningful improvements in health care programs.

The impact of this proposed rule is limited. It does not reach beyond specifically designed demonstration projects. Nor does it allow for the waiver or alteration of rules regarding the Military Health Services System other than CHAMPUS rules. Also, it does not allow for the waiver of requirements that may not be waived under applicable law.

The proposed rule also establishes certain procedural requirements whenever OCHAMPUS waives or alters a normally applicable provision of the part in connection with a demonstration. To assure that providers, beneficiaries and other interested parties are aware of the demonstration project and the matters affected by the regulatory waiver, the proposed rule provides for notice to be published at least 30 days before the waiver would be effective.

Included in this Federal Register notice of the demonstration project would be its duration and an explanation of what it is designed to test. The definition included in the proposed rule makes clear that these are the key features, limited duration and its nature as a test, that distinguish a demonstration project from a change in program policy or procedure. Because of these features, these notices of demonstration projects are not covered by public comment practices under DoD Directive 5400.9 (32 CFR Part 296) or DoD Instruction 6010.8. Similarly, individual notices of demonstration projects are not "rules" within the meaning of section 553 of the Administrative Procedure Act because they are not statements of general applicability and future effect that

establish or interpret policy or procedure; rather, as is made clear in the definition contained in the proposed rule, they are time-limited tests. Any generally applicable change in policy or procedure that might arise from a demonstration project will be handled in accordance with established practices for soliciting public comment, to the extent those practices apply.

This proposed rule is not a major rule under the Regulatory Flexibility Act or Executive Order 12291.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

Accordingly, 32 CFR Part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301.

2. In § 199.1 paragraph (o) is redesignated as paragraph (p).

3. Add a new paragraph (o) to § 199.1 to read as follows:

§ 199.1 General Provisions.

* * * * *

(o) *Demonstration projects*—(1) *Authority.* The Director, OCHAMPUS may waive or alter any requirements of this Regulation in connection with the conduct of a demonstration project required or authorized by law, except for any requirement that may not be waived or altered pursuant to 10 U.S.C. Chapter 55, or other applicable law.

(2) *Procedures.* At least 30 days prior to taking effect, OCHAMPUS shall publish a notice describing the demonstration project, the requirements of this Regulation being waived or altered under paragraph 1 and the duration of the waiver or alteration. Consistent with the purpose and nature of demonstration projects, these notices are not covered by public comment practices under DoD Directive 5400.9 or DoD Instruction 6010.8.

(3) *Definition.* For purposes of this section, a "demonstration project" is a project of limited duration designed to test a different method for the finance, delivery or administration of health care activities for the uniformed services. Demonstration projects may be required or authorized by 10 U.S.C. 1092, any other statutory provision requiring or authorizing a demonstration project or any other provision of law that authorizes the activity involved in the demonstration project.

* * * * *

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 31, 1987.

[FR Doc. 87-17801 Filed 8-4-87; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 2

[FRL No. 3172-8]

Freedom of Information Regulations

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This proposed rule would modify the Environmental Protection Agency procedures for handling requests for information under the Freedom of Information Act. It would modify the rules and guidelines that implement the charging of fees and granting of fee waivers, amend the exemptions, and add the exclusions to reflect amendments enacted by the Freedom of Information Reform Act of 1986.

DATE: Comments must be submitted on or before September 4, 1987.

ADDRESS: Comments should be addressed to the Office of General Counsel, Contracts and Information Law Branch (LE-132G), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Comments will be available for public inspection in Room M3600 at this address from 8:30 a.m. to 4:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Marlyne Lipfert or Mary Adler, Office of General Counsel, Contracts and Information Law Branch (LE-132G), 401 M Street, SW., Washington, DC 20460, Telephone: 202/382-5460.

SUPPLEMENTARY INFORMATION: The Freedom of Information Reform Act of 1986 (Pub. L. 99-570) amended the Freedom of Information Act (5 U.S.C. 552) by modifying the terms of Exemption (b)(7), by adding a new subsection (c), and by supplying new provisions relating to the charging and waiving of fees.

This **Federal Register** notice proposes changes in the following sections:

Sec.

2.100 Definitions.
2.101 Policy on disclosure of EPA records.
2.113 Initial denials of requests.
2.116 Contents of determination denying appeal.
2.118 Exemption categories.
2.120 Fees: payment; waiver.
2.121 Exclusions.

The following is a brief summary by section of each of the above changes:

Section 2.100(b) would be modified to conform the definition of "agency record" to that used in Freedom of Information Act case law.

Section 2.100 (e) through (k) would be added to include definitions of key terms used in this rulemaking. These definitions are adopted from those set forth in Office of Management and Budget, Uniform Freedom of Information Act Fee Schedule and Guidelines, 52 FR 10012 (March 27, 1987), implementing certain provisions of the Freedom of Information Reform Act of 1986.

Section 2.101(d) would be added to indicate that requestors will be referred to agencies operating statutory-based fee programs, such as the Government Printing Office and the National Technical Information Service, when records responsive to a request are maintained by them for distribution.

Section 2.113(d) would be modified to contain two subsections and to indicate generally that the existence or nonexistence of records will not be revealed in response to a request where an exemption is designed to protect that very information. This section is further modified to indicate that concurrence in such a determination must be by the General Counsel or his designee, which is the Contracts and Information Law Branch of the Office of General Counsel.

Section 2.113(e) would be modified to clarify those instances when an additional person's identity and position must be stated in a determination letter.

Section 2.113(f) would be modified to indicate that an appeal notice must be given when the existence of records is neither confirmed or denied and that no appeal notice will be given when a determination denies the existence of records.

Section 2.116 would be modified to contain two subsections and to indicate that appeal determinations upholding the initial determination shall not reveal the existence or nonexistence of records when the initial determination has not done so.

Section 2.118(a)(7) would be amended to reflect the changes in the statutory language for Exemption (b)(7) (5 U.S.C. 552(b)(7)) as enacted by the Freedom of Information Reform Act of 1986.

Section 2.120(a)(1) would be amended to include the four new categories of requestors and the three new levels of fees.

Section 2.120(a)(2) would be amended to describe how a requestor's fee category will be determined.

Section 2.120(a)(3) would be amended to reflect the Agency's new fee schedule.

Section 2.120(a)(4) would be amended to give notice that appropriate fees will be charged, even if there is no disclosure of records.

Section 2.120(a)(5) would be modified to eliminate the examination or review of records as exempt from charge, to indicate no charges will be made for resolution of legal or policy issues, or for the first two hours of search time or the first 100 pages of duplication (except for commercial use requestors), to clarify when the Agency may aggregate requests, and to clarify when Privacy Act requests will not be billed. The remaining items for which no charge will be made contain no changes except that they have been renumbered within the subsection.

Section 2.120(b) would be amended to indicate that the authority of the Debt Collection Act will be utilized concerning delinquent FOIA bills. This section has also been rearranged to place the lockbox addresses immediately following reference to them.

Section 2.120(c) would be modified to indicate that assurance of payment will be sought if the fees for processing a request will exceed $25.00, and that prepayment will be required when prior FOIA fees have not been paid timely, or may be required when estimated fees exceed $250.00. This section is also modified to give notice that when prepayment is required and such payment is not received within 30 days of EPA's billing, the request will not be processed further.

Section 2.120(d) would be amended to reflect the changes in the statutory language on reduction or waiver of fees as enacted by the Freedom of Information Reform Act of 1986. Also included is guidance interpreting the new language. This guidance is based on the guidelines developed by the Department of Justice, Office of Information and Privacy.

Section 2.120(e) would be modified to include review charges in the record maintained by the FOI Officer.

Section 2.121 would be added to implement the new statutory language that excludes certain enforcement-related records from the provisions of the Freedom of Information Act, as enacted by the Freedom of Information Reform Act of 1986.

Executive Order 12291

Under Executive Order 12291, EPA must submit a Regulatory Impact Analysis for all "major" rules. EPA has determined that this regulation is not a major rule for purposes of Executive Order 12291 because it will not have a $100 million annual effect on the economy, will not result in a major increase in cost or prices for consumers, individual industries, Federal, state, or local government agencies or geographic regions, and will not have 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 the domestic or export markets. Therefore, a Regulatory Impact Analysis is not required. EPA has based all administrative decisions on this rule on adequate information concerning the need for and consequences of the rule.

Paperwork Reduction Act

This rule does not come under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., because it makes no independent request or requirement to collect information.

Regulatory Flexibility Act

This regulation will not have significant economic impact on a substantial number of small entities. These changes to EPA's regulations will not impose significant additional costs on small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., is not required.

List of Subjects in 40 CFR Part 2

Administrative practice and procedure, Freedom of information, Public information.

Dated: July 24, 1987.

Lee M. Thomas,

Administrator.

Therefore, EPA proposes to amend 40 CFR Part 2 as follows:

PART 2—[AMENDED]

1. The authority citation for Part 2 is revised to read as follows:

Authority: 5 U.S.C. 301, 552 (as amended), 553, secs 114, 206, 208, 301, and 307 of the Clean Air Act, as amended (42 U.S.C. 7414, 7525, 7542, 7601, 7607), secs. 308, 501 and 509(a) of the Clean Water Act, as amended (33 U.S.C. 1318, 1361, 1369(a)); sec. 13 of the Noise Control Act of 1972 (42 U.S.C. 4912); secs 1445 and 1450 of the Safe Drinking Water Act (42 U.S.C. 300j–4, 300j–9); secs 2002, 3007, and 9005 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6912, 6927, 6995); secs. 8(c), 11, and 14 of Toxic Substances Control Act (15 U.S.C. 2607(c), 2610, 2613); secs. 10, 12, and 25 of Federal Insecticide, Fungicide and Rodenticide Act, as amended (7 U.S.C. 136h, 136j, 136w); sec. 408(f) of the Federal Food, Drug and Cosmetic Act, as amended (21 U.S.C. 346(f)); secs 104(f) and 108 of the Marine Protection Research and Sanctuaries Act of 1972 (33 U.S.C. 1414(f), 1418); sec. 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604); sec 505 of the Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 2005).

2. Section 2.100 is amended by revising paragraph (b) and adding paragraphs (e) through (k) to read as follows:

§ 2.100 Definitions.

* * * * *

(b) "EPA Record" or, simply "record" means any document, writing, photograph, sound or magnetic recording, drawing, or other similar thing by which information has been preserved, from which the information can be retrieved and copied, and over which EPA has possession or control. It may include copies of the records of other Federal agencies (see § 2.111(d)). The term includes informal writings (such as drafts and the like), and also includes information preserved in a form which must be translated or deciphered by machine in order to be intelligible to humans. The term includes documents and the like which were created or acquired by EPA, its predecessors, its officers, and its employees by use of Government funds or in the course of transacting official business. However, the term does not include materials which are legally owned by an EPA officer or employee in his or her purely personal capacity. Nor does the term include materials published by non-Federal organizations which are readily available to the public, such as books, journals, and periodicals available through reference libraries, even if such materials are in EPA's possession.

* * * * *

(e) The term " 'commercial use' request" 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 requestor or the person on whose behalf the request is made. In determining whether a requestor properly belongs in this category, EPA must determine the use to which a requestor will put the documents requested. Moreover, where EPA has reasonable cause to doubt the use to which a requestor will put the records sought, or where that use is not clear from the request itself, EPA may seek additional clarification before assigning the request to a specific category.

(f) 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 (e) 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.

(g) 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, which operates a program or programs of scholarly research.

(h) 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 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. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they 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 EPA may also look to the past publication record of a requestor in making this determination.

(i) 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. Searching for material must be done in the most efficient and least expensive manner so as to minimize costs for both the EPA and the requester. For example, EPA will not engage in line-by-line search when merely duplicating an entire document would prove the less expensive and quicker method of complying with a request. "Search" will be distinguished, moreover, from "review" of material in order to determine whether the material is exempt from disclosure (see paragraph (j) of this section. Searches may be done manually or by computer using existing programming.

(j) The term "review" refers to the process of examining documents located in response to a request that is for a commercial use (see paragraph (e) 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 legal or policy issues regarding the application of exemptions.

(k) The term "duplication" refers to the process of making a copy of a document necessary to respond to an 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 must be in a form that is reasonably usable by requestors.

4. Section 2.101 is amended by adding paragraph (d) to read as follows:

§ 2.101 Policy on disclosure of EPA records.

* * * * *

(d) When documents responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs, such as, but not limited to, the Government Printing Office or the National Technical Information Service, EPA will inform the requestor of the steps necessary to obtain records from the sources.

4. Section 2.113 is amended by revising paragraphs (d), (e) and (f) to read as follows:

§ 2.113 Initial denials of requests.

* * * * *

(d)(1) Each initial determination to deny a request shall be written, signed, and dated, and, except as Provided in paragraph (d)(2), shall contain a reference to the Request Identification Number, shall identify the records that are being withheld (individually, or, if the denial covers a large number of similar records, by described category), and shall state the basis for denial for each record or category of records being withheld.

(2) No initial determination shall reveal the existence or nonexistence of records if identifying the mere fact of the existence or non-existence of those records would reveal the information that an exemption is designed to protect. Instead of identifying the existence or nonexistence of the records, the initial determination shall state that the request is denied because either the records do not exist or they are exempt from mandatory disclosure under the applicable provision of 5 U.S.C. 552(b). No such determination shall be made without the concurrence of the General Counsel or his designee. The General Counsel has designated the Contracts and Information Law Branch to act on these requests for concurrence. See § 2.121 for guidance on initial determinations denying, in limited circumstances, the existence of certain law enforcement records or information.

(e) If the decision to deny a request is made by an authorized EPA employee other than the person signing the determination letter, that other person's identity and position shall be stated in the determination letter.

(f) Each initial determination which denies, in whole or in part, a request for one or more existing, located EPA records (including determinations described in § 2.113(d)(2) above) shall state that the requestor may appeal the initial denial by sending a written appeal to the address shown in § 2.106(a) within 30 days after receipt of the determination. An initial determination which only denies the existence of records, however, will not include a notice of appeal rights.

* * * * *

5. Section 2.116 is revised to read as follows:

§ 2.116 Contents of determination denying appeal.

(a) Except as provided in paragraph (b) of this section, each determination denying an appeal from an initial denial shall be in writing, shall state which of the exemptions in 5 U.S.C. 552(b) apply to each requested existing record, and shall state the reasons(s) for denial of the appeal. A denial determination shall also state the name and position of each EPA officer or employee who directed that the appeal be denied. Such a determination shall further state that the person whose request was denied may obtain *de novo* judicial review of the denial by complaint filed with the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the Agency records are situated, or in the District of Columbia, pursuant to 5 U.S.C. 552(a)(4).

(b) No determination denying an appeal shall reveal the existence or nonexistence of records if identifying the mere fact of the existence or nonexistence of those records would

reveal the information that an exemption is designed to protect. Instead of identifying the existence or nonexistence of the records, the determination shall state that the appeal is denied because either the records do not exist or they are exempt from mandatory disclosure under the applicable provision of 5 U.S.C. 552(b).

6. Section 2.118 is amended by revising paragraph (a)(7) to read as follows:

§ 2.118 Exemption categories.

(a) * * *

(7) Records or information compiled for law enforcement purposes, (i) but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) 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 in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) 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 (F) could reasonably be expected to endanger the life or physical safety of any individual;

* * * * *

7. Section 2.120 is revised to read as follows:

§ 2.120 Fees, payment, waiver.

(a) *Fee schedule.* Requestors shall be charged the full allowable direct costs incurred by the Agency in responding to a FOIA request. However, if EPA uses a contractor to search for, reproduce or disseminate records responsive to a request, the cost to the requestor shall not exceed the cost of the Agency itself performing the service.

(1) There are four categories of requests. Fees for each of the categories will be charged as follows:

(i) Commercial use requests. If the request seeks disclosure of records for a commercial use, the requestor shall be charged for the time spent searching for the requested record, reviewing the record to determine whether it should be disclosed and for the cost of each page of duplication.

(ii) Requests from an educational or non-commercial scientific institution whose purpose is scholarly or scientific research, involving a request which is not for a commercial use and seeks disclosure of records. In the case of such a request, the requestor shall be charged only for the duplication cost of the records, except that the first 100 pages of duplication shall be furnished without charge.

(iii) Requests from a representative of the news media, involving a request which is not for a commercial use and seeks disclosure of records. In the case of such a request, the requestor shall be charged only for the duplication cost of the records, except that the first 100 pages of duplication shall be furnished without charge.

(iv) All other requests. If the request seeks disclosure of records other than as described in paragraphs (a)(1) (i), (ii), and (iii) of this section, the requestor shall be charged the full cost of search and duplication. However, the first two hours of search time and the first 100 pages of duplication shall be furnished without charge.

(2) The determination of a requestor's fee category will be based on the following:

(i) Commercial use requestors—the use to which the requestor will put the documents requested;

(ii) Educational and non-commercial scientific institution requestors—identity of the requestor and the use to which the requestor will put the documents requested;

(iii) Representatives of the news media requestors—the identity of the requestor and the use to which the requestor will put the documents requested.

(3) Fees will be charged to requestors, as appropriate, for search, duplication and review of requested records in accordance with the following schedule:

(i) Manual search for records. For each ½ hour or portion thereof (EPA employees):

(A) GS–8 and below: $4.00

(B) GS–9 and above: $10.00

(ii) Computer search for records charges will consist of:

(A) EPA employee operators: For each ½ hour or portion thereof:

(*1*) GS–8 and below: $4.00

(*2*) GS–9 and above: $10.00, *plus*

(B) Contractor operators (where separately charged to the EPA), actual charges up to but not exceeding the *rate* which would have been charged had EPA employees conducted the search (see (A) above), *plus*

(C) Actual computer resource usage charges for this search, as indicated on the computer run printout.

(iii) Review of records. For each ½ hour or portion thereof (EPA employees):

(A) GS–8 and below: $4.00.

(B) GS–9 and above: $10.00.

(iv) Duplication or reproduction of records.

(A) Duplication or reproduction of documents by EPA employees (paper copy of paper original): $.15 per page

(B) Computer printouts (other than those calculated in a direct-cost billing—see paragraph (a)(3)(ii) of this section "Computer Search for records") $.15 per page

(C) Other methods of duplication or reproduction, including, but not limited to, duplication of photographs, microfilm and magnetic tape, will be charged at the actual direct cost to EPA.

(v) Certification or authentication of records: $25.00 per certification or authentication.

(vi) Other charges. Other charges incurred in responding to a request including but not limited to, special handling or transportation of records will be charged at the actual direct cost to EPA.

(4) EPA may assess charges for time spent searching and reviewing, even if EPA fails to locate the records or if the records located are determined to be exempt from disclosure.

(5) No charge shall be made—

(i) For the cost of preparing or reviewing letters of response to a request or appeal;

(ii) For time spent resolving legal or policy issues concerning the application of exemptions;

(iii) For search time and the first 100 pages of duplication for requests described in § 2.120(a)(1) (ii) and (iii) above;

(iv) For the first two hours of search time and for the first 100 pages of duplication for requests described in § 2.120(a)(1)(iv);

(v) If the total fee in connection with a request is less than $25.00, or if the costs of collecting the fee would otherwise exceed the amount of the fee. However, when EPA reasonably believes that a requestor or group of requestors is attempting to break a request down into a series of requests for the purpose of avoiding the assessment of fees, EPA will aggregate such requests to determine the total fee, and will charge accordingly.

(vi) For responding to a request by an individual for one copy of a record

retrievable by the requesting individual's name or personal identifier from a Privacy Act system of records;

(vii) For furnishing records requested by either House of Congress, or by a duly authorized committee or subcommittee of Congress, unless the records are requested for the benefit of an individual Member of Congress or for a constituent;

(viii) For furnishing records requested by and for the official use of other Federal agencies; or

(ix) For furnishing records needed by an EPA contractor, subcontractor, or grantee to perform the work required by the EPA contract or grant.

(b) *Method of payment.* All fee payments shall be in the form of a check or money order payable to the "U.S. Environmental Protection Agency" and shall be sent (accompanied by a reference to the pertinent Request Identification Numbers(s)) to the appropriate Headquarters or Regional Office lock box address:

(1) EPA—Washington Headquarters, P.O. Box 360277M, Pittsburgh, PA 15251;

(2) EPA—Region 1, P.O. Box 360197M, Pittsburgh, PA 15251;

(3) EPA—Region 2, P.O. Box 360188M, Pittsburgh, PA 15251;

(4) EPA—Region 3, P.O. Box 360515M, Pittsburgh, PA 15251;

(5) EPA—Region 4, P.O. Box 100142, Atlanta, GA 30384;

(6) EPA—Region 5, P.O. Box 70753, Chicago, IL 60673;

(7) EPA—Region 6, P.O. Box 360582M, Pittsburgh, PA 15251;

(8) EPA—Region 7, P.O. Box 360748M, Pittsburgh, PA 15251;

(9) EPA—Region 8, P.O. Box 360859M, Pittsburgh, PA 15251;

(10) EPA—Region 9, P.O. Box 360863M, Pittsburgh, PA 15251;

(11) EPA—Region 10, P.O. Box 360903M, Pittsburgh, PA 15251;

Under the Debt Collection Act of 1982 (Pub. L. 97–365), payment (except for prepayment) shall be due within thirty (30) calendar days after the date of billing. If payment is not received at the end of thirty calendar days, interest and a late payment handling charge will be assessed. In addition, under this Act, a penalty charge will be applied on any principal amount not paid within ninety (90) calendar days after the due date for payment. By the authority of the Debt Collection Act of 1982, delinquent amounts due may be collected through administrative offset or referred to private collection agencies. Information related to delinquent accounts may also be reported to the appropriate credit agencies.

(c) *Prepayment or assurance of payment.* (1) If an EPA office estimates that the fees for processing a request (or aggregated requests as described in § 2.120(a)(5)(v)) will exceed $25.00, that office need not search for, duplicate or disclose records in response to the request(s) until the requestor assures payment of the total amount of fees estimated to become due under this section. In such cases, the EPA office will promptly inform the requestor (by telephone if practicable) of the need to make assurance of payment.

(2) An EPA office may not require a requestor to make an advance payment, i.e. payment before work is commenced or continued on a request, unless:

(i) A requestor has previously failed to pay a fee charged in a timely fashion (i.e., within 30 days after the date of the billing), or

(ii) The EPA office estimates or determines that the allowable charges that a requestor may be required to pay are likely to exceed $250.00. Then the EPA office will notify the requestor of the likely cost and obtain satisfactory assurance of full payment where the requestor has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requestors with no history of payment. If such advance payment is not received within 30 days after EPA's billing, the request will not be processed and the request will be closed. See also § 2.112(d).

(d) *Reduction or waiver of fee.* (1) The fee chargeable under this section shall be reduced or waived by EPA if the Agency determines that disclosure of the information

(i) Is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and

(ii) Is not primarily in the commercial interest of the requestor.

(2) Both of these requirements must be satisfied before fees properly assessable can be waived or reduced.

(3) The Agency will employ the following four factors in determining whether the first requirement has been met:

(i) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government";

(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";

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding"; and

(iv) The significance of the contribution to public understanding: Whether disclosure is likely to contribute "significantly" to public understanding of government operations or activities.

(4) The Agency will employ the following factors in determining whether the second requirement has been met:

(i) The existence and magnitude of a commercial interest: Whether the requestor has a commercial interest that would be furthered by the requested disclosure; and if, so

(ii) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requestor is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requestor."

(5) In all cases, the burden shall be on the requestor to present information in support of a request for a waiver of fees. A request for reduction or waiver of fees should include:

(i) A clear statement of the requestor's interest in the requested documents;

(ii) The use proposed for the documents and whether the requestor will derive income or other benefit from such use;

(iii) A statement of how the public will benefit from such use and from the release of the requested documents; and

(iv) If specialized use of the documents or information is contemplated, a statement of the requestor's qualifications that are relevant to the specialized use.

(6) A request for reduction or waiver of fees shall be addressed to the appropriate Freedom of Information Officer. The requestor shall be informed in writing of the Agency's decision whether to grant or deny the fee waiver or fee reduction request. This decision may be appealed by letter addressed to the EPA Freedom of Information Officer. The Assistant Administrator for External Affairs or, if delegated the authority, the Deputy Assistant Administrator for External Affairs, shall decide such appeals.

(e) The EPA Freedom of Information Officer shall maintain a record of all fees charged requesters for searching for, reviewing and reproducing requested records under this section. If after the end of 60 calendar days from the date on which request for payment was made the requestor has not submitted payment to the appropriate EPA billing address (as listed in § 2.120(b)), the Financial Management Division shall place the requestor's

name on a delinquent list which is sent to the EPA Freedom of Information Officer. If a requestor whose name appears on the delinquent list makes a request under this part, the EPA Freedom of Information Officer shall inform the requestor that EPA will not process the request until the requestor submits payment of the overdue fee from the earlier request. Any request made by an individual who specifies an affiliation with or representation of a corporation, association, law firm, or other organization shall be deemed to be a request by the corporation, association, law firm, or other organization. If an organization placed on the delinquent list can show that the person who made the request for which payment was overdue did not make the request on behalf of the organization, the organization will be removed from the delinquent list but the name of the individual shall remain on the list. A requestor shall not be placed on the delinquent list if a request for a reduction or for a waiver is pending under paragraph (d) of this section.

8. Section 2.121 is added to read as follows:

§ 2.121 Exclusions.

(a) Whenever a request is made which involves access to records described in § 2.118(a)(7)(A), and

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

(2) There is reason to believe that the subject of the investigation is not aware of its pendency, and disclosure of the existence of such records could reasonably be expected to interfere with enforcement proceedings, EPA shall, during only such time as the circumstances continue, treat the records as not subject to the requirements of 5 U.S.C. 552 and this subpart.

(b) Whenever informant records maintained by the Agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier and the informant's status as an informant has not been officially confirmed, EPA shall treat the records as not subject to the requirements of 5 U.S.C. 552 and this subpart.

(c) No determination relying on this section shall be issued without the concurrence of the General Counsel or his designee. The General Counsel has designated the Contracts and Information Law Branch to act on these requests for concurrence.

(d) An initial determination which only relies on this section will not include notice of appeal rights.

[FR Doc. 87-17762 Filed 8-4-87; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 180

[PP 7E3466/P424; FRL-3240-3]

Pesticide Tolerance for Chlorpyrifos

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for the combined residues of the pesticide chlorpyrifos and its metabolite 3,5,6-trichloro-2-pyridinol in or on the raw agricultural commodity blueberries. The proposed regulation to establish a maximum permissible level for residues of the pesticide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATE: Comments, identified by the document control number [PP 7E3466/P424], should be received on or before September 4, 1987.

ADDRESSES:

By mail, submit written comments to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Donald R. Stubbs, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1806.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 7E3466 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project and the Agricultural Experiment Station of New Jersey.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the pesticide chlorpyrifos [*O,O*-diethyl *O*-(3,5,6-trichloro-2-pyridyl)phosphorothioate] and its metabolite 3,5,6-trichloro-2-pyridinol (TCP) in or on the raw agricultural commodity blueberries at 2 parts per million (of which no more than 1 part per million is chlorpyrifos).

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include:

1. A 2-year dog feeding study with a plasma cholinesterase (ChE) no-observed-effect level (NOEL) of 0.01 milligram (mg)/kilogram (kg)/day and a NOEL at 1.0 mg/kg/day (highest dose tested) for systemic effects.

2. A voluntary human study with a ChE NOEL of 0.03 mg/kg/day (based on 20 days of exposure at this level).

3. A 2-year mouse oncogenicity study which was negative for oncogenic effects under the conditions of the study at all levels tested (0.5, 5, and 15 ppm).

4. A three-generation rat reproduction study with a NOEL for reproductive effects at 1.0 mg/kg/day (highest dose tested).

5. A rat teratology study that was negative for teratogenic effects at 15 mg/kg/day.

6. An acute delayed neurotoxicity study in the hen that was negative at 100 mg/kg.

7. A 2-year rat feeding/oncogenicity study with a red blood cell ChE NOEL of 0.1 mg/kg/day and negative for oncogenic effects at all levels tested (0.03, 0.1, 1.0 and 3.0 mg/kg/day). The existing rat feeding/oncogenicity study is not adequate for regulatory purposes (core supplementary data) and represents a data gap for the chemical.

The provisional acceptable daily intake (PADI), based on the human voluntary ChE study (ChE NOEL of 0.03 mg/kg/day) and using a 10-fold safety factor, is calculated to be 0.003 mg/kg of body weight/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 0.18 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg daily diet of a 60-kg human is calculated to be 0.63093 mg/day; the current action will increase the TMRC by 0.0009 mg/day (a 0.14 percent increase). The increase in dietary exposure to residues of chlorpyrifos and its metabolite resulting from the proposed use on blueberries is considered to pose a negligible incremental risk in dietary exposure (0.14 percent increase in the TMRC).

Although the TMRC based on all established tolerances for chlorpyrifos exceeds the MPI, the Agency believes that the actual residues to which the public is likely to be exposed are considerably less than indicated by the TMRC for the following reasons:

1. Not all of the planted crop for which a tolerance is established is normally treated with the pesticide.

2. Not all crops contributing to the TMRC are likely to be consumed by an individual.

3. Most treated crops have residue levels which are below the established tolerance level.

4. Residues are frequently reduced when foods are processed or prepared for human consumption.

The basic manufacturer has been requested to submit additional studies to allow the Agency to reassess the existing tolerances for chlorpyrifos. Additional plant and animal metabolism studies are required to fully characterize and quantify the parent compound and its metabolites (including TCP) in plants and animals. Since there is insufficient information to adequately characterize TCP, the tolerance expression for chlorpyrifos currently includes this major metabolite. The requested data will allow the Agency to determine the necessity of establishing tolerances at levels sufficient to cover residues for both the parent compound and metabolite TCP. If the requested data indicate that it is not necessary to include the metabolite in the tolerance expression, the TMRC for chlorpyrifos will be lower than the current calculation based on tolerances for combined residues of chlorpyrifos and TCP. The U.S. tolerances for chlorpyrifos would also be compatible with the Codex Alimentarius and the tolerances of Canada and Mexico, which include only chlorpyrifos per se.

Although additional plant and animal metabolism data are needed to fully characterize the residues, the available metabolism data are adequate to support the proposed use of chlorpyrifos on blueberries. Chlorpyrifos and its major metabolite TCP are considered to be the residues of concern for this use.

Adequate analytical methods, gas chromatography, are available in the Pesticide Analytical Manual, Volume II (PAM-II), for enforcement purposes. There is no expectation of secondary residues in meat and milk since blueberries are not an animal feed commodity. There are presently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency, the tolerance established by amending 40 CFR 180.342 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments should bear a notation indicating the document control number, [PP 7E3466/P424]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: July 22, 1987.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR 180.342 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.342 is amended by adding and alphabetically inserting the raw agricultural commodity blueberries to paragraph (a), to read as follows:

§ 180.342 Chlorpyrifos; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Blueberries	2 ppm (of which no more than 1 ppm is chlorpyrifos)
* * * * *	

[FR Doc. 87-17345 Filed 8-4-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[General Docket 87-112]

Development and Implementation of a Public Safety National Plan and Amendment of Part 90 to Establish Service Rules and Technical Standards for Use of the 821-824/866-869 MHz Bands by the Public Safety Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of time.

SUMMARY: This action extends the time for filing reply comments to the Notice of Proposed Rulemaking in this proceeding. This action is in response to a Motion for Extension of Time filed by the Land Mobile Radio Section of the Electronics Industries Association's Information and Telecommunications Technologies Group. It requested more time so that technical data could be developed relative to the Commission's proposed channeling plan.

DATES: Reply comments are now due August 5, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Fred Thomas, telephone (202) 632–8112.

SUPPLEMENTARY INFORMATION: The Proposed Rule was published on May 26, 1987, 52 FR 19544.

Federal Communications Commission.

Thomas P. Stanley,

Chief Engineer.

[FR Doc. 87–17541 Filed 8–4–87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 97

[PR Docket No. 86–397; FCC 87–233]

Amateur Radio Service; Amendment of Part 97 To Authorize Additional Privileges in the 40 Meter Band to Novice and Technician Control Operators at Amateur Stations in Alaska, Hawaii, Region 2 Pacific Insular Areas and the Caribbean Insular Areas

AGENCY: Federal Communications Commission.

ACTION: Withdrawal of proposed rule.

SUMMARY: The proposed rule amendments (published on October 29, 1986, 51 FR 39554) would have authorized additional privileges in the 40 meter band at 7050–7075 kHz for Novice and Technician control operators at amateur stations in Alaska, Hawaii, Region 2 Pacific Insular areas and the Caribbean Insular areas, based on a petition for rule making that claimed excessive interference in those areas from International broadcasting. The proposal was withdrawn because the situation of Novice and Technician control operators in those areas is not unique.

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

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Federal Communications Commission, Washington, DC 20554, (202) 632–4964.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–17540 Filed 8–4–87; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 52, No. 150
Wednesday, August 5, 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.

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration
Title: Statement by Foreign Importer of Aircraft or Vessel Repair Parts
Form Number: Agency—ITA-686P, EAR 373.8; OMB—0625-0137
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 55 respondents; 15 reporting/recordkeeping hours
Needs and Uses: The Aircraft and Vessel Repair Station Procedure was established as an alternative procedure to the filing of supporting documents with applications to export aircraft or vessel repair parts to certain destinations. To apply for qualification to operate under the Aircraft and Vessel Repair Station procedure, the foreign importer needs to submit ITA Form-686P.
Affected Public: Businesses and other for-profit institutions; small businesses or organizations
Frequency: On occasion/recordkeeping
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: John Griffen, 395-7340

Agency: International Trade Administration
Title: Statement by Foreign Consignee in Support of a Special License
Form Number: Agency—ITA-6052P; OMB 0625-0135
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 1,000 respondents; 533 reporting/recordkeeping hours
Needs and Uses: Special license procedures have been established allowing exporters under special circumstances to ship certain commodities abroad without restrictions to foreign consignees that have been approved for unlimited shipments. ITA Form-6052P is used by foreign consignees of U.S. exporters as a means of providing pertinent information to support the special license procedures (Distribution, Project License and Service Supply). Foreign consignees approved for such shipments need not submit supporting documentation every time they place an order with a U.S. exporter.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: On Occasion/recordkeeping
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: John Griffen, 395-7340

Agency: International Trade Administration
Title: Exception to Order Requirement
Form Number: Agency—EAR 372.6(c); OMB—0625-0024
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 10 respondents; 3 reporting/recordkeeping hours
Needs and Uses: Generally an export license application is not considered unless an actual order has been received. However, Export Administration will consider granting a waiver of the order requirement when an applicant is able to substantiate that an exception is warranted. The information provided is used in determining whether or not to grant the waiver.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: On occasion/recordkeeping
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: John Griffen, 395-7340

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3228, New Executive Office Building, Washington, DC 20503.

Dated: July 29, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87-17765 Filed 8-4-87; 8:45 am]

BILLING CODE 3510-CW-M

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council has appointed a Limited Entry Committee to develop specific limited access alternatives for the west coast groundfish fishery, for analysis and discussion by the Pacific Council and the public. The Committee is comprised of trawl, pot, longline, hook-and-line, and gillnet groundfish fishermen; a Pacific Coast Federation of Fishermen's Association representative; a fish processor; National Oceanic and Atmospheric Administration legal counsel, and an enforcement representative. In addition, technical and gear-specific industry advisory groups have been set up to assist the Committee with development and analysis of limited entry options. The Committee, in conjunction with the Technical Advisory Group, is scheduled to convene August 18-19, 1987, beginning at 10 a.m., at the Pacific Council's offices, Metro Center, Room 330, 2000 SW. First Avenue, Portland, OR.

For further information about the public meeting, contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW First Avenue, Portland, OR 97201; telephone: (503) 221-6352.

Dated: July 31, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 87-17749 Filed 8-4-87; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blends and Other Vegetable Fiber Textile Products From Taiwan Effective on January 1, 1987; Correction

July 31, 1987.

A notice was published in the **Federal Register** on June 12, 1987 (52 FR 22515) which added TSUSA number 352.4000 to the TSUSA numbers for man-made fiber textile products in Category 669–F, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987. TSUSA number 352.4000 should not be included in the TSUSAs for Category 669–F and, therefore, is to be deleted. The corrrect TSUSA numbers for Category 669–F are 355.4520 and 355.4530.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–17756 8–4–87; 8:45 am]

BILLING CODE 3510–DR–M

CONSUMER PRODUCT SAFETY COMMISSION

Interagency Committee on Cigarette and Little Cigar Fire Safety; Technical Study Group Meeting

AGENCY: Interagency Committee on Cigarette and Little Cigar Fire Safety.

ACTION: Notice of meeting.

SUMMARY: The Technical Study Group on Cigarette and Little Cigar Fire Safety will meet on August 17 and 18, 1987, in Washington, DC to review the technical reports implementing the Cigarette Safety Act of 1984.

DATE: The meeting will be on August 17 and 18, 1987, from 9:30 a.m. to 5:00 p.m. each day.

ADDRESS: The meeting will be in room 703–A of the Hubert Humphrey Building, 200 Independence Avenue, SW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Terri Buggs, Office of Program Management and Budget, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492–6554.

SUPPLEMENTARY INFORMATION: The Cigarette Safety Act of 1984 (Pub. L. 98–567, 98 Stat. 2925, October 30, 1984) created the Technical Study Group on Cigarette and Little Cigar Fire Safety to prepare a final technical report to Congress concerning the technical and commercial feasibility of developing cigarettes and little cigars with minimum propensity to ignite upholstered furniture and mattresses.

The Technical Study Group will meet on August 17 and 18, 1987, to approve revised technical reports on (1) cigarette ignition propensity measurement; (2) economic impact (benefit-cost) analysis; (3) ignition probability analysis; (4) pilot field data study; and (5) cigarette performance data study. In addition, the second draft of the Final Technical Report will be reviewed.

The meeting will be open to observation by members of the public, but only members of the Technical Study Group may participate in the discussion.

Dated: July 28, 1987.

Colin B. Church,

Federal Employee Designated by the Interagency Committee on Cigarette and Little Cigar Fire Safety.

[FR Doc. 87–17758 Filed 8–4–87; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

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, September 1, 1987; Tuesday, September 8, 1987; Tuesday, September 15, 1987; Tuesday, September 22, 1987; and Tuesday, September 29, 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 gurantee 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 inivted 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.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 31, 1987.

[FR Doc. 87–17803 Filed 8–4–87; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP87–444–000 et al.]

Natural Gas Certificate Filings; Williams Natural Gas Co. et al.

July 30, 1987.

Take notice that the following filings have been made with the Commission:

1. Williams Natural Gas Company

[Docket No. CP87–444–000]

Take notice that on July 14, 1987, Williams Natural Gas Company (WNG), formerly Northwest Central Pipeline Corporation, P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP87–444–000 a request pursuant to §§ 157.205, and 157.216 of the Regulations under the Natural Gas Act (18 CFR 157.205, and 157.216) for authorization to abandon by reclaim and in place approximately 5.0 miles of 4-inch pipeline and appurtenant facilities and the transportation of gas

through said facilities, and to relocate two taps serving right-of-way customers all in Brown County, Kansas, under its authorization issued in Docket No. CP82–479–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in its request on file with the Commission and open to public inspection.

WNG states that the 4-inch pipeline and appurtenant facilities are no longer required as a part of its transmission system. It is stated that an existing 6-inch pipeline looping the 4-inch line has sufficient capacity to handle existing volumes as well as any expected growth on WNG's system. It is further stated that the pipeline was installed in 1930 and is now obsolete, shallow, and has a number of corrosion leaks each year. WNG indicates that two right-of-way customers are currently located on the 4-inch pipeline and that they would be relocated to the existing 6-inch pipeline with no interruption of service. WNG states that the cost of constructing the two taps is estimated to be $8,380, and furthermore the cost of removing the 4-inch line is estimated to be $7,180 and it is expected to have a salvage value of $600.

Comment date: September 14, 1987, in accordance with Standard Paragraph G at the end of this notice.

2. Columbia Gas Transmission Corporation

[Docket No. CP87–450–000]

Take notice that on July 16, 1987, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP87–450–000, a request pursuant to § 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate sales taps and related facilities for twelve additional points of delivery to existing wholesale customers, under the certificate issued in Docket No. CP83–76–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Specifically, Columbia requests authorization to construct and operate certain facilities necessary to provide twelve additional delivery points to the following:

Wholesale customers	Commercial	Residential	Industrial	Annual (McF) volumes
The Dayton Power and Light Company		1		150
Columbia Gas of Kentucky		2 (150 Mcf ea)		300
Mountaineer Gas Company		2 (150 Mcf ea)		300
Columbia Gas of Ohio		5 (150 Mcf ea)		750
Do	1			2,100
Do			1	18,000

These customers would serve new requests for residential, commercial and/or industrial service, it is stated. Columbia also explains that the additional volumes to be provided through the new delivery points are within Columbia's currently authorized level of sales and such volumes would not affect the peak day and annual deliveries to which these existing wholesale customers are entitled. Columbia indicates further that the sales to be made through the proposed taps would be under its currently effective Contract Demand Service Rate Schedule.

Comment date: September 14, 1986, in accordance with Standard Paragraph G at the end of this notice.

3. Arkla Energy Resources, a Division of Arkla, Inc.

[Docket No. CP87–445–000]

Take notice that on July 14, 1987, Arkla Energy Resources (AER), a division of Arkla, Inc., P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP87–445–000 a request pursuant to §§157.205 and 157.208 of the Regulations under the Natural Gas Act (18 CFR 157.205 and 157.208) for authorization to acquire, construct and operate pipeline facilities and related appurtenances located in northern Arkansas, under the certificate issued in Docket Nos. CP82–384–000 and CP82–384–001, pursuant to the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission, and open to public inspection.

Specifically, by this application AER proposes to: (1) Acquire from AER-Arkansas Gas Transit Company, a subsidiary of Arkla, Inc., approximately 120 miles of 12-inch pipeline facilities formerly used in petroleum transportation, which will be designated Line BT–14; (2) construct a 3.2-mile, 8-inch line, to be disignated Line BT–16, extending from the Mantooth Compressor Station in the Aetna Field, Franklin Country, Arkansas, to a point of interconnection with the acquired facilities; and (3) construct connections between Line BT–14 and Line BT–16 and between Line BT–14 and Line JM–30. It is stated that all of the above facilities would be operated in interstate commerce. AER estimates that acquisition, and construction of the proposed facilities, which would enable AER to supply its central Arkansas markets with approximately 50,000 Mcf on a peak day, would cost approximately $14.43 million.

AER states that the proposed acquisition, construction and operation, would permit the production and introduction into AER's system supply reserves that cannot currently be made available to AER becasue of capacity limitations in the facilities carrying gas from the fields in the eastern Arkoma Basin. It if further stated that additional incidental benefits include the possibility of future connections between Line BT–14 and other lines in the Arkoma Basin and a commensurate unloading of AER's existing transmission lines.

Comment date: September 14, 1987, in accordance with Standard Pragraph G at the end of this notice.

4. KN Energy, Inc., Northern Utilities, Inc.

[Docket No. CP87–432–000]

Take notice that on July 8, 1987, KN Energy, Inc. (KN), P.O. Box 15625, Lakewood, Colorado 80215 and Northern Utilities, Inc. (NUI), 441 South Center Street, Casper, Wyoming 82602, filed in Docket No. CP87–432–000 a joint application pursuant to section 7(c) of the Natural Gas Act (NGA) for a certificate of public convenience and necessity authorizing the exchange of natural gas between KN and UNI, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

KN and NUI state that they have entered into a gas exchange agreement dated June 25, 1987, pursuant to which they would exchange equivalent volumes of natural gas for a primary term of 15 years, continuing year to year thereafter, at primary exchange points located at the West Poison Spider Field in Natrona County, Wyoming and the Beaver Creek producing area in Freemont County, Wyoming. KN also rquests authority to designate a secondary exchange and balancing point for deliveries to NUI at KN's Sand Draw plant located in the Big Sand Draw field, Freemont County, Wyoming, where KN presently receives gas for system supply from third parties. KN states that this secondary exchange

point would only be utilized if exchange and balancing at the primary Beaver Creek exchange point is not feasiable, for whatever reason.

It is stated that under the proposed exhange UNI would deliver to KN at West Poison Spider, volumes of gas supply in which NUI has an interest, and KN would deliver to NUI at Beaver Creek equivalent volumes of gas supply in which KN haws an interest. Thus, it is further stated, under the proposed exchanges each party would be able to arrange for delivery of gas from fields in which each has supply interests to distant points of receipt on the respective systems of each, to be accomplished without the construction of any new facilities.

KN and NUI state that the maximum exchange volumes would be 15,000 Mcf per day. It is further started that the volumetric exchange would be undertaken on a no fee basis.

NUI states that it is an intrastate pipeline exempt from Commission jurisdiction pursuant to section 1(c) of the NGA and seeks a limited jurisdiction certificate authorization to participate in this exchange only to the extent necessary to authorize its participation in such gas supply exchange. NUI requests that the certificate of public convenience and necessity issued to it be so limited and conditioned so as not to make NUI subject to FERC jurisdiction as "a natural gas company" under the NGA with respect to any of its other operations, nor to require NUI to file reports or maintain its books and records in accordance with the Uniform System of Accounts, nor to change its status as as intrastate pipeline and public utility subject to the jurisdiction of the Public Service Commission of Wyoming, nor to alter NUI's Hinshaw exemption under section 1(c) of the NGA.

Comment date: August 20, 1987, in accordance with Standard Paragraph F at the end of this notice.

5. Natural Gas Pipeline Company of America

[Docket Nos. CP86–106–003 and CP86–107–005]

Take notice that on July 1, 1987, Natural Gas Pipeline Company of America (Petitioner), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket Nos. CP86–106–003 and CP86–107–005 a petition to amend the order issued May 1, 1986, in Docket Nos. CP86–106–000 and CP86–107–000, respectively, pursuant to section 7(c) of the Natural Gas Act. Petitioner requests authorization so as to extend the terms of its transportation services for two end-users, Firestone Tire and Rubber Company (Firestone) and Wabash Alloys, Inc. (Wabash), and to increase the maximum daily volume of gas transported for Wabash, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Petitioner states that in the order issued May 1, 1986, in Docket No. CP86–106–000, it is authorized to transport up to 4,000 MMBtu of natural gas per day on an interruptible basis for Firestone for a term ending August 30, 1987.

Petitioner states that in an amendement to the transportation agreement dated April 13, 1987, it has received a request from Firestone to continue service beyond the currently authorized termination date. Petitioner requests that the certificate, in Docket No. CP86–106–000, be extended for a limited term ending April 30, 1989.

Petitioner states that in the order issued May 1, 1986, in Docket No. CP86–107–000, it is currently authorized to transport on an interruptible basis for Wabash up to 1,300 MMBtu of gas per day for a limited term ending April 30, 1987.

Petitioner states that, in an amendment to the transportation agreement dated February 5, 1987, it has received a request from Wabash to continue service beyond the currently authorized termination date, and increase the maximum daily volume of gas transported by Petitioner for Wabash at its Wabash, Indiana plant. Petitioner requests that the certificate in Docket No. CP86–107–000 be extended for a limited term ending April 30, 1988. Petitioner also requests an increase in the maximum daily volume of gas transported for Wabash to 5,000 MMBtu of gas per day.

Petitioner does not propose any other changes in the authorized service, and states further that no new facilities are proposed here.

Comment date: August 20, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

6. Natural Gas Pipeline Company of America

[Docket No. CP87–412–000]

Take notice that on June 29, 1987, Natural Gas Pipeline Company of America (Applicant), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP87–412–000 an application pursuant to section 7(c) of the Natural Gas Act for authorization to transport up to 100,000 MMBtu of natural gas per day on an interruptible basis for Delhi Gas Pipeline Corporation (Delhi) and TXO Gas Marketing Corp. (TXO Marketing), all as more fully set forth in its application which is on file with the Commission and open for public inspection.

Pursuant to the terms and conditions contained in a gas transportation agreement (Agreement) between Applicant and Delhi dated November 17, 1986, Applicant states that it would receive up to 100,000 MMBtu of gas per day at twenty-two existing points of receipt located in the states of Oklahoma, Texas, Kansas, Iowa and Arkansas for the accounts of Delhi and TXO Marketing. It is further stated that such gas volumes would be transported and redelivered to Northern Indiana Public Service Company (NIPSCO) at three existing points of interconnection located on the Illinois-Indiana border. NIPSCO is expected to use a portion of the gas to meet the supply requirements of its system and to deliver the balance to USX Corporation, an industrial end-suer, for use in its Gary, Indiana plant. It is explained that the proposed transportation service would be provided for an initial term of two years and month to month thereafter, unless cancelled as provided in the Agreement.

Applicant states that it would charge Delhi a transportation rate that is consistent with its Rate Schedule TRT–1 for each MMBtu of gas received. Applicant notes that pursuant to the Commission's Order issued May 8, 1987 at Docket Nos. RP85–150–000 and RP86–97–002, the currently effective transportation rate that would be charged under Rate Schedule TRT–1 for the proposed service is 31.23 cents per MMBtu. Applicant also states that it would either reduce redelivery volumes or impose a monetary charge for fuel consumed and unaccounted for gas. Finally, Applicant advises that it would also charge Delhi the currently effective GRI surcharge, if required, as set forth in its Tariff on file with the Commisison.

Comment date: August 20, 1987, in accordance with Standard Paragraph F at the end of this notice.

7. Mississippi River Transmission Corporation

[Docket No. CP87–429–000]

Take notice that on July 6, 1987, Mississippi River Transmission Corporation (Applicant) 9900 Clayton Road, St. Louis Missouri 63124, filed in Docket No. CP87–429–000 an application pursuant to section 7(c) of the Natural Gas Act for authorization to implement increases in firm gas service for nine (9) of its existing jurisdictional sales customers served under Rate Schedule SGS–1 (SGS Customers) and in conjunction therewith, install new

metering facilities and make minor facility modifications, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

In response to the request of SGS Customers, Applicant states that it is seeking authorization to increase contract demand quantities totaling 6,690 Mcf per day which represent current peak day requirements as well as further growth.

Applicant further states that two of the SGS Customers, City of Hazen and City of Potosi, require a portion of their increased contract demand to provide new natural gas service.

In order to implement the proposed increases in contract demand, Applicant indicates that it would install new meters at the City of Hazen Metering Station and make minor facility modifications to the delivery stations off lateral line A-66 downstream of its Desloge Pressure Regulating Station. Applicant states that there would be minor modifications to the Desloge Pressure Regulating Station, rendering a total estimated cost of the new meters and facility modification at approximately $110,300.

Comment date: August 20, 1987, in accordance with Standard Paragraph F at the end of this notice.

8. Southern Natural Gas Company

[Docket No. CP87-424-000]

Southern Natural Gas Company, South Georgia Natural Gas Company

[Docket No. CP87-425-000]

Take notice that on July 1, 1987, Southern Natural Gas Company (Southern) P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP87-424-000 and Southern and South Georgia Natural Gas Company (South Georgia), P.O. Box 1279, Thomasville, Georgia 31792, filed in Docket No. CP87-425-000 applications pursuant to section 7(c) of the Natural Gas Act for limited-term certificates of public convenience and necessity authorizing the transportation on an interruptible basis of up to 34,500 MMBtu of natural gas per day for a limited term ending October 31, 1988, for distribution customers in Georgia and Alabama, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

In Docket No. CP87-424-000 Southern proposes to transport up to 32,000 MMBtu equivalent of gas per day on behalf of Alabama Gas Corporation (Alagasco), an existing distribution customer, acting as agent for commercial and industrial customers in Alabama. Southern states that it would receive gas purchased by Alagasco from SNG Trading Inc. (SNG) at existing points on Southern's system in Texas, Louisiana, offshore Louisiana and Mississippi. It is further stated that Southern would redeliver equivalent volumes of gas less 3.25 percent for compressor fuel and company-use gas at 20 points on Southern's system in Alabama for use by Alagasco's commercial and industrial customers.

In Docket No. CP87-425-000 Southern and South Georgia propose to transport up to 2,500 MMBtu of gas per day on behalf of the City of Bainbridge, Georgia (Bainbridge). Southern and South Georgia state that Southern would receive gas purchased by Bainbridge from four producer-suppliers [1] at existing points on Southern's system in Louisiana, offshore Louisiana and Alabama. Southern and South Georgia explain that Southern would deliver equivalent volumes of gas less 3.25 percent for compressor fuel and company-use gas to South Georgia at an existing point of interconnection between Southern and South Georgia in Lee County, Alabama. It is further explained that South Georgia would redeliver equivalent volumes less 0.5 percent for compressor fuel and company-use gas to Bainbridge at the City of Bainbridge Meter Stations Nos. 1 and 2 in Decatur County, Georgia.

It is asserted that no new facilities would be required to effect the proposed transportation services.

Southern proposes in Docket No. CP87-424-000 to charge Alagasco the following rates:

(a) Where the aggregate of the volumes transported and redelivered by Southern on any day to Alagasco under any and all transportation agreements with Southern, excluding that certain Long-Term Transportation Agreement Among Southern, Alagasco, and Alabama Interstate Supply dated October 1, 1984, when added to the volumes of gas delivered under Southern OCD Rate Schedule on such day to Alagasco do not exceed the daily Contract Demand of Alagasco, the transportation rate shall be 39.9 cents MMBtu; and

(b) Where the aggregate of the volumes transported and redelivered by Southern on any day to Alagasco under any and all transportation agreements with Southern, excluding that certain Long-Term Transportation Agreement Among Southern, Alagasco, and Alabama Intrastate Supply dated October 1, 1984, when added to the volumes of gas delivered under Southern's OCD Rate Schedule on such day to Alagasco exceed the daily Contract Demand of Alagasco, the transportation rate for the excess volumes shall be 64.9 cents per MMBtu.

Southern proposes in Docket No. CP87-425-000 to charge South Georgia the following rates:

(a) Where the aggregate of the volumes transported and redelivered by Southern on any day to South Georgia under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern OCD Rate Schedule on such day to South Georgia do not exceed the daily Contract Demand of South Georgia, the transportation rate shall be 39.9 cents MMBtu; and

(b) Where the aggregate of the volumes transported and redelivered by Southern on any day to South Georgia under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's OCD Rate Schedule on such day to South Georgia exceed the daily Contract Demand of South Georgia, the transportation rate for the excess volumes shall be 64.9 cents per MMBtu.

South Georgia proposes in Docket No. CP87-425-000 to charge Bainbridge a rate of 28.33 cents per MMBtu redelivered. It is explained that Bainbridge would reimburse South Georgia for all transportation and fuel charges paid to Southern by South Georgia.

It is asserted that in both dockets the transportation agreements provide for collection of the currently authorized GRI surcharge. It is further asserted that Southern would receive take-or-pay credit for all volumes of gas redelivered by Southern.

Comment date: August 20, 1987, in accordance with Standard Paragraph F at the end of this notice.

9. Texas Gas Transmission Corporation

[Docket No. CP87-422-000]

Take notice that on July 1, 1987, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP87-422-000, an application pursuant to section 7(b) of the Natural Gas Act for an order permitting and approving the partial abandonment of service to Associated Natural Gas (Associated) by Texas Gas, all as more fully described in the application on file with the Commission, which is open for public inspection.

Pursuant to the terms of its current service agreement with Texas Gas, which expires October 31, 1987,

[1] SNG, Consolidated Fuel Supply, Inc., Panhandle Trading Company, and Texican Natural Gas Company.

Associated gave timely notice effective October 31, 1987, it w reduce its contract demand from 10.267 MMBtu per day to 7.490 MMBtu per day. It is stated that this reduction is necessary because Associated has experienced changed market conditions, and does not now need the full requirements available to it under its present service agreement.

It is stated that, as a result of this reduction in contract demand, Associated, which is currently purchasing under Texas Gas Rate Schedule G–1, now qualifies for service under Rate Schedule SG–1. This change in rate schedules will be effectuated through Texas Gas's blanket certificate in Docket No. CP82–407 and pursuant to §157.217 of the Commission's Regulations. The change will provide significant savings to associated and its customers.

Comment date: August 20, 1987, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a normal hearing is required, further notice of such hearing will be fully given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and no withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–17789 Filed 8–4–87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP87–457–000]

Application; Trunkline Gas Co.

July 24, 1987.

Take notice that on July 23, 1987, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP87–457–000, an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act and the regulations thereunder for a limited-term certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of Transcontinental Gas Pipe Line Corporation (Transco) on an interruptible basis, for a term ending July 20, 1992, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to a transportation agreement between Trunkline and Transco dated July 20, 1987, Trunkline has agreed to receive for transportation a volume of natural gas of up to 30,000 Mcf per day on an interruptible basis on behalf of Transco. Trunkline will receive volumes for Transco's account from McMoran Oil and Gas Company (McMoran) at Eugene Island Block 380, offshore Louisiana. Trunkline will utilize its capacity in Tarpon Transmission Company (Tarpon) and will redeliver to Transco at an existing point of pipeline interconnection located near Ragley in Beauregard Parish, Louisiana. The ultimate destination of such gas is the system supply of Transco. For this transportation service, Transco will pay Trunkline 31.24 cents for Dt of natural gas received, which includes a charge of 16.88 cents/Dt for transportation on the Tarpon system.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 7, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the approprite action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Trunkline to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–17790 Filed 8–4–87; 8:45 am]

BILLING CODE 6717-01-N

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3242-7]

Financial Assistance Program for Review Under 40 CFR 29 and Subject to Section 204 of the Demonstration Cities and Metropolitan Development Act

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability and review.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of a new financial assistance program (66.703, "Asbestos Inspection and Management Plan Assistance Program") to provide financial support to States (including the District of Columbia and U.S. Trust Territories), and in turn, local education agencies (LEAs) to assist with the costs of inspection for asbestos-containing material (ACM) and preparation of management plans for school buildings. The program is authorized by section 4(b)(1) of the Asbestos Hazard Emergency Response Act of 1986 (AHERA).

DATE: All complete applications must be received in EPA no later than September 1, 1987, to be considered for FY 88 funding awards.

ADDRESS: All the necessary addresses are included in the supplementary information.

FOR FURTHER INFORMATION CONTACT: Michael Stahl, Chief, Hazard Abatement Assistance Branch (TS-788A), U.S. EPA, 401 M Street SW., Washington, DC 20460, (202) 382-3949.

SUPPLEMENTARY INFORMATION:

Under the authority of AHERA, section 4(b)(1), EPA will award grant and cooperative agreements to State agencies. This program is eligible for intergovernmental review under Executive Order 12372 and is subject to the review requirements of Section 204 of the Demonstration Cities and Metropolitan Development Act. States must notify the following office in writing within 30 days of this publication whether their State's official E.O. 12372 process will review applications in this program: Grants Policy and Procedures Branch, Grants Administration Division (PM-216F), U.S. EPA, 401 M Street SW., Washington, DC 20460, Attention: Corinne Allison.

Applicants must contact their State's Single Point of Contact (SPOC) for intergovernmental review as early as possible to find out if the program is subject to the State's official E.O. 12372 review process and what material must be submitted to the SPOC for review. In addition, applications for projects within a metropolitan area must be sent to the areawide/Regional/local planning agency designated to perform metropolitan or regional planning for the area for their review.

Under AHERA, Congress has imposed a deadline of October 12, 1988 for schools to complete their inspections and prepare management plans for submission to State Governors. EPA intends to make awards on or before the date AHERA specifies that final rules are to be promulgated (October 17, 1987). SPOCs and other reviewers should send their official intergovernmental review comments on an application to the Grants Administration Division, Grants Operations Branch (PM-216F), U.S. EPA, 401 M Street SW., Washington, DC 20460, no later than 30 days after the receipt of the application/other required material for review.

The Asbestos Inspection and Management Plan Assistance Program is implemented through the Office of Pesticides and Toxic Substances with support from the EPA Regional Offices. The objective of the program is to provide financial assistance to States which may in turn pass through funds to LEAs to assist with the costs of carrying out inspections and preparing management plans for school buildings. There is a 5% cost sharing requirement for State recipient agencies. Costs incurred before the award date are not allowable. The new assistance program is open to all States. It is expected that 10 to 20 awards will be made during the FY 1988 in amounts ranging from $100,000 to $500,000 and may be used by recipients to:

(1) Pay LEA directly to offset the costs they incur for hiring accredited inspectors;

(2) Pay LEAs directly to offset the costs they incur for hiring accredited management plan developers;

(3) Purchase the services of accredited persons who will perform inspections or develop management plans for schools; or

(4) Pay State employees (who are accredited inspectors) to perform inspections in schools.

Each State is required to establish its own organizational and management structure to formulate and implement its assistance program. EPA's Regional Asbestos Coordinators (RACs) will be the EPA projects officers. Applicants must submit their completed application to the Grants Administration Division, Grants Operations Branch (PM-216F), U.S. EPA, 401 M Street SW., Washington, DC 20460. A duplicate copy of the application must be sent to the appropriate RAC. Addresses for the RACs may be obtained by contacting EPA headquarters (telephone: (202) 382-3949). Applications will be evaluated by the Hazard Abatement Assistance Branch (HAAB) staff and the RACs who will generate an award list.

Each application submitted to EPA must include specific details on how the individual State intends to manage any federally awarded funds. The following outlines the standard program elements required of applicants.

1. Applicants must complete EPA Standard for 5700-33.

2. Applicants must provide an explanation of their plans for administration of the grant program. This must include identification of official(s) responsible for making award determinations and distributing funds to LEAs.

3. Applicants must include a proposal for budgeting administrative costs. Not more than 2% of the total award may be used for administrative purposes. Administrative costs include costs incurred by the recipient in the management or supervision of the execution of the program but do *not* include salaries of employees who inspect for ACM or assist in the preparation of management plans.

4. Applicants must provide an estimate of the demand for assistance (*i.e.*, the number of LEAs and the dollar amount needed) from financially needy LEAs in their State.

5. Applicants must provide a description of the selection criteria and process they will use to determine LEAs who will receive funds. LEA selections must be based on financial need of the LEA. EPA strongly encourages the recipient agencies to give *both private and public schools equitable consideration* when making award decisions.

6. Applicants must identify who will be responsible for managing and overseeing their program. Program oversight include these elements:

A. Assurance that federal funds are used specifically for inspection of and preparation of management plans for school buildings.

B. Assurance that accredited persons are used to conduct inspections or develop management plans.

C. Assurance that school inspection costs will be necessary and reasonable.

D. Assurance that those LEAs receiving financial assistance, will perform inspections and submit management plans to State Governors

by October 12, 1988 as required by AHERA, section 205.

A schedule of events, containing among other elements, the announcement of awards and milestones for program oversight, must be included.

E. Assurance that all federally funded inspections will be done in accordance with AHERA.

Dated: July 24, 1987.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 87-17742 Filed 8-4-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3242-8]

Science Advisory Board; Hazard Ranking System Review Subcommittee; Open Meeting, September 14-15, 1987

Under Pub. L. 92-463, notice is hereby given that the Science Advisory Board's Hazard Ranking System Review Subcommittee will hold a two day meeting September 14-15, 1987 at the U.S. Environmental Protection Agency, the Administrator's Conference Room, 1103 West Tower, Waterside Mall, 401 M Street, SW., Washington, DC. The meeting will begin a 8:30 a.m. Monday and adjourn no later than 5:00 p.m. Tuesday.

The major purpose of the meeting is to continue review of the issues presented to the Science Advisory Board concerning the Hazard Ranking System. The three major documents under review are: *Discussion of Options for Revisions of Hazard Ranking System (HRS) Toxicity Factor, Air Target Distance for Hazard Ranking System*, and *Superfund Hazard Ranking System (HRS): Selected Issues Related to Mining Waste Sites*. Copies of these and other documents provided to the Subcommittee are available in the Superfund Docket. The Superfund Docket is located at EPA Headquarters, Waterside Mall Sub-basement, 401 M Street, SW., Washington, DC 20460. The Docket is open by appointment only from 9:00 a.m. to 4:00 p.m. Monday through Friday excluding holidays. To obtain copies of the documents or to make an appointment, contact Tina Maragousis at (202) 382-3046.

The meeting is open to the public. Any member of the public wishing to attend, make brief oral comments, or submit written comments to the Subcommittee should notify Mrs. Kathleen Conway, Executive Secretary, or Mrs. Dorothy Clark, Staff Secretary, (A101-F) Science Advisory Board, by the close of business on Monday, August 10, 1987. The telephone number is (202) 382-2552.

Terry F. Yosie,

Director, Science Advisory Board.

Date: July 30, 1987

[FR Doc. 87-17743 Filed 8-4-87; 8:45 am]

BILLING CODE 6560-50-M

[PF-486; FRL-3242-6]

Chevron Chemical Co.; Withdrawals of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the withdrawal without prejudice of certain pesticide petitions filed by the Chevron Chemical Co. for the fungicide captafol that were previously filed and published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: By mail: Richard F. Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Hwy. Arlington, VA 22202, (703) 557-1830.

SUPPLEMENTARY INFORMATION: EPA has received requests under 40 CFR 180.8 from the Chevron Chemical Co., 15049 San Pablo Ave., Richmond, CA 94804-0010, to withdraw without prejudice to future filings the following petitions that were previously filed and published in the **Federal Register**

1. *PP 6F1795.* Proposed in the **Federal Register** of July 6, 1976 (41 FR 27776), that 40 CFR 180.267 be amended by establishing a tolerance for residues of the fungicide captafol (*cis-N*-[(1,1,2,2-tetrachloroethyl)thio]-4-cyclohexene-1,2-dicarboximide) in or on the raw agricultural commodity pecan nutmeats (shells removed) at 0.1 part per million.

2. *PP 7F1962.* Proposed in the **Federal Register** of July 19, 1977 (42 FR 37029), that 40 CFR 180.267 be amended by establishing a tolerance for residues of the fungicide captafol on growing soybeans with a tolerance limitation of 3 ppm in soybean hulls.

3. *FAP 7H5166.* Proposed in the **Federal Register** of July 19, 1977 (42 FR 37029), that 21 CFR Part 561 be amended by establishing a regulation permitting the use of the fungicide captafol on growing soybeans with a tolerance limitation of 3 ppm in soybean hulls.

4. *PP 8E2047.* Proposed in the **Federal Register** of March 16, 1978 (43 FR 10971), establishment of a tolerance for captafol in or on green coffee beans at 0.20 ppm, amended in the **Federal Register** of June 30, 1982 (47 FR 28453), by increasing the proposed tolerance from 0.20 ppm to 5.0 ppm, and further amended in the **Federal Register** of September 7, 1983 (48 FR 40433), by decreasing the proposed tolerance to 1.0 ppm and changing the expression of residues.

5. *PP 4E3080.* Proposed in the **Federal Register** of June 6, 1984 (49 FR 23444), that 40 CFR 180.267 be amended by establishing a tolerance for residues of the fungicide captafol in or on the commodity kiwifruit at 5.0 ppm.

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2))

Dated: July 27, 1987.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 87-17745 Filed 8-4-87; 8:45 am]

BILLING CODE 6560-50-M

[PF-484; FRL-32425]

Pesticide Tolerance Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the filing of pesticide petitions proposing the establishment of tolerances and/or regulations for residues of certain pesticide chemicals in or on certain agricultural commodities.

ADDRESS: By mail, submit written comments to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (TS–767C), Attn: Product Manager (PM) (named in the petition), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

In person, contact the PM named in each petition at the following office location/telephone number:

Production manager	Office location/ telephone number	Address
Dennis Edwards (PM 12).	Rm. 202, CM #2, (703)–557–2386.	EPA, 1921 Jefferson Davis Hwy., Arlington, VA 22202.
George LaRocca (PM 15).	Rm. 204, CM #2, (703)–557–2400.	Do.
Lois Rossi (PM 21).	Rm. 227, CM #2, (703)–557–1900.	Do.
Mr. Robert Taylor (PM 25).	Rm. 245, CM #2 (703)–557–1800.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide (PP) and/or food and feed additive (FAP) petitions as follows, proposing the establishment and or amendment of tolerances or regulations for residues of certain pesticide chemicals in or on certain agricultural commodities.

Initial Filing

1. *PP 6F3331.* Ciba-Geigy Corp., Agricultural Division, P.O. Box 18300, Greensboro, NC 27419, proposes amending 40 CFR 180.298 by establishing a tolerance for the insecticide methidathion (O,O-dimethyl phosphorodithioate, S-ester with 4-(mercaptomethyl-2-methoxy-delta^2-1,3,4,-thiadiazolin-5-one) and its oxygen analog (S-[(5-methoxy-2-oxo-1,3,4,-thiadiazol-3(2H)-yl)methyl]O,O-dimethyl phosphorothiate in or on corn, grain at 0.1 ppm and corn, fodder and corn, forage at 2.0 ppm. The proposed analytical method for determining residues as liquid gas chromatography (PM 12).

2. *PP 7F3516.* Union Carbide Agricultural Products Co., Inc., P.O. Box 12014, T.W. Alexander Drive, Research Triangle Park, NC 27709, proposes amending 40 CFR 180.407 by establishing a regulation to permit the residues of the insecticide thiodicarb (dimethyl N,N'[thiobis[(methylamino) carbonyloxy]]bis[ethanimidothioate]) and its metabolite, methomyl (S-methyl N-[(methylcarbamoyl)oxy]-thioacetimidate) in or on leafy vegetables at 30 ppm. The proposed analytical method for determining residues is liquid gas chromatography. (PM 12)

3. *PP 7F3521.* ICI Americas, Inc., Agricultural Products Group, Registration and Regulatory Affairs, Wilmington, DE 19897, proposes amending 40 CFR Part 180 by establishing a regulation to permit the residues of the insecticide tefluthrin (2,3,5,6-tetrafluoro-4-methylbenzyl cis-3-[(Z)-2-chloro-3,3,3-trifluoroprop-l-enyl]-2,2-dimethylcyclopropanecarboxylate) in or on corn, grain, field and corn, grain, pop at 0.01 ppm. The proposed analytical method for determining residues is liquid gas chromatography. (PM 15)

4. *FAP 7H5536.* Agrimont, S.P.A. c/o Kennedy Consultants, Inc., 9101 Cherry Lane, Suite 113, Laurel, MD 20708, proposes amending 21 CFR Part 561 by establishing a regulation to permit the residues of the fungicide benalaxyl (N-(2,6-dimethylphenyl)- N-(2-phenylacetyl)-DL-alanine methyl ester in or on hops (dry) at 0.2 ppm. The proposed analytical method for determining residues is gas chromatography. (PM 21)

5. *PP 7F3522.* Mobay Corp., Agricultural Chemicals Division, Kansas City, MO 64120, proposes amending 40 CFR 180.158 by establishing a regulation to permit the residues of the fungicide anilazine (2,4-dichloro-6-(o-chloroanilino)-s-triazine) in or on onions (dry bulbs) at 10.0 ppm. The proposed analytical method for determining residues is gas chromatographic. (PM–21

6. *PP 7F3523.* Mobay Crop., Agricultural Chemicals Division, Kansas City, MO 64120, proposes amending 40 CFR 180.349 by establishing a regulation to permit the residues of the fungicide fenamiphos (ethyl-3-methy-4-(methylthio)phenyl (1-methylethyl)phosphoramidate) and its sulfone and sulfoxide metabolites in or on peanut shells at 0.5 ppm. The proposed analytical method for determining residues is gas chromatographic. (PM–21)

7. *PP 7F3529.* BASF Corp. Chemicals Division, Agricultural Chemicals Group, 100 Cherry Hill Rd., Parsippany, NJ 07054, proposes amending 40 CFR 180.412 by establishing a regulation to permit the residues of the herbicide 2-[1-(ethoxyimino) butyl]-5-(2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-l-one and its metabolites containing the 2-cyclohexen-l-one moiety (calculated as the herbicide) in or on potatoes at 4.00 ppm. The proposed analytical method for determining residues is gas chromatographic. (PM–25)

8. *FAP 7H5537.* BASF Corp., Chemicals Division, Agricultural Chemicals Group, 100 Cherry Hill Rd., Parsippany, NJ 07054, proposes amending 21 CFR Part 193 by establishing a regulation to permit the residues of the herbicide (2-[1-(ethoxyimino)butyl]-5-(2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-l-one) and its metabolites containing the 2-cyclohexen-l-one moiety (calculated as the herbicide) in or on potato flakes at 8:00 ppm and potato granules at 8.00 ppm. The proposed analytical method for determining residues is gas chromatographic. (PM–25)

Authority: 21 U.S.C. 346a.

Dated: July 24, 1987.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 87–17744 Filed 8–4–87; 8:45 am]

BILLING CODE 6560–50–M

[OPP–180739; FRL–3240–2]

Emergency Exemptions; Paraquat, etc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the 23 States listed below and one quarantine exemption granted to the United States Department of Agriculture. Also listed are two denials of requests for specific exemptions from the California Department of Food and Agriculture and the Wisconsin Department of Agriculture, Trade, and Consumer Protection. These exemptions, issued during the months of April and June, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. Information on these restrictions is available from the. contact persons in EPA listed below.

DATES: See each specific or quarantine exemption for its effective date.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following information applies to all contact persons:

By mail: Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–1806).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Alabama Department of Agriculture and Industries for the use of paraquat on peanuts to control Florida beggarweed and sicklepod; April 13, 1987 to June 1, 1987. (Jack E. Housenger)

2. Arizona Commission of Agriculture and Horticulture for the use of sulfur dioxide as a postharvest fumigant on table grapes to control gray mold and bunch rot; April 1, 1987 to July 31, 1987. (Jack E. Housenger)

3. Arizona Department of Agriculture for the use of fenoxycarb on citrus groves, dairy feed lots, pasture and rangeland near Mesa, AZ to control imported fire ants; April 15, 1987 to June 15, 1987. Solicitation of public comment was published in the **Federal Register** of March 4, 1987 (52 FR 6607), no comments were received. The exemption was granted based on the finding that the main western front of the fire ant infestation is still several hundred miles to the east. The establishment of the fire ant in the State can be significantly delayed provided isolated infestations that slip through the quarantine inspection at the border can be eliminated as they occur. The toxicology data available to the Agency for fenoxycarb will support the proposed one-time use. The most exposed subgroup would be nonnursing infants whose estimated TMRC would utilize 15.6 percent of the PADI. It is highly unlikely that any endangered species will be affected by the proposed use of fenoxycarb and that fenoxycarb will degrade in the soil, and it is not expected to contaminate ground water. (Jim Tompkins)

4. California Department of Food and Agriculture for the use of methiocarb on artichokes to control snails and slugs; April 15, 1987 to March 1, 1988. (Jim Tompkins)

5. Delaware Department of Agriculture for the use of (±)-2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-ethyl-3-pyridinecarboxylic acid (imazethapyr) on lima beans and snap beans to control broadleaf weeds; April 27, 1987 to September 30, 1987. Solicitation of public comment was published in the **Federal Register** of March 10, 1987 (52 FR 7307), no comments were received. The exemption was granted based on the finding that there are no registered alternative pesticides which will provide adequate control of these pests in lima and snap beans. A significant economic loss may result if an effective pesticide is not made available. Residues of imazethapyr will not exceed 0.1 ppm in snap beans and lima beans and 0.3 ppm in cannery waste (snap and lima beans). These residue levels can be toxicologically supported and will not pose a threat to the public health. The percent PADI occupied by these uses and established uses is 0.023 percent. The proposed use should not pose an unreasonable hazard to the environment. (Libby Pemberton)

6. Florida Department of Agriculture and Consumer Services for the use of paraquat on peanuts to control Florida beggarweed and sicklepod; April 13, 1987 to August 1, 1987. (Jack E. Housenger)

7. Georgia Department of Agriculture for the use of paraquat on peanuts to control Florida beggarweed and sicklepod; April 13, 1987 to August 1, 1987. (Jack E. Housenger)

8. Idaho Department of Agriculture for the use of fluazifop-butyl on onions to control grasses; April 28, 1987 to September 1, 1987. (Donald Stubbs)

9. Iowa Department of Agriculture for the use of fluazifop-butyl on onions to control grasses; April 28, 1987 to September 1, 1987. (Donald Stubbs)

10. Maryland Department of Agriculture for the use of (±)-2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-ethyl-3-pyridinecarboxylic acid (imazethapyr) on lima beans and snap beans to control morningglory; April 27, 1987 to September 30, 1987. Solicitation of public comment was published in the **Federal Register** of March 25, 1987 (52 FR 9536), no comments were received. The exemption was granted based on the finding that there are no registered alternative pesticides which will provide adequate control of this pest in lima and snap beans. A significant economic loss may result if an effective pesticide is not made available. Residues of imazethapyr will not exceed 0.1 ppm in snap beans and lima beans and 0.3 ppm in cannery waste (snap and lima beans). These residue levels can be toxicologically supported and will not pose a threat to the public health. The percent PADI occupied by these uses and established uses is 0.023 percent. The proposed use should not pose an unreasonable hazard to the environment. (Libby Pemberton)

11. Minnesota Department of Agriculture for the use of 6-(4-isopropyl-4-methyl-5-oxo-2-imidazolin-2-yl)methyl ester and 2-(4-isopropyl-4-methyl-5-oxo-2-imidazoline-2-yl)methyl ester on sunflowers to control wild mustard; April 26, 1987 to July 31, 1987. Solicitation of public comment was published in the **Federal Register** of January 22, 1987 (52 FR 2440), no comments were received. The exemption was granted based on the finding that there are no postemergent herbicides registered for control of wild mustard in sunflowers. Other products tested for this use are economically unacceptable. The potential losses of $2.81 million in Minnesota and $6.48 million in North Dakota threaten long-term financial viability of the sunflower industry in these States. (Libby Pemberton)

12. Nebraska Department of Agriculture for the use of sethoxydim on dry edible beans to control wild proso millet; April 28, 1987 to August 15, 1987. (Jim Tompkins)

13. New Jersey Department of Environmental Conservation for the use (±)-2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-ethyl-3-pyridinecarboxylic acid (imazethapyr) on lima beans and snap beans to control broadleaf weeds; April 27, 1987 to September 30, 1987. Solicitation of public comment was published in the **Federal Register** of February 18, 1987 (52 FR 4961), no comments were received. The exemption was granted based on the finding that there are no registered alternative pesticides which will provide adequate control of these pests in lima and snap beans. A significant economic loss may result if an effective pesticide is not made available. Residues of imazethapyr will not exceed 0.1 ppm in snap beans and lima beans and 0.3 ppm in cannery waste (snap and lima beans). These residue levels can be toxicologically supported and will not pose a threat to the public health. The percent PADI occupied by these uses and established uses is 0.023 percent. The proposed use should not pose an unreasonable hazard to the environment. (Libby Pemberton)

14. New Jersey Department of Environmental Protection for the use of sodium fluoaluminate on potatoes to control Colorado potato beetles; April 20, 1987 to October 31, 1987. (Gene Asbury)

15. New Jersey Department of Environmental Protection for the use of sulfur dioxide as a postharvest fumigant on imported table grapes to control gray mold and bunch rot; April 1, 1987 to April 30, 1987. (Jack E. Housenger)

16. New York Department of Environmental Conservation for the use of fluazifop-butyl on onions to control grasses; April 28, 1987 to July 1, 1987. (Donald Stubbs)

17. North Carolina Department of Agriculture for the use of paraquat on peanuts to control annual broadleaf weeds and grasses; April 13, 1987 to August 1, 1987. (Jack E. Housenger)

18. North Dakota Department of Agriculture for the use of 6-(4-isopropyl-4-methyl-5-oxo-2-imidazolin-2-yl)methyl ester and 2-(4-isopropyl-4-methyl-5-oxo-2-imidazoline-2-yl)methyl ester on sunflowers to control wild mustard; April 26, 1987 to July 31, 1987.

Solicitation of public comment was published in the **Federal Register** of January 22, 1987 (52 FR 2441), no comments were received. The exemption was granted based on the finding that there are no postemergent herbicides registered for control of wild mustard in sunflowers. Other products tested for this use are economically unacceptable. The potential losses of $2.81 million in Minnesota and $6.48 million in North Dakota threaten long-term financial viability of the sunflower industry in these States. (Libby Pemberton)

19. Oregon Department of Agriculture for the use of vinclozolin on snap beans to control gray mold; June 1, 1987 to September 15, 1987. (Gene Asbury)

20. Pennsylvania Department of Agriculture for the use of sodium fluoaluminate on potatoes to control Colorado potato beetles; April 20, 1987 to October 31, 1987. (Gene Asbury)

21. Rhode Island Department of Environmental Management for the use of sodium fluoaluminate on potatoes to control Colorado potato beetles; April 20, 1987 to September 30, 1987. (Gene Asbury)

22. South Carolina, Clemson University for the use of paraquat on peanuts to control Florida beggarweed and sicklepod; April 13, 1987 to August 1, 1987. (Jack E. Housenger)

23. South Dakota Department of Agriculture for the use of fenvalerate on winter wheat to control pale western and army cutworms; April 1, 1987 to June 30, 1987. (Gene Asbury)

24. Virginia Department of Agriculture and Consumer Services for the use of (±)-2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-ethyl-3-pyridinecarboxylic acid (imazethapyr) on lima beans and snap beans to control broadleaf weeds; April 27, 1987 to September 30, 1987. Solicitation of public comment was published in the **Federal Register** of February 26, 1987 (52 FR 5831), no comments were received. The exemption was granted based on the finding that there are no registered alternative pesticides which will provide adequate control of these pests in lima and snap beans. A significant economic loss may result if an effective pesticide is not made available. Residues of imazethapyr will not exceed 0.1 ppm in snap beans and lima beans and 0.3 ppm in cannery waste (snap and lima beans). These residue levels can be toxicologically supported and will not pose a threat to the public health. The percent PADI occupied by these uses and established uses is 0.023 percent. The proposed use should not pose an unreasonable hazard to the environment. (Libby Pemberton)

25. Virginia Department of Agriculture and Consumer Services for the use of paraquat on peanuts to control annual broadleaf weeds and grasses; April 13, 1987 to August 1, 1987. (Jack E. Housenger)

26. Washington Department of Agriculture for the use of fluazifop-butyl on dry bulb onions to control grassy weeds; April 17, 1987 to November 30, 1987. (Libby Pemberton)

27. Washington Department of Agriculture for the use of sethoxydim on green peas to control rye grass and barnyard grass; April 21, 1987 to July 1, 1987. (Jim Tompkins)

28. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of metolachlor on dry bulb onions to control grassy weeds; April 6, 1987 to September 15, 1987. (Libby Pemberton)

A quarantine exemption was granted to the:

United States Department of Agriculture for the use of dichlorvos in traps to monitor the Mediterranean fruit fly; April 9, 1987 to April 9, 1990. (Gene Asbury)

EPA has denied requests from the:

1. California Department of Agriculture for the use of benomyl on parsley (fresh and processed) to control *Septoria petroselini*. A notice of receipt was published in the **Federal Register** of April 17, 1987 (52 FR 12593). The Agency has denied this request on the following basis: The applicant failed to demonstrate that an urgent, nonroutine situation or a significant economic loss will occur as a result of late blight. (Jim Tompkins)

2. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of pyridate on cabbage to control broadleaf weeds. A notice of receipt was published in the **Federal Register** of March 4, 1987 (52 FR 6608). The Agency has denied this request on the following basis: The applicant provided no evidence that an urgent, nonroutine situation exists. Much of the data necessary to support registration of this chemical are lacking, thus complete risk evaluation of the proposed use was not possible. (Jim Tompkins)

Authority: 7 U.S.C. 136.

Dated: July 22, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 87-17346 Filed 8-4-87; 8:45 am]

BILLING CODE 6560-50-M

[OPP-30282; FRL-3241-3]

Certain Companies; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: NOTICE.

SUMMARY: This notice announces receipt of applications to register a pesticide product containing an active ingredient not included in any previously registered product and a product involving a changed use pattern pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATE: Comment by September 4, 1987.

ADDRESSES: By mail submit comments identified by the document control number [OPP-30282] and the registration/file number, attention Product Manager (PM) named in each application at the following address:

Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to:

Environmental Protection Agency, Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Registration Division (TS-767C), Attn: (Product Manager (PM) named in each registration), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

In person: Contact the PM named in each registration at the following office location/telephone number:

Product Manager	Office location telephone number	Address
PM 15 George LaRocca	Rm. 204, CM#2 (703-557-2400)	Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202.
PM 17 Arturo Castillo	Rm. 207, CM#2 (703-557-2690)	Do.

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register a pesticide product containing an active ingredient not included in any previously registered product and a product involving a changed use pattern pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

I. Product Containing an Active Ingredient Not Included in Any Previously Registered Product

File Symbol: 10182-RGN. Applicant: ICI Americas, Inc., Agricultural Chemical Div., Concord Pike and New Murphy Road, Wilmington, DE 19897. Product name: Force® 1.5G. Insecticide. Active ingredient: 2,3,5,6-tetrafluoro-4-methylbenzyl-cis-3-[(*Z*)-2-chloro-3,3,3-trifluoroprop-1-enyl]-2,2-dimethylcyclopropane-carboxylate 1.5%. Proposed classification/Use: General. For use to control insects on field corn and popcorn. Type registration: Conditional. (PM 15)

II. Product Involving a Changed Use Pattern

File Symbol: 35977-ET. Applicant: Maag Agrochemicals, HLR Science, PO Box X, Vero Beach, FL 32961. Product name: Maag Logic® Fire Ant Killer. Insect Growth Regulator. Active ingredient: Fenoxycarb ethyl (2-(4-phenoxyphenoxy)ethyl) carbamate 1%. Proposed classification/Use' General. To include in its presently registered use, a new domestic outdoor use. Type registration: Conditional. (PM 17).

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Program Management and Support Division (PMSD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the PMSD office (703-557-3262), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

Dated: July 23, 1987.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 87-17516 Filed 8-4-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL HOME LOAN BANK BOARD

[No. AC-645]

Final Action Approval of Conversion Application; Lyman Savings and Loan Association, Pittsburgh, PA

Date: July 29, 1987.

Notice is hereby given that on July 23, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Lyman Savings and Loan Association, Pittsburgh, Pennsylvania for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552 and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Pittsburgh, One Riverfront Center, 20 Stanwix Street, Pittsburgh, Pennsylvania 15222-4893.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87-17702 Filed 8-4-87; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in §572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-003945-008.

Title: Port of Oakland Terminal Agreement.

Parties:

Port of Oakland

Maersk Line Pacific, Ltd.

Synopsis: The proposed agreement extends the original term for Agreement No. 224-003945 an additional three months to and including October 31, 1987.

Agreement No.: 224-200013.

Title: City of Long Beach Terminal Agreement.

Parties:

City of Long Beach (The City)

Baker Commodities, Inc. (Baker).

SYNOPSIS: The proposed agreement would lease to Baker certain premises on Pier D in the Harbor District of the City for use as a tank farm and transmission lines to berths 30 and 32.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: July 31, 1987.

[FR Doc. 87-17750 Filed 8-4-87; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in §572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-010637-021.

Title: North Europe-U.S. Atlantic Conference.

Parties:

Atlantic Container Line, B.V.
Dart-ML Limited
Hapag-Lloyd AG
Sea-Land Service, Inc.
Gulf Container Line (GCL), B.V.
Trans Freight Lines
Compagnie Generale Maritime (CGM)
Nedlloyd Lijnen, B.V.

Synopsis: The proposed amendment would delete Southampton and Greenock from the list of United Kingdom base ports.

Agreement No.: 203–010717–019.
Title: United States Atlantic and Gulf/Central America Freight Association.
Parties:

Crowley Caribbean Transport, Inc.
Ecuadorian Line, Inc.
Seaboard Marine Line, Ltd.
American Transport Lines, Inc.

Synopsis: The proposed amendment would restate the agreement to incorporate previously effective amendments and would remove the restriction on collective ratemaking with respect to household goods, personal effects and privately owned vehicles moving under U.S. government through bills of lading. It would also permit independent action with respect to the level of compensation paid to an ocean freight forwarder who is also a customs broker.

Agreement No.: 202–010950–001.
Title: Aruba Bonaire Curacao Liner Association.
Parties:

Genesis Container Line, Ltd.
Sea-Land Service, Inc.
King Ocean Service de Venezuela S.A.

Synopsis: The proposed amendment would authorize independent action on the level of compensation paid to an ocean freight forwarder who is also a customs broker. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.
Dated: July 31, 1987.
Joseph C. Polking,
Secretary.

[FR Doc. 87–17760 Filed 8–4–87; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Application to Engage de Novo in Permissible Nonbanking Activities; Banc One Corp.

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 27, 1987.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Banc One Corporation*, Columbus, Ohio; to engage *de novo* through its subsidiary, Banc One Community Development Corp., Columbus, Ohio, in community development pursuant to § 225.25(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 30, 1987.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 87–17695 Filed 8–4–87; 8:45 am]
BILLING CODE 6210–01–M

Formations of; Acquisitions by; and Mergers of Bank Holding Companies; Community Bank System, Inc., et al.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 27, 1987.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Community Bank System, Inc.*, DeWitt, New York; to become a bank holding company and acquiring 100 percent of the voting shares of The Nichols National Bank, Nichols, New York.

B. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Mercer County State Bancorp, Inc.*, Sandy Lake, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Mercer County State Bank, Sandy Lake, Pennsylvania, and The First National Bank of Stoneboro, Stoneboro, Pennsylvania.

C. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago Illinois 60690:

1. *First of America Bank Corporation*, Kalamazoo, Michigan; to acquire 100 percent of the voting shares of Manistee Bank & Trust Co., Manistee, Michigan.

2. *Ixonia Bancshares, Inc.*, Ixonia, Wisconsin; to become a bank holding company by acquiring 100 percent of the

voting shares of Ixonia State Bank, Ixonia, Wisconsin.

3. *Northern Financial, Inc.*, Sault Ste. Marie, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Presque Isle Bank, Rogers City, Michigan. Comments on this application must be received by August 24, 1987.

D. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Lincolnland Bancorp, Inc.*, Dale, Indiana; to acquire 100 percent of the voting shares of Chrisney State Bank, Chrisney, Indiana.

E. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Dean Financial Services, Inc.*, Minneapolis, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Princeton State Bank, Princeton, Minnesota. *Comments on this application must be received by August 28, 1987.*

2. *Langdon Bank Holding Company*, Walhalla, North Dakota, to become a bank holding company by acquiring 88.3 percent of the voting shares of First Bank of Langdon, Langdon, North Dakota.

3. *215 Holding Co.*, Minneapolis, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of First Bank Luverne, N.A., Luverne, Minnesota.

4. *Walhalla Bank Holding Company*, Walhalla, North Dakota; to acquire 100 percent of the voting shares of Langdon Bank Holding Company, Walhalla, North Dakota.

Board of Governors of the Federal Reserve System, July 30, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-17696 Filed 8-4-87; 8:45 am]

BILLING CODE 6210-1-M

Acquisition of Company Engaged in Permissible Nonbanking Activities; Norwest Corp.

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 C.F.R. 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 28, 1987.

A. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation*, Minneapolis, Minnesota; to acquire Norwest Mortgage, Inc., Des Moines, Iowa, and thereby engage in a general residential mortgage loan business pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 30, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-17697 Filed 8-4-87; 8:45 am]

BILLING CODE 6210-01-M

Applications; Hearings; Determinations; Application To Engage de Novo in Permissible Nonbanking Activities; Ohio County Bancshares, Inc.; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 87-14495) published at page 24058 of the issue for Friday, June 26, 1987.

Under the Federal Reserve Bank of St. Louis, the entry for Ohio County Bancshares, Inc. is revised to read as follows:

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Ohio County Bancshares, Inc.*, Beaver Dam, Kentucky; to engage *de novo* through its subsidiary, Catalyst Financial Services, Inc., Beaver Dam, Kentucky; in the business of leasing personal and real property pursuant to § 225.25(b)(5) of the Board's Regulation Y.

Comments on this application must be received by August 8, 1987.

Board of Governors of the Federal Reserve System, July 30, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-17698 Filed 8-4-87; 8:45 am]

BILLING CODE 6210-01-M

Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company; One National Bancshares, Inc.

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound

banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 27, 1987.

A. *One National Bancshares, Inc.*, North Little Rock, Arkansas; to become a bank holding company by acquiring 100 percent of the voting shares of Hunt and Howell Bancshares, Inc., Fayetteville, Arkansas, and thereby indirectly acquire First National Bank of Fayetteville, Fayetteville, Arkansas, and First American Bancshares, Inc., North Little Rock Arkansas, and thereby indirectly acquire First American Bank of North Little Rock, N.A., North Little Rock, Arkansas; First American Bank/Little Rock, N.A., Little Rock, Arkansas; and First American Bank of Hot Springs, N.A., Hot Springs, Arkansas.

In connection with this application, Applicant also proposes to acquire First American Life Insurance Company, Little Rock, Arkansas, and thereby engage in the underwriting of insurance sold in connection with extensions of credit made by affiliated banks, limited to ensuring the repayment of the outstanding balance due on the credit in the event of death, disability, or involuntary unemployment of the debtor pursuant to § 225.25(b)(8) of the Board's Regulation Y. This activity will be conducted in the State of Arkansas.

Board of Governors of the Federal Reserve System, July 30, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-17699 Filed 8-4-87; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 071587 AND 072887

Name of acquiring person name of acquired persons, name of acquired entity	PMN number	Date terminated
(1) Johnson Controls, Inc., General Motors Corporation, Fisher Guide Division, Elyria Plant	87-1807	07/15/87
(2) Avcorp Industries, Inc., Federal Industries, Ltd., Standard Aero Inc	87-1849	07/15/87
(3) Wetterau Incorporated, James D. Tucker, USCP—Wesco Inc	87-1864	07/15/87
(4) Linnaeus Associates, L.P., Pier Properties, Ltd., Pier Properties, Ltd	87-1877	07/15/87
(5) Nelson Peltz, Triangle Industries, Inc., Triangle Industries, Inc	87-1887	07/15/87
(6) CJI Industries, Inc., Triangle Industries, Inc., Triangle Industries, Inc	87-1888	07/15/87
(7) Kevin F. Donohoe, Robert Campeau, Miller & Rhodes, Inc., Miller & Rhodes Real Estate Corp	87-1812	07/16/87
(8) Leucadia National Corporation, Ronald O. Perelman, Devon Capital Corp	87-1910	07/16/87
(9) VSR Acquisition Corp., Rusty Pelican Restaurants, Inc., Rusty Pelican Restaurants, Inc	87-1914	07/16/87
(10) The Philp Co. Trust, J. T. Acquisition Corporation, J. T. Acquisition Corporation	87-1922	07/16/87
(11) Mr. John P. Thompson, J. T. Acquisition Corporation, J. T. Acquisition Corporation	87-1923	07/16/87
(12) Thompson Capital Partners, L.P., The Philp Co. Trust, The Philp Co. Trust	87-1924	07/16/87
(13) Roxboro Investments (1976) Ltd., James B. Lindsey, Sr., Puritan Leasing Company	87-1930	07/16/87
(14) Champion Enterprises, Inc., L.C. Merta, Moduline International, Inc	87-1933	07/16/87
(15) Mrs. Lea Knurr Sternberg, c/o Goudchaux/Maison Blanche, The May Department Stores Company, Associated Dry Goods Corporation and Adcor Realty	87-1935	07/16/87
(16) Cable Systems Corporation (Charles F. Dolan, UPE), Sports-Channel Associates, SportsChannel Associates	87-1950	07/16/87
(17) Cablevision Systems Corporation (Charles F. Dolan, UPE), SportsChannel Prism Associates, SportsChannel Prism Associates	87-1951	07/16/87
(18) Nortek, Inc., Stanley Interiors Corporation, Stanley Interiors Corporation	87-1953	07/16/87

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 071587 AND 072887—Continued

Name of acquiring person name of acquired persons, name of acquired entity	PMN number	Date terminated
(19) Southam Inc., Wallace F. Holladay, Sr., Holladay-Tyler Printing Corporation	87-1957	07/16/87
(20) Dainippon Ink and Chemicals, Incorporated, J.H. Wally III, Opti-Copy, Inc	87-1843	07/20/87
(21) Dainippon Ink and Chemicals, Incorporated, J.C. Wally, Opti-Copy, Inc	87-1850	07/20/87
(22) Stanley H. Durwood, TPI Enterprises, Inc., TPI Enterprises, Inc	87-1869	07/20/87
(23) Frequency Electronics, Inc., TRW, Inc., TRW Microwave Inc	87-1870	07/20/87
(24) BBC Brown Boveri & Company, Limited, Household International, Inc., Schwitzer Division of Household Manufacturing, Inc	87-1831	07/21/87
(25) Anchor Glass Container Corporation, Diamond-Bathurst Inc., Diamond-Bathurst Inc	87-1860	07/21/87
(26) Anchor Glass Container Corporation, Consolidated-Bathurst Inc., Consolidated-Bathurst Inc	87-1861	07/21/87
(27) National Computer Systems, Inc., Data Card Corporation, Data Card Corporation	87-1875	07/21/87
(28) Ratners Group plc, Sterling Inc., Sterling Inc	87-1942	07/21/87
(29) Bunge Foundation, Carlin Foods Corporation, Carlin Foods Corporation	87-1958	07/21/87
(30) Ratners Group plc, Sterling, Inc., Sterling Inc	87-1966	07/21/87
(31) Ronald J. Likas, Harry Weinstein, Weinstein International Corporation	87-1918	07/22/87
(32) Carl W. Kuehne, Harry Weinstein, Weinstein International Corporation	87-1919	07/22/87
(33) Petroleum Heat and Power Co., Inc., Peter J. Carini, Whale Oil Corp	87-1928	07/22/87
(34) Gad Zeevi, Chevron Corporation, Caribbean Gulf Refining Corporation	87-1820	07/23/87
(35) Vulcan Materials Company, R.L. White Company, Statewide Transportation, Inc. and assets of RL White	87-1830	07/23/87
(36) Vulcan Materials Company, White's Mines, Inc., White's Mines, Inc	87-1834	07/23/87
(37) William J. Stoecker, Fruehauf Corporation, Fruehauf Corporation Aerospace Group	87-1866	07/23/87
(38) Conquest Exploration Company, Cenergy Corporation, Cenergy Corporation	87-1908	07/23/87
(39) Burrous Enterprises, Ltd, The Coca-Cola Company, New South Carolina Holding Company	87-1917	07/23/87
(40) Melville Corporation, Merrill Lynch & Co., Inc., Supermarkets General Corporation-25 drug stores	87-1931	07/23/87
(41) Borden, Inc., Culbro Corporation, Culbro Snack Foods, Inc	87-1938	07/23/87
(42) Rock Capital Partners, L.P., Ralston Purina Company, Drake Bakeries, Inc	87-1960	07/23/87
(43) Greenwood Mills, Inc., Paul E. Ramsey, Pre Wash Assoc., Pre Wash Ltd. and RAH, Inc	87-1962	07/23/87
(44) Gabriel Banon, Arthur N. Seessel, III, Seessel's Inc	87-1968	07/23/87
(45) Multibanc Savings Association (David G. Shuldiner, UPE), George A. Steiner Testamentary Trust, Steiner Financial Corporation	87-1976	07/23/87
(46) United Savings of America, AMEV Holdings, Inc., Security Mutual Finance Corporation	87-1978	07/23/87
(47) Regal-Beloit Corporation, Household International, Inc., The Gear Products Division of Household Manufacturing	87-1985	07/23/87

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 071587 AND 072887—Continued

Name of acquiring person name of acquired persons, name of acquired entity	PMN number	Date terminated
(48) Central Life Assurance Company, Lumbermens Mutual Casualty Company, Lumbermens Mutual Casualty Company	87-1987	07/23/87
(49) Central Life Assurance Company, Kemper Corporation, Kemper Corporation	87-1988	07/23/87
(50) MEDIQ Incorporated, Health Care Services, Inc., Health Care Services, Inc	87-2000	07/23/87
(51) Dixons Group plc, Sylvan Kaplan and Doris Kaplan, Tipton Centers, Inc	87-2001	07/23/87
(52) Carolco Investments B.V., Orbis Communications, Inc., Orbis Communications, Inc	87-2005	07/23/87
(53) Dixons Group plc, Sylvan Kaplan and Doris Kaplan, Tipton Centers, Inc	87-2013	07/23/87
(54) Imasco Limited, Pon Partners, L.P., Casa Lupita Restaurants, Inc	87-1925	07/24/87
(55) Mesa Limited Partnership, The Boeing Company, The Boeing Company	87-1858	07/27/87
(56) Tele-Communications, Inc., Tele-Communications, Inc., TCI of Ramapo, TCI of Warwick, TCI of Wildwood	87-1906	07/27/87
(57) Knight-Ridder, Inc., Tele-Communications, Inc., TCI of Ramapo, TCI of Warwick and TCI of Wildwood	87-1913	07/27/87
(58) Tyco Laboratories, Inc., Atcor, Inc., Atcor, Inc	87-1961	07/27/87
(59) Agip S.p.A., Mr. Edwin L. Cox, Sr., Cox Oil and Gas	87-1995	07/27/87
(60) Agip S.p.A., Cox Family Trust No. 8, Trust No. 8, Oil and Gas	87-1996	07/27/87
(61) Agip S.p.A., Berry R. Cox Trust No. 14, Trust No. 14, Oil and Gas	87-1997	07/27/87
(62) N. V. Gemeenschappelijk Bezit van Aandeelen Philips, John Fluke Mfg. Co., Inc., John Fluke Mfg. Co., Inc	87-1879	07/28/87
(63) Laporte Industries (Holdings) PLC, J. Lee Krumme and Elizabeth B. Krumme, husband & wife, Vinings Industries, Inc	87-1881	07/28/87
(64) George Fischer Limited, Signet Scientific Company, Signet Scientific Company	87-1900	07/28/87
(65) Willis Faber plc, Stewart Wrightson Holdings plc, Stewart Wrightson Holdings plc	87-1971	07/28/87
(66) Imo Delaval Inc., Baird Corporation, Baird Corporation	87-1980	07/28/87
(67) Imo Delaval Inc., Baird Corporation, Baird Corporation	87-1982	07/28/87
(68) ASK Computer Systems, Inc., NCA Corporation, NCA Corporation	87-2009	07/28/87
(69) ASK Computer Systems, Inc., NCA Corporation, NCA Corporation	87-2011	07/28/87
(70) ASK Computer Systems, Inc., NCA Corporation, NCA Corporation	87-2012	07/28/87

FOR FURTHER INFORMATION CONTACT:
Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580, (202) 326-3100.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 87-17688 Filed 8-4-87; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Project Grants for Preventive Health Services; Sexually Transmitted Diseases Professional Education Program Announcement and Notice of Availability of Funds for Fiscal Year 1988

Introduction

The Centers for Disease Control (CDC) announces a program to support Project Grants for Sexually Transmitted Diseases (STD) Prevention and Training (P/T) Centers under the Professional Education component of the STD Research, Demonstrations, and Public and Professional Education Grant Program.

Authority

This program is authorized by section 318(b) of the Public Health Service Act (42 U.S.C. 247c(b)), as amended. Regulations governing Grants for STD Research, Demonstrations, and Public and Professional Education are codified in Part 51b, Subparts A and F of Title 42, Code of Federal Regulations. The Catalog of Federal Domestic Assistance Number is 13.978.

Eligible Applicants

Eligible applicants for this program are the official public health agencies of State and local governments, including the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and the Virgin Islands.

Purpose

The objective of this program of grants under section 318(b) of the Public Health Service Act is to support STD professional education programs. It is designed to meet the 1990 Objective for the Nation which states that 95 percent of public health care providers and key clinical specialists should receive accurate and timely information on diagnosis and treatment of all currently recognized STD.

This will be accomplished primarily by training health department STD clinicians, but also by updating private sector practitioners on the latest developments in the diagnosis and treatment of STD, by educating physicians-in-training, and by demonstrating quality standards for the care of patients with STD. The achievement of the 1990 objective to improve clinical capability and the other objectives to reduce STD cases and complications are mutually dependent and are national in scope. Therefore, it is necessary to assure that this training initiative is coordinated effectively with the basic control components of local STD programs. It must also be coordinated with CDC to assure that the total training environment represents a national model, that training is consistent with guidelines and is uniform nationwide, and that all course offerings can be broadly publicized by CDC.

Priority for Locating P/T Centers

Priority will be given to funding at least one applicant in each of the following areas:

1. *Carribean Area,* which includes the Commonwealth of Puerto Rico and the Virgin Islands;
2. *Central Area,* which includes Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin;
3. *Mid-Atlantic Area,* which includes Delaware, the District of Columbia, Maryland, North Carolina, Pennsylvania, Virgina, and West Virginia;
4. *North Central Area,* which includes Colorado, Montana, Nebraska, North Dakota, South Dakota, and Wyoming;
5. *Northeastern/New England Area,* which includes Connecticut, Maine, Massachusetts, New Hamphire, New Jersey, New York, Rhode Island, and Vermont;
6. *Northwestern Area,* which includes Alaska, Idaho, Oregon, and Washington;
7. *South Central Area,* which includes Arkansas, Kansas, Louisiana, New Mexico, Oklahoma, and Texas;
8. *Southeastern Area,* which includes Alabama, Florida, Georgia, Kentucky, Mississippi, South Carolina, and Tennessee; and
9. *Western Area,* which includes American Samoa, Arizona, California, the Federated States of Micronesia, Guam, Hawaii, Nevada, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and Utah.

Availability of Funds

Based on the President's budget approximately $1.8 to $2 million will be available for Fiscal Year 1988 to fund up to seven continuation applications and up to three competing applications as indicated below. Grants are usually funded in 12-month budget periods within a 2 to 5-year project period. Funding estimates outlined may vary and are subject to change.

Competing Applications—Approximately $350,000 will be available in Fiscal Year 1988 to fund one grant in each of the following areas:

1. *Carribean Area,* one fulltime P/T center, $70,000 to $100,000;

2. *Northeastern/New England Area,* one fulltime P/T center, $150,000 to $210,000; and

3. *North Central Area,* one parttime P/T center; $30,000 to $40,000.

Although all applications will be considered, priority for FY 1988 funding will be given to existing programs which are making satisfactory progress. It is expected that one competing grant will be awarded on or about December 1, 1987, and two competing grants will be awarded on or about January 2, 1988, for 12 months in a 2 to 5 year project period.

Non-Competing Applications—Approximately $1.4 million will be available for Fiscal Year 1988 to fund up to seven continuation grants ranging from $141,000 to $260,000 with an average awrd of $200,000.

Use of Funds

1. Grant funds may be used for the costs associated with organizing and conducting professional education programs.

2. Requests for direct assistance (i.e., "in lieu of cash") for personnel and other forms of direct assistance will be considered.

3. Funds will not be awarded for the purchase or lease of land or buildings or for the construction of a facility. Except where another agency normally houses the public STD clinic, the P/T center should be located in the health department facility. Funds will not be awarded to renovate existing space, without adequate justification, including appropriate detailed diagrams, reliable estimates of cost, and a realistic projection of the time required for completion.

4. Grant funds may not be used to supplant funds supporting existing STD control services.

Reporting Requirements

1. Quarterly narrative reports may be required 30 days after the end of each quarter subject to approval by the Office of Management and Budget. Narratives should address progress being made in achieving project objectives, problems which have been encountered (and methods used or changes being made to resolve problems) and other information which, in the grantee's opinion, may be useful.

2. Financial status reports are required no later than 90 days after the end of each budget period. Final financial status and progress reports are required 90 days after the end of a project period.

Recipient Financial Participation

There are no matching or cost participation requirements for this program.

Application Content

Competing applications, including new applications and initial applications for new project periods, must include a narrative detailing the following:

1. Plans to locate the P/T center in a health department clinic that; a. Is dedicated to the diagnosis and treatment of STD patients;

b. Serves an average of at least 300 patients per 40 weekly service hours;

c. Serves patients of sufficient demographic variety and morbidity to support and stimulate the learning process;

d. Is sufficiently near to major highways that accessibility by car is a reasonable option; and

e. Is convenient to restaurants and reasonable hotel/motel accommodations and accessible through a local ground transportation system from an airport;

2. The role, support, experience, and firm commitment in principle of at least one university school or medicine in the vicinity which should include a description of the existing medical school-health department liaison activities needed to develop and implement clinical training and evidence of that local institution's participation;

3. Assurance that a satisfactory schedule of training activities will continue without interruption if the award is made to an established P/T center or that the training will begin within 180 days of the date of grant award if a new P/T center is established;

4. Evidence of the capability of complying with the CDC document entitled "Quality Assurance Guidelines for STD Clinics, 1986" (Clinic QAG) in providing clinic structure, clinic management, STD diagnosis and treatment, patient education and compliance counseling, and disease intervention outreach activities;

5. Evidence of the capability of complying with applicable portions of the CDC document entitled "STD Prevention/Training Center Curriculum Guidelines and Performance Standards for STD Clinical Training" (P/T Center Guidelines) revised August, 1986;

6. Evidence of a stisfactory commitment from the State/local health department administration toward meeting STD 1990 Objectives for the Nation, and specifically, the objective related to the preparation of STD clinicians to adequately diagnose and treat STD, and to conduct such noninvasive STD research that may be feasible and which will not conflict with other program priorities;

7. Evidence which describes how the P/T center corresponds to the needs, plans, and objectives of the State/local STD Program; how the P/T center activities will be effectively coordinated with the basic control components of the local STD program; and how both will be coordinated with CDC to assure that the total training environment represents a national model;

8. Long- and short-term objectives of the propsed training which address the applicant's expected role over the project period in meeting the STD 1990 Objectives for the Nation and which establish the applicant's anticipated training accomplishments for the initial budget period;

9. An evaluation plan which will help determine if the methods are effective and the long- and short-term objectives are being achieved;

10. An itemized budget with accompanying justification;

11. A description of the organizational structure, including an organizational chart, resumes and duties, responsibilities, and role relationships of persons involved with the training center; and

12. Any other information which will support the request for assistance.

Noncompeting applications must include a narrative detailing the following:

1. A progress report on activities performed during the prior budget period, including the following:

a. A discussion of progress or lack of progress in accomplishing the project objectives of the prior budget period;

b. The number of courses offered and persons trained;

c. Special achievements;

d. Problems encountered;

e. Short term objectives for the next budget period;

f. Activities and methods which will be used to accomplish the new objectives;

g. An evaluation plan which will help determine if the methods are effective and the objectives are being achieved; and

h. Any changes concerning the personnel, operations and policies of the P/T center.

2. A continued commitment from the State/local health department administration toward meeting the STD 1990 Objective on the preparation of STD clinicians to adequately diagnose

and treat STD, and to conduct such noninvasive STD research as may be feasible and which will not conflict with other program priorities; an updated description of how the P/T center corresponds to the needs, plans, and objectives of the State/local STD Program; how the P/T center activities are effectively coordinated with the basic control components of the local STD program; positive and negative impact upon the established STD control program; and how both are coordinated with CDC to assure that the total training environment represents a national model.

3. A continued commitment to comply with the provisions of both the "Quality Assurance Guidelines for STD Clinics, 1986" and the "STD Prevention/Training Center Curriculum Guildelines and Performance Standards for STD Clinical Training" and a satisfactory explanation in those instances where local procedures or practices depart from them;

4. A continued commitment from a local university medical school to participate with the applicant in the continuation of P/T center activities;

5. An itemized budget with accompanying justification consistent with the objectives and purpose of the grant funds.

Review and Evaluation Criteria

Competing applications, including new applications and initial applications for new project periods, will be reviewed and evaluated based on the extent to which the evidence submitted specifically describes (with documentation and attachments) the applicant's ability to meet the following criteria:

1. Locate the P/T center in a health department clinic that:

a. Is dedicated to the diagnosis and treatment of STD patients;

b. Serve an average of at least 300 patients per 40 weekly service hours; and

c. Serve patients of sufficient demographic variety and morbidity to support and stimulate the learning process;

d. Is sufficiently near to major highways that accessibility by car is a reasonable option; and

e. Is convenient to restaurants and reasonable hotel/motel accommodations and accessible through a local ground transportation system from an airport.

2. Provide evidence of a commitment in principle from a local university medical school to participate with the applicant in the establishment of a P/T center which addresses the following:

a. The commitment of a part-time liaison/coordinating physician (usually a second or third year fellow) to help coordinate activities between the State/local health department and medical school faculty (the expense of medical school faculty instructional services should be covered by the most cost-effective mechanism possible);

b. The medical school's participation in the development of curriculum that is governed by the STD P/T Center Guidelines;

c. The instruction that will be provided annually as described in 5h;

d. Faculty assistance from the medical school in clinical practicum through the use of residents or fellows;

e. The medical school's reinforcement of the provisions of the Clinic QAG during curriculum development, instruction, and precepting clinic practicum; and

f. The medical school's arrangement for medical students, accompanied by faculty preceptors, to rotate through the center for training and clinic practicum.

3. Assure that a satisfactory schedule of training activities will continue without interruption if an award is made to an established P/T center or that the training will begin within 180 days of the date of grant award if a new P/T center is established;

4. Comply with the CDC document entitled "Quality Assurance Guidelines for STD Clinics, 1986" (Clinic QAG) in providing clinic structure, clinic management, STD diagnosis and treatment, patient education and compliance counseling, and disease intervention outreach activities, in particular:

a. There will be adequate space (examination rooms, waiting area, laboratory, office space) and clinical, clerical and Disease Intervention Specialist (D.I.S.) staff to accommodate patient volume;

b. There will be at least 5 days of full clinical services provided (a minimum of 35 registration hours during a minimum of 40 patient service hours, including at least one late evening or Saturday session each week) with no interim daily shutdowns;

c. Clinic management responsibility will be assigned to one person with clinical and/or administrative skills and experience;

d. Diagnosis and treatment will be provided for most STD and their syndromes (e.g., HTLV-III/LAV infection, syphilis, gonorrhea, nongonococcal urethritis, chlamydia, pelvic inflammatory disease, herpes, trichomoniasis, human papilloma virus, scabies, etc.);

e. A nurse clinician or nurse clinician and physician assistant model of care will be used with a physician available on-site for consultation;

f. An integrated flow will be used which minimizes the number of patient stops and the amount of patient waiting time. There should be no more than four patients stops (registration, clinical care, interviewing/counseling, and waiting room);

g. An appointment, modified appointment, or walk-in patient care system will be utilized;

h. Confidentiality will be observed during both patient registration and patient care service delivery;

i. Patients are given oral and written information concerning their visit, the clinic and STDs;

j. Special rapid registration procedures for patients attending for followup exam, test-of-cure, repeat STD, or D.I.S. emergencies are incorporated into the daily clinic operations;

k. A standardized medical record with a checkoff design contains a sufficiently complete set of symptoms, history, physical exam findings, diagnosis, treatment, and appropriate lab tests to cover all common STD. The medical record should be fully auditable;

l. The medical records should be stored in locked files or a room where they are not accessible to unauthorized persons;

m. There will be an on-site laboratory facility which offers a range of immediately available (stat) tests for commonly seen STD;

n. There will be a formalized quality assurance program through which clinical care is audited systematically and the proficiency of state laboratory activities are assessed through smear/culture and serologic test correlations;

o. CDC diagnostic guidelines will be used (complete history, basic physical exam for women and men including lab work, therapy, followup, emergency procedures, counseling, and education);

p. The policies and procedures of the STD clinic will harmoniously complement the activities of the disease intervention outreach component of the program; and

q. Current CDC guidelines for STD treatment will be used;

5. Assure that the development and operation of the clinical training component of the proposed P/T center will be according to the STD P/T Center Guidelines, in particular:

a. There will be adequate training space for clinical courses and assurances that it will be available for all scheduled courses. This space should

comfortably seat a minimum of 10 students;

b. Classroom space will be adequately furnished and equipped with appropriate audiovisual equipment;

c. A P/T Center Coordinator will be identified or provided for through a proposal to create and fill such a position;

d. A clerical resource will be identified and available on-site to assist the P/T Center Training coordinator or will be provided for through a proposal to create and fill such a position;

e. The curricula will be developed according to STD P/T Center Curriculum Guidelines;

f. The clinic and stat laboratory practicum will be structured such that participants are provided an opportunity to demonstrate their clinical skills under the supervision of P/T center personnel by performing STD examinations on patients and practicing STD laboratory procedures;

g. There will be a written evaluation of student and medical school teaching faculty performance;

h. In P/T centers designated by CDC as "Full-time," a minimum of 400 hours of instruction and four "core" courses will be provided annually. Unless approved by CDC, at least one Comprehensive course, one Laboratory Methods course, one Intensive or Advanced course, and at least two Clinician Update courses (one of which is entirely dedicated to AIDS/HTLV-III/LAV infection), will be offered as described by the P/T Center Guidelines. P/T centers designated by CDC as "Part-time" will offer fewer hours of instruction, the precise type, number, and budget for which should be specified;

i. The medical school personnel will play a dominant role in classroom training;

6. Convey a satisfactory commitment from the State/local health department administration toward meeting STD 1990 Objectives for the Nation, and specifically, that objective related to the preparation of STD clinicians to adequately diagnose and treat STD, and to conduct such noninvasive STD research that may be feasible and which will not conflict with other program priorities;

7. Satisfactorily describe how the P/T center corresponds to the needs, plans, and objectives of the State/local STD Program; how the P/T center activities will be effectively coordinated with the basic control components of the local STD program; and how both will be coordinated with CDC to assure that the total training environment represents a national model;

8. Satisfactorily describe the expected role over the project period in meeting STD 1990 Objectives for the Nation and ensure that anticipated training accomplishments for the initial budget period are satisfactorily addressed in the long- and short-term objectives;

9. Provide a satisfactory evaluation plan which will help determine if the methods are effective and the long- and short-term objectives are being achieved;

10. Submit a budget request which is clearly and thoroughly explained (with item by item justification), reasonable, and consistent with the intended use of grant funds; and

11. Evidence that the organizational structure which discusses persons involved with the training center, duties and responsibilities, and role relationships is capable of supporting a clinic environment that represents a national model.

Site visits may also be made in connection with the review of applicants.

Noncompeting applications will be reviewed and evaluated based on the extent to which evidence is submitted which specifically describes (with documentation and attachments) the following criteria:

1. The accomplishments of the current budget period show that the P/T Center is meeting its objectives and is contributing to the achievement of the 1990 objective for the Nation on clinical training; the objectives for the coming budget period are realistic, specific, and measurable; the methods are clearly described and lead to achievement of these objectives; the evaluation plan will allow management to monitor whether the methods are effective and the objectives are being achieved;

2. A continued commitment from the State/local health department administration toward meeting the STD 1990 Objective on the preparation of STD clinicians to adequately diagnose and treat STD, and to conduct such noninvasive STD research as may be feasible and which will not conflict with other program priorities; an updated description of how the P/T Center corresponds to the needs, plans, and objectives of the State/local STD Program; how the P/T Center activities are effectively coordinated with the basic control components of the local STD Program; positive and negative impact upon the established STD control program; and how both are coordinated with CDC to assure that the total training environment represents a national model;

3. There is substantial compliance with the provisions of both the "Quality Assurance Guidelines for STD Clinics, 1986" and the "STD Prevention/Training Center Curriculum Guidelines and Performance Standards for STD Clinical Training" and a satisfactory explanation in those instances where local procedures or practices depart from them;

4. A continued commitment from a local university medical school to participate with the applicant in the continuation of P/T Center activities;

5. The budget request is thoroughly explained, adequately justified (with item by item justification), reasonable, and consistent with the intended use of grant funds.

Application Information

The original and two unbound copies of the application must be submitted to Leo A. Sanders, Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305. Competing applications are due on or before 4:30 p.m. (E.D.T.) on October 5, 1987. Noncompeting continuation applications are due 120 days prior to the expiration of the current budget period.

Deadline: Applicants shall be considered as meeting the deadline if they are either:

1. Received at the above address on or before the deadline date; or

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applicants: Applications which do not meet the criteria in A. 1. or 2. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Other Requirements: Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Where to Obtain Additional Information

Information on application procedures, copies of application forms, and other material may be obtained from Nealean Austin, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305, or by

calling (404) 262–6575 or FTS 236–6575. Technical assistance may be obtained from Yvonne Green, Division of Sexually Transmitted Diseases, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia 30333, telephone (404) 329–2775 or FTS 236–2775.

Dated: July 30, 1987.

Glenda S. Cowart,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 87–17693 Filed 8–4–87; 8:45 am]

BILLING CODE 4160–18–M

Health Resources and Services Administration

Availability of Funds for Maternal and Child Health Projects

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that funds are available for grants for carrying out the following activities:

(1) Projects for the screening of newborns for sickle-cell anemia and other genetic diseases,

(2) Research projects to promote access to primary health services for children and community-based service network and case management services for children with special health care needs,

(3) Training projects to promote access to primary health services for children and community based service networks and case management services for children with special health care needs,

(4) Special projects of regional or national significance to promote access to primary health services for children and community-based service networks and case management services for children with special health care needs.

DATE: To receive consideration as being on time, mailed applications must be postmarked on or before August 28, 1987. Hand delivered applications must be received by 5:00 PM on August 28, 1987.

ADDRESS: Application materials may be obtained by calling or writing the Grants Management Officer, Office of Program Support, Bureau of Health Care Delivery and Assistance, HRSA, Room 6–29, 5600 Fishers Lane, Rockville, Maryland 20857, (301–443–1440). Requests should specify the grant category for which an application is requested. Applications for research projects will use Form PHS 398 approved by the Office of Management and Budget (OMB) under control number 0915–0098. Training project applications will be made using Form PHS 6025–1 approved by the OMB under control number 0915–0060 and other special projects of regional and national significance will use application Form PHS 5161–1 with revised facesheet DHHS Form 424 approved by the OMB under control number 0915–0006.

FOR FURTHER INFORMATION CONTACT: Office of the Director, Division of Maternal and Child Health, Bureau of Health Care Delivery and Assistance, HRSA, Room 6–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301–443–2170).

SUPPLEMENTARY INFORMATION: The Fisal Year 1987 Supplemental Appropriations Act (Pub. L. 100–71) provides additional 1987 funding for newborn sickle-cell and genetic screening under section 502(c)(1) of the Social Security Act and, under section 502(c)(2)(B), for research, training and other special projects designed to promote access to primary health services for children, community based service networks, and case management services with special health care needs.

These are new authorities added to Title V of the Social Security Act by the Omnibus Budget, Reconciliation Act of 1986, Pub. L. 99–509. HRSA, through this notice, invites potential applicants to request application packages for the particular grant category in which they are interested and then make their application for funding. A total of $1,312,500 is available for genetic projects under section 502(c)(1) and a total of $871,003 is available under section 502(c)(2)(B) for the research, training, and special projects described in the summary part of the notice. These funds will be utilized for new projects in these program areas.

Notice is herein also provided that additional funds totaling $1,744,622 have been made available for funding of projects under the ongoing priorities of section 502(a); that is, projects of regional and national significance that contribute to the improvement of services for mothers, children, and children with special health care needs; for research and training in maternal and child health; genetic diseases screening, testing, counseling and information services; and hemophilia diagnosis and treatment projects. Because of the extremely limited time available for processing and reviewing grant applications in this fiscal year, these funds will be used to provide funding for high quality projects approved but not funded during the recently completed review cycle. No new project applications will be accepted for these funds.

The department will review applications for funds under sections 502(c)(1) and 502(c)(2)(B) as competing applications and will fund those which are consistent with the statutory purpose of improving child health and, in the Department's view, will best promote improvements in child health care.

In accordance with the statute, training grants may be made only to public or nonprofit private institutions of higher learning and research grants may be only to public or nonprofit private institutions of higher learning or to nonprofit agencies and organizations engaged in research or in maternal and child health or crippled children's programs. Any public or private entity including an Indian tribe or tribal organization (as defined at 25 U.S.C. 450b) is eligible to apply for grants for genetic disease testing and special maternal and child health improvement grants.

The regulations implementing this program are codified at 42 CFR Part 51a. Applicants should note that § 51a.4 of the regulation requires the submission of a budget and narrative plan including the applicant's past attempts and future plans to secure other sources of funding. (This requirement is approved by the Office of Management and Budget under control number 0915–0050).

Other Award Information

The MCH Federal Set-Aside Program has been determined to be a program which is not subject to the provision of Executive Order 12372 concerning intergovernmental review of Federal programs.

The MCH program is listed as No. 13.110 in the OMB Catalog of Federal Domestic Assistance.

Dated: July 14, 1987.

David N. Sundwall,

Administrator.

[FR Doc. 87–17700 Filed 8–4–87; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974—Establishment of New Notice of System of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior proposes to establish a new notice describing a system of records maintained by the

Bureau of Indian Affairs (BIA). The notice is titled "Indian Electric Power Utilities—Interior, BIA–26", and documents an existing system of records containing information on power service provided to the public from electricity generated at Indian electric power utilities. The new notice is published in its entirety below.

As required by section 3 of the Privacy Act of 1974, as amended (5 U.S.C. 552a(o)), the Office of Management and Budget, the President of the Senate, and the Speaker of the House of Representatives have been notified of this action.

5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment. The Office of Management and Budget, in its Circular A–130, requires a 60-day period to review such proposals. Therefore, written comments on this proposal can be addressed to the Department Privacy Act Officer, Office of the Secretary (PMA), Room 7357, Main Interior Building, U.S. Department of the Interior, Washington, DC 20240. Comments received on or before October 5, 1987, will be considered. The notice shall be effective as proposed without further notice at the end of the comment period, unless comments are received which would require a contrary determination.

Dated: July 27, 1987.

Oscar W. Mueller, Jr.,

Director, Office of Management Analysis.

INTERIOR/BIA–26

SYSTEM NAME:

Indian Electric Power Utilities—Interior, BIA–26.

SYSTEM LOCATIONS:

(1) Colorado River Irrigation Project—Power Division; Route 1, Box 9–C; Parker, AZ 85344; (2) Flathead Indian Irrigation Project—Power Division; Box 890; Polson, Montana 59860; (3) San Carlos Indian Irrigation Project—Power Division; Box 250; Coolidge, Arizona 85228.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual Indians and non-Indians desiring electric power service for households, farms, small businesses and organizations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Electric power service requests and agreements; applications and contracts; applications and contracts for seasonal motors; special provisions to application agreement and billing records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Act of August 30, 1935 (49 Stat. 1039), the Act of May 25, 1948 (62 Stat. 269) and the Act of June 7, 1924 (43 Stat. 476).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records is to identify the recipient(s) of the electric power services rendered and the person(s) responsible for monetary charges (service bill) associated with providing the desired benefits. Disclosure outside the Department of the Interior may be made (1) to the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (2) to disclose pertinent information to an appropriate Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, regulation, rule, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (3) to a Member of Congress from the record of an individual in response to an inquiry made at the request of that individual; (4) to the Department of the Treasury to effect payment to Federal, State, and local government agencies, nongovernmental organizations, and individuals; (5) to a Federal agency for the purpose of collecting a debt owed the Federal government through administrative or salary offset; and (6) to other Federal agencies conducting computer matching programs to help eliminate fraud and abuse and to detect unauthorized overpayments made to individuals.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection 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:

Manual, application, agreement and contract files.

RETRIEVABILITY:

Indexed by individual name and account number.

SAFEGUARDS:

In accordance with 43 CFR 2.5.

RETENTION AND DISPOSAL:

Records retention and disposal in accordance with 15 BIAM Supplement 3, Schedule No. 1103–13, BIA Files Operation and Records Disposition Handbook.

SYSTEM MANAGER(S) AND ADDRESS:

(1) Power Manager, Colorado River Irrigation Project—Power Division; Route 1, Box 9–C; Parker, AZ 85344; (2) Power Manager, Flathead Indian Irrigation Project—Power Division; Box 890; Polson, Montana 59860; (3) Power Manager, San Carlos Indian Irrigation Project—Power Division; Box 250; Coolidge, Arizona 85228.

NOTIFICATION PROCEDURES:

To determine whether the records are maintained on you in this system, write to the pertinent System Manager. The request must meet the requirements of 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

To see your records, write to the pertinent System Manager. The request must meet the requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

To request corrections or the removal of material from your files, write to the pertinent System Manager. The request must meet the requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained, electric power service customers.

[FR Doc. 87–17703 Filed 8–4–87; 8:45 am]
BILLING CODE 4310–02–M

Bureau of Land Management

[CO–070–07–4212–13; C–43108]

Exchange of Lands in Pitkin, Grand, Eagle, and Garfield Counties, Colorado; Correction

AGENCY: Bureau of Lands Management, Interior.

ACTION: Notice of exchange of lands.

In notice document 87–10727 appearing on pages 17835 and 17836 in the issue of May 12, 1987, make the following corrections:

1. Disposal Parcel 113—The acreage is changed to "184.76 acres."

2. Disposal Parcel 310—The description should read "Section 30, lots 3, 4, 5, 6, and SE¼NW¼, and Section 25, SE¼NE¼, NE¼SE¼."

3. Disposal Parcel 92—The acreage is changed to "7.89 acres."

4. Tyler Mountain Parcel—The description should read "T. 3 N., R. 81 W., 6th P.M., Section 29, NE¼SE¼, and Section 17, SW¼NW¼."

5. Parcel B—The description should read "Section 30, lots 5, 6, 7, 8, 9, 10, 11, 12, S½NE¼, N½SE¼ and SW¼SE¼."

Bruce Conrad,

District Manager, Grand Junction District.

[FR Doc. 87–17704 Filed 8–4–87; 8:45 am]

BILLING CODE 4310–JB–M

[CO–920–07–4121–02]

Meeting of the Green River–Hams Fork Regional Coal Team and Request for Public Comment on the Long-Range Market Analysis for the Region; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Green River-Hams Fork Regional Coal Team (RCT) will meet to consider the need for new federal coal leasing in the region.

DATES: The Green River-Hams Fork Regional Coal Team will meet on Friday, October 9, 1987, at 9:00 a.m. To ensure that they receive full consideration, comments on the long-range market analysis for the region should be submitted to Betsy Daniel at the address below by C.O.B., Monday, September 22, 1987. Comments received after the September 22 deadline but before the RCT meeting will be made available after to members of the RCT for consideration as time permits.

ADDRESSES: The meeting will be held at the Clarion Hotel, 3203 Quebec Street, Denver, Colorado 80207 telephone (303) 321–3333. Copies of the long-range market analysis for the Green River-Hams Fork Region may be obtained from the Public Room of the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, CO 80215. Telephone (303) 236–2100 or (FTS) 776–2100.

FOR FURTHER INFORMATION CONTACT: Betsy Daniel, Green River-Hams Fork Project Manager, Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215. Telephone (303) 236–1778 or (FTS) 776–1778.

SUPPLEMENTARY INFORMATION:

The charter for the Green River-Hams Fork Regional Coal Team was approved by the Secretary of the Interior on March 26, 1986. This is the first meeting of the regional coal team since approval of the charter.

At this initial meeting, the regional coal team will consider various options regarding new federal coal leasing in the region. The options identified include: (1) Initiating a new round of activity planning or resuming the round II regional coal activity planning process which was suspended in July of 1983; (2) decertifying some portion or all of the region and leasing in response to applications filed under the regulations contained in 43 CFR 3425.1–5; and, finally, (3) maintaining the regional activity planning option without either initiating or resuming activity planning, leasing only in response to emergency lease applications meeting the criteria of 43 CFR 3425.1–4. The public will be provided with opportunities to comment on the appropriateness of the available options at the regional coal team meeting.

Following is a preliminary meeting agenda:

I. Introductions
II. Approval of Minutes
III. Approval of Agenda
IV. Updates
  A. Geographic Information Systems
  B. Technical Investigations
  C. Other Studies
  D. Current Levels of Production
  E. Pending Lease Actions
    1. Emergency Lease Applications
    2. Preference Right Lease Applications
  F. Lease Relinquishments
  G. Round 2 Tracts
V. Regional Coal Team Charter
VI. Long-Range Market Analysis
  A. Summary of Public Comment
  B. Additional RCT/Public Comment
VII. Activity Planning in the Green River-Hams Fork Region
  A. Options
    1. Initiate Regional Activity Planning
    2. Defer Regional Activity Planning and Continue Leasing Under the Emergency Leasing Criteria
    3. Decertify the Region and Lease Only in Response to Applications
  B. Public and RCT Discussion
  C. RCT Recommendation of Preferred Alternative
  D. Actions and Schedules Necessary to Implement the Preferred Alternative
VIII. Data Adequacy

On and after September 23, 1987, copies of the written comments received on the long-range market analysis will be available for review from 10 a.m. to 4 p.m., in the Public Room of the Colorado State Office at the address above. In addition, a summary of all public comment received on the long-range market analysis will be provided to the RCT members on Monday, October 5, 1987, and will be available to the public on that date, again, on request to the Public Room of the Colorado State Office. Copies of the public comment summary will also be available at the RCT meeting.

Date: July 30, 1987.

Neil F. Morck,

State Director.

[FR Doc. 87–17711 Filed 8–4–87; 8:45 am]

BILLING CODE 4310–JB–M

National Park Service

Yellowstone National Park; Commercial Traffic Regulations

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the National. Park Service, Yellowstone National Park, has scheduled three meetings for the purpose of obtaining public response concerning the regulation of commerical traffic on that portion of U.S. Highway 191 which passes through Yellowstone National Park.

DATES: The first public meeting is scheduled for September 4, 1987, at Big Sky, Montana. Two additional meetings are planned, one on September 19, 1987, in West Yellowstone, Montana, and one on September 30, 1987, in Bozeman, Montana.

FOR FURTHER INFORMATION CONTACT: Superintendent, Yellowstone National Park, Yellowstone National Park, Wyoming, 82190; telephone 307–344–7381, (FTS) 585–0011.

Jack W. Neckels,

Acting Regional Director, Rocky Mountain Region.

[FR Doc. 87–17619 Filed 8–4–87; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-271]

Import Investigation; Certain Buoyant Metallized Balloons

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on June 26, 1987, under section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, on behalf of Continental American Corporation, 555 North Woodlawn, Wichita, Kansas 67208 and Gerald L. Hurst, 1401 Spring Garden Road, Austin, Texas 78746. A supplement to the complaint was filed on July 13, 1987. The complaint, as supplemented, alleges unfair methods of competition and unfair acts in the importation of certain buoyant metallized balloons, and in their sale, by reason of alleged direct and induced infringement of at least claim 1 of U.S. Letters Patent 4,077,588. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainants requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and a permanent cease and desist order.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Gertler, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-523-0115.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on July 27, 1987, Ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation into the United States of certain buoyant metallized balloons, or in their sale, by reason of alleged direct and induced infringement of claim 1 of U.S. Letters Patent 4,077,588, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

Continental American Corporation, 555 North Woodlawn, Wichita, Kansas 67208

Gerald L. Hurst, 1401 Spring Garden Road, Austin, Texas 78746

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Pacific Balloon Manufacturing Company, 2454 Mariondale Avenue, Los Angeles, California 90032

Bernhardt-Case, Inc., 1187 Coast Village Road, No. 1, Suite 201, Santa Barbara, California 93108

You Chang Balloon Manufacturing Company, Suite 1102, Manhattan Hotel, 13-3 Yeoeuido-Dong, Yeongdeungpo-ku, P.O. Box 406, Yeoeuido, Seoul 150, South Korea.

(c) Jeffrey L. Gertler, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 701 E Street NW., Room 125, Washington, DC 20436, shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210-21). Pursuant to § 201-16(d) and 210.21(a) of the rules (19 CFR 201-16(d) and 210.21(a)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, DC 20436, telephone 202-523-0471. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: July 28, 1987.

[FR Doc. 87-17780 Filed 8-4-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-272]

Import Investigation; Certain Electronic Chime Modules

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on June 30, 1987, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Lectron Products, Inc., 1400 South Livernois, Rochester Hills, Michigan 48308. The complaint was supplemented on July 14, 15, and 17, 1987. The complaint, as supplemented, alleges unfair methods of competition and unfair acts in the importation into the United States of certain electronic chime modules, and in their sale, by reason of alleged direct infringment of (1) at least claims 1-2, 6-10, 12, 14-16, and 18-25 of U.S. Letters Patent 4,286,257; and (2) at least claims 10, 11, and 15 of U.S. Letters Patent 4,183,278. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to substantially injure an industry, efficiently and economically operated, in the United States

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

FOR FURTHER INFORMATION CONTACT: Juan Cockburn, Esq., Office of unfair Import Investigations, U.S. International Trade Commission, telephone 202-523-1272.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation: Having considered the complaint, the U.S.

International Trade Commission, on July 30, 1987, Ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation into the United States of certain electronic chime modules, or in their sale, by reason of alleged direct infringement of (1) claims 1–2, 6–10, 12, 14–16, or 18–25 of U.S. Letters Patent 4,286,257; or (2) claims 10, 11 or 15 of U.S. Letters Patent 4,183,278, the effect or tendency of which is to substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is Lectron Products, Inc., 1400 South Livernois, Rochester Hills, Michigan 48308.

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Modu-Tronics, Inc., 710 Progress Avenue, Scarborough, Ontario N1H 2Y3, Canada

Invotec Instruments, Inc., 390 Tapscott Road, Scarborough, Ontario M1B 2Y6, Canada

Invotec Instruments, Inc., Invotronics Division, 19700 Haggerty Road, Livonia, Michigan 48154.

(c) Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 701 E Street NW., Room 128, Washington, DC 20436, shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to § 201.16(d) and 210.21(a) of the rules (19 CFR 201.16(d) and 210.21(a)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, DC 20436, telephone 202–523–0471. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: July 30, 1987.

[FR Doc. 87–17781 Filed 8–4–87; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 332–248]

Implications of Foreign-Trade Zones (FTZ's) for U.S. Industries and for Competitive Conditions Between U.S. and Foreign Firms (Supplement and Expansion)

AGENCY: International Trade Commission.

ACTION: Institution of investigation.

SUMMARY: Following receipt on July 6, 1987, of a request from the Committee on Ways and Means of the U.S. House of Representative. The Commission instituted investigation No. 332–248 under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g), for the purpose of gathering and presenting information on the implication of foreign-trade zones (including subzones) (FTZ's) for U.S. industries and for competitive conditions between U.S. and foreign firms. The Commission's investigation will examine all developments concerning issues covered in the Commission's previous investigation, No. 332–165 (The Implications of Foreign-Trade Zones for U.S. Industries and for Competitive Conditions between U.S. and Foreign Firms, USITC Pub. 1496, February 1984), that have occurred since it was completed and will expand it to cover certain additional information requested by the Committee, primarily concerning subzones.

EFFECTIVE DATE: July 28, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Carl F. Seastrum, General Manufactures Division, U.S. International Trade Commission, Washington, DC 20436 (telephone 202–724–1733).

SUPPLEMENTARY INFORMATION: In addition to providing a supplement to the previous report, the Commission was specifically asked to expand the study to place focus on subzones so that the Committee can analyze them and assess their implications for the U.S. economy and U.S. International trade. In this connection, the report will have an account of trends since the previous study in the usage of subzones; an account of the Foreign-Trade Zones Board activities, focusing on subzones; an account of safeguards in the system, including the effectiveness of customs procedures in detecting such abuses as evasion of quotas, an circumvention of countervailing and antidumping orders and country of origin provisions; an analysis, to the extent possible, of the economic effects of subzone status on employment, tariff revenue, state economic development, U.S. investment levels, and on international trade; and a description of U.S. industry concerns (including both user industries and affected industries, such as suppliers) about subzones (the previous study invited comments on FTZ's in general and thus such comments are solicited within the scope of the request for a supplement), and an assessemnt of these recommendations for change.

The Committee requested that the Commission forward its support no later than January 29, 1988.

Written Submissions: To accelerate delivery of this report to the Committee for use in its hearings, the Committee asked the Commission to rely on written submissions from the public rather than to hold separate hearings. Thus interested persons are invited to submit written statements concerning the investigation. Such submissions should be received by the close of business on November 16, 1987. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practices and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submission should be addressed to the Secretary,

United States International Trade Commission, 701 E Street NW., Washington, DC 20436.

Hearing impaires individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 724–0002.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: July 30, 1987.

[FR Doc. 87–17787 Filed 8–4–87; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–242]

Commission Decision on Whether To Review Initial Determination, Specification of Issues for Review, and Schedule for Filing of Written Submissions on Review and on Remedy, the Public Interest, and Bonding; Certain Dynamic Random Access Memories, Components Thereof and Products Containing Same

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has determined to review the administrative law judge's initial determination (ID) that there is a violation of section 337 of the Tariff Act of 1930 in the above-captioned investigation with respect to certain issues, has requested written submissions with respect to specific questions, has determined to review and vacate certain findings and conclusions in the ID, and has determined not to review the ID with respect to certain other issues.

Authority: The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in §§ 210.53–.56 of the Commission's rules of practice and procedure (19 CFR 210.53–210.56).

FOR FURTHER INFORMATION CONTACT: Judith M. Czako, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0359.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 19, 1986, in response to a complaint filed by Texas Instruments, Inc. (TI) of Dallas, Texas on February 7, 1986, to determine whether there is a violation of section 337 (19 U.S.C. 1337) and 19 U.S.C. 1337a in the importation and sale of certain dynamic random access memories (DRAMs). The complaint alleged that such importation and sale by the nineteen named respondents constitutes unfair methods of competition and unfair acts by reason of infringement of certain claims of ten U.S. patents owned by TI. The complaint further alleged that the effect or tendency of these unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States. During the course of the proceedings, thirteen of the original nineteen respondents were terminated from the investigation on the basis of license and settlement agreements.

On May 21, 1987, the presiding administrative law judge (ALJ) issued her initial determination (ID), finding that there is a violation of section 337 and 19 U.S.C. 1337a in the importation and sale of certain DRAMs by two of the remaining respondents, and that there is no violation of section 337 and 19 U.S.C. 1337a in the importation and sale of certain DRAMs by the other four remaining respondents. Complainant, the remaining respondents, and the Commission investigative attorneys filed petitions for review of various portions of the ID, and responses thereto. Subsequently, the Commission determined to terminate respondents Hitachi, Ltd. and Hitachi America, Ltd. from the investigation on the basis of a settlement and license agreement.

Having examined the record in this investigation, including the ID, the petitions for review, and the responses thereto, the Commission has concluded that there are issues that warrant review. Specifically, the Commission will review the following issues. As noted below, the Commission is limiting written submissions to specific questions raised by the issues to be reviewed.

1. Whether U.S. Letters Patent 3,716,764 (the '764 patent) is valid, and infringed by the accused imports. Review is limited to the validity and infringement issues arising out of the interpretation of the term "central region" in the patent claims, and the question of infringement under the doctrine of equivalents.

2. Whether U.S. Letters Patent 3,940,747 is infringed by the accused imports. Review is limited to the question of infringement under the doctrine of equivalents.

3. Whether U.S. Letters Patent 4,081,701 is infringed by the accused imports.

4. Whether U.S. Letters Patent 4,543,500 (the '500 patent) and U.S. Letters Patent 4,533,843 (the '843 patent) are valid, and infringed by the accused imports.

5. Whether respondent NEC Corporation is licensed under the '500 and '843 patents.

6. Whether complainant's activities, and those of its licensees, with respect to the patents in issue constitute an industry or industries, efficiently and economically operated, in the United States.

7. Whether the infringing imports have the effect or tendency to substantially injure a domestic industry or industries.

The Commission has further determined to review and vacate the ID with respect to the ALJ's determinations concerning the issue of double-patenting respecting U.S. Letters Patent 4,043,027, and infringement of claims 5, 8, and 15 of U.S. Letters Patent 4,240,092. In addition, the Commission has determined to review the ID with respect to the ALJ's findings and conclusions concerning respondents Hitachi, Ltd. and Hitachi America, Ltd., and vacate such findings and conclusions in light of the settlement and license agreement between Hitachi, Ltd. and complainant Texas Instruments, Inc.

The Commission has determined not to review the remainder of the ID, which thereby becomes the determination of the Commission.

If the Commission finds that a violation of section 337 has occurred, it may issue (1) an order which could result in the exclusion of the subject articles from entry into the United States and/or (2) cease and desist orders which could result in one or more respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions which address the form of remedy, if any, which should be ordered.

If the Commission concludes that a violation of section 337 has occurred and contemplates some form of remedy, it must consider the effect of that remedy upon the public interest. The factors which the Commission will consider include the effect that an exclusion order and/or cease and desist order(s) would have upon (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the U.S. production of articles which are like or directly competitive with those which are the subject of the investigation, and (4) U.S. consumers. The Commission is therefore interested in written submissions which address the aforementioned public interest factors in the context of this investigation.

If the Commission finds that a violation of section 337 has occurred

and orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is thereby interested in receiving written submissions concerning the amount of the bond which should be imposed.

Written Submissions: While the Commission has determined that no hearing will be held in this investigation, the parties to the investigation and interested Government agencies are encouraged to file written submissions on the issues under review and on the issues of remedy, the public interest, and bonding. Complainant and the Commission investigative attorneys are also requested to submit a proposed exclusion order and/or proposed cease and desist order(s) for the Commission's consideration. Persons other than the parties and Government agencies may file written submissions addressing the issues of remedy, the public interest, and bonding. Submissions on the issues of remedy, the public interest, and bonding, are limited to fifty (50) pages, excluding exhibits in support thereof, and twenty-five (25) pages in response, excluding exhibits in support thereof. Exhibits should be limited to the extent possible, and where appropriate, may simply reference exhibits and testimony adduced during the trial before the ALJ.

In connection with its review of the issues specified above, the Commission wishes to receive written submissions which are responsive to the following questions *only*. The submissions should be concise, and thoroughly referenced to the record in this investigation, including references to specific exhibits and testimony. To the extent possible, the parties should reference arguments made in the pre- and/or post-hearing briefs filed with the ALJ concerning these questions. Arguments referenced in this manner need not be repeated in full, but may be made in summary form. The submissions are limited to thirty (30) pages with respect to the patent issues (questions 1–5 below), and an additional seventy (70) pages with respect to the economic issues (questions 6–15 below). Submissions in response are limited to fifteen (15) pages with respect to the patent issues, and an additional thirty-five (35) pages with respect to the economic issues. The Commission does not wish to receive submissions on the infringement issues.

1. With respect to the interpretation of the claims of the '764 patent, the parties should address the proper definition of the phrases "central region" and "central region of the assembly." The parties should specifically address whether the ALJ's definition of those phrases is supported by the record.

2. With respect to the ALJ's decision that the '500 patent is unenforceable the parties should address the following issues:

(a) Was the due process/unenforceability issue raised by the parties prior to the ALJ's issuance of the ID?

(b) Did the parties put on evidence at the evidentiary hearing regarding TI's contention that the scope of claims 6 and 7 of the '500 patent does not extend to DRAMs which at no time during the active cycle raise the word line voltage to a level which is greater than the supply voltage level?

(c) If the respondents had been apprised of TI's corrected answer to NEC Interrogatory No. 55 (Eighth Set) prior to the hearing, would the presentation of their case have differed? If yes, explain how respondents' case would have differed from that presented?

(d) Were respondents prejudiced by TI amending its answer to Interrogatory No. 55? In answering this question specifically address whether respondents were prejudiced in view of the prosecution history of the '500 patent.

(e) In the event that the Commission determines that any party was denied due process, or denied any statutory rights or any rights under the Commission's rules, what is the appropriate remedy?

3. The parties should discuss the effect of the terminal disclaimers filed by TI with respect to the '500 and '843 patents on the existence of any license.

4. The parties should address whether the filing of the terminal disclaimers by TI amounts to an admission that the inventions claimed in the '500 and '843 patents are obvious variants of the invention claimed in U.S. Letters Patent 4,239,993 (the '993 patent).

5. The parties should address whether the effect of the filing of the terminal disclaimers by TI respect to the '500 and '843 patents results in the '993, '500, and '843 patents being merged into one patent, regardless of whether there is actually double patenting among those patents. *In re Braithwaite*, 154 U.S.P.Q. 29 (CCPA 1967).

6. With respect to the domestic industry issue, the parties should address the legal and factual arguments concerning whether the definition of a single domestic industry producing DRAMs under multiple patents is appropriate in the circumstances of this case; the effect of such a determination on the existence of a domestic industry as of the date of filing of the complaint; and the effect of such a determination on the analysis of the efficient and economic operation of the domestic industry.

7. The parties should address whether the nature and significance of the domestic activities involved in the exploitation of the '764 patents are sufficient to constitute an industry in the United States.

8. The parties should address whether the existence of shut-down production capacity, sales from inventory, research and development, and service-related activities by Motorola are sufficient, under either a single-industry definition or a patent-based industries definition, to be included in the scope of the domestic industry(ies).

9. With respect to the value-added analysis in considering the nature and significance of domestic activities, the parties should address whether the inclusion of costs related to material, labor, marketing, capital, overhead, general and administrative expense, profit, research and development, and royalties from licensing is appropriate in the circumstances of this investigation, particularly in light of judicial and Commission precedent concerning the appropriate elements of value-added analysis.

10. The parties should address whether the nature and significance of domestic activities pertaining to the production of DRAMs whose front-end production takes place in complainant's foreign facilities is nonetheless sufficient to support the conclusion that such DRAMs are produced by a domestic industry.

11. With respect to the issue of substantial injury to the domestic industry, the parties should address whether infringing imports substantially injure a patent-based domestic industry practicing the '764 patent.

12. With respect to the issue of substantial injury to the domestic industry or industries, the parties should address whether infringing imports substantially injure separate patent-based domestic industries, as defined in the ID, including analysis of the condition of the respective industries and the casual nexus between infringing imports and the substantial injury to each such industry.

13. With respect to the issue of substantial injury to the domestic industry, the parties should address whether infringing imports substantially

injure a single domestic industry, including analysis of the casual nexus between infringing imports and the substantial injury, and a discussion of whether a sectoral or sub-industry analysis is legally valid and factually appropriate.

14. With respect to the issue of tendency to substantially injure the domestic industry and/or industries, the parties should discuss relevant conditions or circumstances, including foreign costs and production capacity, which might indicate capacity and intent to penetrate the U.S. market, and the potential volumes and effect of infringing imports.

15. With respect to the issue of effect or tendency to substantially injure the domestic industry or industries, the parties should discuss the volume and effect of infringing imports entered into the United States incorporated into downstream products and through the "gray market."

Written submissions on the issues enumerated above and on remedy, the public interest, and bonding, must be filed by August 3, 1987. Reply submissions on the enumerated issues and on remedy, the public interest, and bonding, must be filed by August 10, 1987.

Additional Information: Persons submitting written submissions must file the original document and 14 true copies thereof with the Office of the Secretary on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary to the Commission and must include a full statement on the reasons why the Commission should grant such treatment. Documents containing confidential information approved by the Commission for confidential treatment will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

Notice of this investigation was published in the **Federal Register** of March 19, 1986 (51 FR 9537).

Copies of all nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing-imparied individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Issued: July 24, 1987.

Stephen A. McLaughlin,

Acting Secretary.

[FR Doc. 87–17795 Filed 8–4–87; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–260]

Initial Determination Terminating Respondent on the Basis of Settlement Agreement; Certain Feathered Fur Coats and Pelts, and Process for the Manufacture Thereof

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: Hong Kong Tientsin Fur Co. Ltd. (Tientsin).

SUPPLEMENTARY INFORMATION: This investiation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the intitial determination. The initial determination in this matter was served upon the parties on July 30, 1987.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

By order of the Commission.

Issued: July 30, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87–17782 Filed 8–4–87; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–260]

Commission Decision Not To Review Initial Determination Terminating One Respondent; Certain Feathered Fur Coats and Pelts, and Process for the Manufacture Thereof

AGENCY: International Trade Commission.

ACTION: Nonreview of initial determination terminating the above-captioned investigation as to one respondent.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) granting a joint motion to terminate the investigation as to respondent Jindo Industries, Ltd. (Jindo) on the basis of a settlement and license agreement.

FOR FURTHER INFORMATION CONTACT: Randi S. Field, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–563–0261.

SUPPLEMENTARY INFORMATION: On November 10, 1986, David Leinoff and David Leinoff, Inc. (Leinoff), filed a section 337 complaint with the Commission alleging unfair methods of competition and unfair acts in the importation and sale of certain feathered fur coats and pelts. On the basis of that complaint, the Commission instituted the above-captioned investigation. The notice of investigation referred to the following unfair acts: (1) alleged infringement of claim 1 of U.S. Letters Patent 3,760,424. (the '424 patent), owned by Leinoff and (2) alleged manufacture abroad by a process which, if practiced in the United States, would infringe claim 5 of the '424

patent, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States. 51 FR 46944 (December 29, 1986). The Commission's notice of investigation listed eleven respondents that were alleged to be in violation of section 337.

On June 15, 1987, complainants and respondent Jindo filed a joint motion (Motion No. 260–17) to terminate the investigation as to Jindo on the basis of a settlement and license agreement.

On July 1, 1987, the presiding administrative law judge (ALJ) issued an ID (Order No. 21) granting joint Motion No. 260–17 and terminating the investigation as to Jindo on the basis of the settlement and license agreement.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rules 210.53–.55 (19 CFR 210.53–210.55).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–1626. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Issued: July 28, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87–17783 Filed 8–4–87; 8:45 am]

BILLING CODE 7020–02–W

[Investigations Nos. 701–TA–288 and 289 (Preliminary) and 731–TA–381 and 382 (Preliminary)]

Import Investigation; Certain Granite From Italy and Spain

AGENCY: International Trade Commission.

ACTION: Institution of preliminary countervailing duty and antidumping investigations and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of countervailing duty investigations Nos. 701–TA–288 and 289 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) and of preliminary antidumping investigations Nos. 731–TA–381 and 382 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Italy and Spain of certain granite,[1] suitable for use as monumental, paving, or building stone, the foregoing pitched, lined, pointed, hewn, sawed, dressed, polished, or otherwise manufactured, provided for in item 513.74 of the Tariff Schedules of the United States, that is alleged to be subsidized by the Governments of Italy and Spain and sold in the United States at less than fair value. As provided in sections 703(a) and 733(a), the Commission must complete preliminary countervailing duty and antidumping investigations in 45 days, or in this case by September 11, 1987.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: July 28, 1987.

FOR FURTHER INFORMATION CONTACT: Rebecca Woodings (202–523–0282), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–523–0161.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on July 28, 1987, by the Ad Hoc Granite Trade Group.

Participation in the Investigations

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 9:30 a.m. on August 18, 1987, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Rebecca Woodings (202–523–0282) not later than August 14, 1987, to arrange for their appearance. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written Submissions

Any person may submit to the Commission on or before August 20, 1987, a written statement of information pertinent to the subject of the investigations, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope

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[1] For the purposes of these investigations, the term "certain granite" refers to products ⅜ inch to 2-½ inches in thickness and includes rough sawed granite slabs; face finished granite slabs; and finished dimensional granite including, but not limited to, building facing, flooring, tiles, and crypt fronts; excluding monument stone, crushed granite, and curbing.

and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: July 31, 1987.

[FR Doc. 87-17784 Filed 8-4-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-248]

Commission Decision To Extend the Deadline for Determining Whether To Review Final Initial Determination; Certain Plastic Fasteners and Processes for the Manufacture Thereof

AGENCY: International Trade Commission.

ACTION: Extension of deadline for deciding whether to review final initial determination.

SUMMARY: Notice is hereby given that the Commission has determined to extend until August 14, 1987, the deadline by which it must decide whether to review the final initial determination (ID) issued by the presiding administrative law judge (ALJ) in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Stephen A. McLaughlin, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0421.

SUPPLEMENTARY INFORMATION: On June 19, 1987, the presiding ALJ issued his final ID finding that there is no violation of section 337 in the importation and sale of certain plastic fasteners. The original deadline for deciding whether to review the ALJ's final ID was August 6, 1987.

This action is taken under authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.53(h) of the Commission's Rules of Practice and Procedure (19 CFR 210.53(h)).

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: July 30, 1987.

[FR Doc. 87-17785 Filed 8-4-87; 8:45 am]

BILLING CODE 7020-02-M

Dismissal of Request for Institution of a Section 751(b) Review Investigation; Certain Welded Carbon Steel Pipes and Tubes From Turkey

AGENCY: International Trade Commission.

ACTION: Dismissal of a request to institute a section 751(b) review investigation concerning the Commission's affirmative determinations in investigation No. 701-TA-253 (Final), Certain Welded Carbon Steel Pipes and Tubes from Turkey.

SUMMARY: The Commission determines, pursuant to section 751(b) of the Tariff Act of 1930 (19 U.S.C. 1675(b)) and rule 207.45 of the Commission's rules (19 CFR 207.45), that the request does not show good cause or changed circumstances sufficient to warrant institution of an investigation to review the Commission's affirmative determinations in investigation No. 701-TA-253 (Final), regardidng certain circular welded carbon steel standard and line pipes and tubes from Turkey.[1]

FOR FURTHER INFORMATION CONTACT: Daniel Leahy (202-523-1376), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the office of the Secretary at 202-523-0161.

SUPPLEMENTARY INFORMATION:

Background

On February 21, 1986, the Commission issued its determinations in investigation No. 701-TA-253 (Final), Certain Welded Carbon Steel Pipes and Tubes from Turkey, notice of which was published in the **Federal Register** of March 3, 1986 (51 FR 7342). The Commission determined that an industry in the United States was materially injured, or threatened with material injury, by reason of imports from Turkey of welded carbon steel standard pipes and tubes which had been found by the Department of Commerce to be subsidized by the Government of Turkey. The Commission also determined that an industry in the United States was threatened with material injury by reason of imports from Turkey of welded carbon steel line pipes and tubes which had been found by the Department of Commerce to be subsidized by the Government of Turkey. On March 7, 1986, the Department of Commerce issued a countervailing duty order, notice of which was published in the **Federal Register** (51 FR 7984).

On April 24, 1987, the Commission received a request filed by the Government of Turkey, pursuant to section 751(b) of the Act, to review its affirmative determinations in investigation No. 701-TA-253 (Final). On May 28, 1987, the Commission requested written comments in the **Federal Register** (52 FR 19933) as to whether the changed circumstances alleged by the petitioner were sufficient to warrant a review investigation. Comments were supplied by counsel on behalf of the standard and line pipe subcommittees of the Committee on Pipe and Tube Imports (CPTI), and the individual producer members of these subcommittees, opposing the institution of a review investigation. These parties were the petitioners in the original investigation (No. 701-TA-253 (Final)). Comments were also received from counsel on behalf of the Government of Turkey supporting the institution of a review investigation.

After consideration of the request for review and the responses to the notice inviting comments, the Commission has determined, pursuant to 19 U.S.C. 1675(b) and rule 19 CFR 207.45, that the request does not show good cause or changed circumstances sufficient to warrant institution of a review investigation regarding circular welded

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[1] The term "welded carbon steel standard pipes and tubes" covers welded carbon steel pipes and tubes of circular cross section, 0.375 inch or more but not over 16 inches in outside diameter, provided for in items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925 of the Tariff Schedules of the United States Annotated (TSUSA). The term "welded carbon steel line pipes and tubes" covers welded carbon steel pipes and tubes of circular cross section, with walls not thinner than 0.065 inch, 0.375 inch or more but not over 16 inches in outside diameter, conforming to American Petroleum Institute specifications for line pipe, provided for in TSUSA items 610.3208 and 610.3209.

carbon steel pipes and tubes from Turkey. A Memorandum Opinion, setting forth reasons for dismissing this request, will be made available in the Secretary's office.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: July 29, 1987.

[FR Doc. 87-17786 Filed 8-4-87; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31085]

Rocky Mountain Railcar and Railroad, Inc.; Operation Exemption; Corps of Engineers Railroad

Rocky Mountain Railcar and Railroad, Inc. has filed a notice of exemption to operate rail lines of the U.S. Department of the Army located primarily within the Rocky Mountain Arsenal, Adams County, CO. The lines consist of 8 main-line miles and 26 branch-line miles that connect at milepost 632.0 with Union Pacific Railroad Company's main line between Denver, and Limon, CO, and at milepost 553.2 with Burlington Northern Railroad Company's main line between South Denver, CO, and McCook, NE. Any comments must be filed with the Commission and served on Ron Maynard, President; Rocky Mountain Railcar and Railroad, Inc.; P.O. Box 39164; Denver, CO 80239; (303) 286-8636.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.[1]

Decided: July 24, 1987.

By the Commission, Jane F. Mackall, Director, Office of Procedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-17529 Filed 8-4-87; 8:45 am]

BILLING CODE 7035-01-M

[1] The Railway Labor Executives' Association (RLEA) filed an unsupported request for labor protection, claiming that this transaction is subject to the mandatory labor protection provisions of 49 U.S.C. 11347. Since this transaction involves an exemption from 49 U.S.C. 10901, only a showing of exceptional circumstances will justify the imposition of labor protective conditions. RLEA's request is denied because the requisite showing has not been made. *See Class Exemption—Acq. & Oper. of R. Lines under 49 U.S.C. 10901*, 1 I.C.C. 2nd 810 (1985).

[Docket No. AB-167 (Sub-1085X)]

Consolidated Rail Corp.; Exemption; Abandonment in Middlesex County, NJ

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by the Consolidated Rail Corporaiton of a 0.52-mile portion of the Sayreville Running Track between milepost 11.73± on the south side of Georges Road to milepost 12.25G6# , including all wye trackage at the terminus of the subject line, in New Brunswick, Middlesex County, NJ, subject to labor and historic preservation conditions.

DATES: This exemption will be effective on September 4, 1987. Petitions to stay must be filed by August 20, 1987, petitions for reconsideration must be filed by August 31, 1987.

ADDRESSES: Send pleadings referring to Docket No. AB-167 (Sub-No. 1985X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representatives: Charles E. Mechem, 1138 Six Penn Center Plaza, Philadelphia, PA 19103-2959.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 202-289-4357.

Decided: July 28, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87-17761 Filed 8-4-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

Competitive Impact Statements and Proposed Consent Judgments; United States v. Hughes Tool Co., et al.

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (a) and (b), the United States publishes below the comment it received on the Competitive Impact Statement and proposed Final Judgment in *United States* v. *Hughes Tool Company, et al.*, Civil No. 87-0932 JHP, United States District Court for the District of Columbia, together with the response of the United States to this comment.

Copies of the response and the public comment are available on request for inspection and copying in Room 3233, Antitrust Division, Department of Justice, Washington, DC, and for inspection at the Office of the Clerk of the United States District Court for the District of Columbia.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

United States of America, plaintiff, v. Hughes Tool Company and Baker International Corporation, defendants.

[Civil No. 87-0932]

Filed: April 3, 1987.

Plaintiff's Response to Comment on the Proposed Final Judgment

Plaintiff, the United States, pursuant to section 2(d) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)-(h), files this Response to Comments on the Proposed Final Judgment submitted for entry in this civil antitrust proceeding.

On April 3, 1987, the Plaintiff filed a civil antitrust Complaint under section 15 of the Clayton Act, 15 U.S.C. 25, alleging that the proposed merger of Hughes Tool Company ("Hughes") and Baker International Corporation ("Baker") would constitute a violation of section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleged, in part, that the effect of the merger may be substantially to lessen competition in the manufacture for sale in the United States of tricone rock bits (U.S. tricone rock bit market), which Hughes manufactured and sold through its Hughes Tool Division and which Baker manufactured and sold through its wholly-owned subsidiary, Reed Tool Company. The Complaint sought, among other relief, an injunction preventing defendants from combining their tricone rock bit businesses in any manner. On April 3, 1987 the plaintiff and defendants filed a stipulation by which they consented to the entry of a proposed Final Judgment designed to eliminate the anticompetitive effects of the merger.[1] Under the proposed Final Judgment, defendant Baker was required to sell its tricone rock bit business within six (6) months.[2]

[1] The proposed Final Judgment was published in the **Federal Register** on April 23, 1987, 52 FR 13533.

[2] On April 30, 1987, Baker sold its tricone rock bit business to Camco, Incorporated.

Plaintiff received one comment on the proposed Final Judgment, submitted on behalf of Smith International, Inc. (Smith), one of the defendants' principal competitors in the U.S. tricone rock bit market.[3] As discussed in the Competitive Impact Statement,[4] prior to the filing of the proposed Final Judgment, plaintiff considered a proposal by Smith that the defendants be required to delay their merger pending resolution of defendant Hughes' claim as a judgment creditor in the Chapter 11 reorganization proceeding in which Smith was then involved.[5] Alternatively, Smith asked that the merger be delayed until the relief required in the proposed Final Judgment was approved by the Court. Smith contended that Hughes had engaged in a series of anticompetitive actions during the reorganization proceeding and that the relief proposed was necessary to preserve Smith as a significant competitor in the tricone rock bit industry. Plaintiff rejected Smith's proposals because we concluded that there was not a sufficient nexus between the relief sought by Smith and the anticompetitive effects that formed the basis of our challenge to the merger. 52 FR 13542.

On June 9, 1987, Smith, a letter from its counsel, informal plaintiff that it had reached a stettlement with Baker Hughes, incorporated[6] regarding the Hughes judgment against Smith. Smith stated that as a result of the settlement, it was withdrawing its objection to the merger of Baker and Hughes. It is not clear that this letter is intended by Smith to be a comment on the proposed Final Judgment requiring a response by plaintiff. Nontheless, because the letter was received during the comment period and relates to the subject matter of the action in which the proposed Final Judgment was entered, plaintiff is treating Smith's letter as a commnt on the proposed Final Judgment.

Given that Smith's letter simply withdraws its earlier objections, Plaintiff sees no need to respond to Smith's comment beyond filing it with the Court.

Plaintiff received no other comments on the proposed Final Judgment.

Respectfully submitted,

Donald A. Kaplan,

Patricia G. Chick,

Donna N. Kooperstein,

Philip J. Thompson,

Attorneys, U.S. Department of Justice, Antitrust Division, Judiciary Center Building, Room 9822, 555 Fourth Street, NW., Washington, DC 20001, (202) 724-6464.

Dated: July 23, 1987.

June 9, 1987.

James R. Weiss, Esq.,
Chief, Transportation, Energy and Agriculture Section, Antitrust Division, U.S. Department of Justice, Judiciary Center Bldg., Rm. 9403, 555 Fourth Street, NW., Washington, D.C. 20001

Re: *United States* v. *Hughes Tool Co., et al.* (D.D.C. Civil Action No. 87-0932)

Dear Mr. Weiss: In previous communications with the Department, Smith International, Inc. has expressed concerns about the antitrust implications of the merger of Hughes Tool Co. and Baker International, Inc., as conditioned in the proposed Final Judgment. Smith's concerns about its own survival as a viable competitor and the resulting effect on a competitive market for tricone drill bits were driven by Smith's being in bankruptcy as a result of a patent judgment obtained by its principal creditor, Hughes.

Smith is pleased to report that the judgment that Baker Hughes holds against Smith has been settled, subject to the entry of an appropriate order by the Bankruptcy Court. (Attached is a copy of the press release announcing the settlement.) This settlement should clear the way for Smith promptly to file a plan of reorganization and emerge from bankruptcy as a viable competitor.

Because of this development, Smith withdraws its objections to the merger of Baker and Hughes.

Sincerely yours,

Howard J. Trienens.

HJT:ez

cc: Michael N. Sohn, Esq.
Counsel for Baker Hughes.

Smith International Announces Settlement with Baker Hughes

Newport Beach, California (June 5, 1987) . . . Smith International, Inc. (NYSE, PSE: SII) announced today that it has agreed with Baker Hughes, Incorporated to settle litigation which had resulted in the entry of a $205 million judgment against Smith for patent infringement. Appeals taken by each party to this judgment are pending before a Federal appeals court. Under the settlement, which is contingent on a stay of the pending appeals and consummation of a plan of reorganization in Smith's Chapter 11 proceeding, Smith would pay Baker Hughes a total of $95 million in cash and notes.

The judgment was entered in March 1986 in patent litigation between Smith and Hughes Tool Company, which is now a subsidiary of Baker Hughes. As a result of this judgment, Smith filed a petition for reorganization under Chapter 11 of the Bankruptcy Code, which is pending in the U.S. Bankruptcy Court for the Central District of California.

Smith International is a worldwide supplier of products and services to the oil and gas drilling, completion and production industries.

For further information, contact Loren Carroll, Vice President and Chief Financial Officer at 714/752-9000.

Certificate of Service

I hereby certify that I caused a copy of the foregoing to be mailed, first class mail, postage prepaid, this twenty-third day of July, 1987, to:

Michael N. Sohn, Esquire, Arnold & Porter, 1200 New Hampshire Avenue NW., Washington, DC 20036

John W. Ebert, Esquire, Andrews & Kurth, 4200 Texas Commerce Tower, Houston, Texas 77002

Howard J. Trienens, Esquire, Sidley & Austin, One First National Plaza, Chicago, Illinois 60603.

Donna N. Kooperstein.

[FR Doc. 87-17710 Filed 8-4-87; 8:45 am]
BILLING CODE 4410-01-M

[3] The comment is attached to this response.

[4] Competitive Impact Statement, at 20-21, 52 FR 13542 (April 23, 1987).

[5] Prior to the proposed merger, defendant Hughes obtained a judgment against Smith for $205 million for Smith's alleged infringement of Hughes' patent covering an O-Ring seal used in tricone rock bits. As a result of Hughes' judgment againt it, Smith entered Chapter 11 reorganization proceedings in which Hughes participated as an unsecured judgment creditor.

[6] Subsequent to the filing of the Complaint and proposed Final Judgment, and subject to conditions set forth in the proposed Final Judgment and a Hold Separate Order entered by the Court on April 3, 1987 (52 FR 13542-46), Baker and Hughes completed their merger to form Baker Hughes, Incorporated, which, as successor to Hughes, held the patent infringement judgment against Smith.

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. M-87-162-C]

Petition for Modification of Application of Mandatory Safety Standard; Colket Coal Co.

Colket Coal Company, P.O. Box 32, Saint Clair, Pennsylvania 17970 has filed a petition to modify the application of 30 CFR 75.1714 (self-contained self rescuers) to its Sharp Mount No. 2 Mine (I.D. No. 36-07761) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that each operator make available to each person who goes underground a self-contained self-rescue device approved by the Secretary which

is adequate to protect such persons for one hour or longer.

2. The mine is always damp to wet. There is only one piece of electrical equipment, which is a small pump located at the foot of the slope.

3. Petitioner states that the distance from the mine portal to the actual working face is less than 2,000 feet. The mine can be evacuated in less than 15 minutes.

4. Petitioner states that the devices are too heavy, bulky, and cumbersome to be worn while working or in the narrow confines of the slope gun boat which serves as a mantrip at the mine.

5. Sections of the mine are subjected to freezing temperatures making constant availability of the devices questionable. In addition, the wet mine conditions make it difficult to locate a suitable, dry storage location for the self-rescuers.

6. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 4, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Date: July 24, 1987.

[FR Doc. 87-17726 Filed 8-4-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-150-C]

Petition for Modification of Application of Mandatory Safety Standard; Cresent Development Co., Inc.

Cresent Development Company, Inc., 206 Seemont Drive, Kingwood, West Virginia 26537 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Baker No. 1 Mine (I.D. No. 46-07277) located in Preston County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the use of a locked padlock to secure battery plugs to machine-mounted battery receptacles on permissible, mobile battery-powered machines.

2. As an alternate method, petitioner proposes to use a spring-loaded metal locking device in lieu of padlocks. The spring-loaded device will be designed, installed and used to prevent the threaded signs that secure the battery plugs to the battery receptacles from unintentionally loosening and will be attached to prevent accidental loss. In addition, the fabricated metal brackets will be securely attached to the battery receptacles to prevent accidental loss of the brackets.

3. Petitioner states that the spring-loaded metal locking devices will be easier to maintain than padlocks because there are no keys to be lost and dirt cannot get into the workings as with a padlock.

4. Operators of permissible, mobile, battery-powered machines affected by this modification will be trained in the proper use of the locking device, the hazards of breaking battery-plug connections under load, and the hazards of breaking battery-plug connections in areas of the mine where electric equipment is required to be permissible.

5. For these reasons, petitioner requests a modification of the standards.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 4, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Date: July 24, 1987.

[FR Doc. 87-17727 Filed 8-14-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-158-C]

Petition for Modification of Application of Mandatory Safety Standard; CY Smith, Inc.

CY Smith, Inc., HC 81, Box 2114, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its No. 2 Mine (I.D. No. 15-15484), its No. 4 Mine (I.D. No. 15-15720) and No. 7 Mine (I.D. No. 15-15099) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous monitor, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous monitor will be available to assure that all coal hauling tractors will be equipped with a continuous monitor;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These

comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 4, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Date: July 30, 1987.

[FR Doc. 87-17728 Filed 8-4-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-167-C]

Petition for Modification of Application of Mandatory Safety Standard; Girdner Mining Co.

Girdner Mining Company, HC 73, Box 2086, Bryant Store, Kentucky 40921 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 1 (I.D. No. 15-14708) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous monitor, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximaterly 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous monitor will be available to assure that all coal hauling tractors will be equipped with a continuous monitor;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 4, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Date: July 30, 1987.

[FR Doc. 87-17729 Filed 8-4-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-178-C]

Petition for Modification of Application of Mandatory Safety Standard; Granny Rose Coal Co., Inc.

Granny Rose Coal Company, Inc., P.O. Box 1098, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 1 (I.D. No. 15-15732) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioners's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous monitor, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractors will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapsed time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous monitor will be available to assure that all coal hauling tractors will be equipped with a continuous monitor;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 4, 1987. Copies of the petition

are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Dated: July 29, 1987.

[FR Doc. 87-17730 Filed 8-4-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-166-C]

Petition for Modification of Application of Mandatory Safety Standard; Hubbs Creek Coal

Hubbs Creek Coal, P.O. Box 188, Rockhold, Kentucky 40759 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Hubbs Creek No. 4 Mine (I.D. No. 15-15448) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continous monitor, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 35% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous monitor will be available to assure that all coal hauling tractors will be equipped with a continuous monitor;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alternations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 4, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Date: July 24, 1987.

[FR Doc. 87-17731 Filed 8-4-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-151-C]

Petition for Modification of Application of Mandatory Safety Standard; Kerr-McGee Coal Corp.

Kerr-McGee Coal Corporation, P.O. Box 727, Harrisburg, Illinois 62946 has filed a petition to modify the application of 30 CFR 75.902 (low- and medium-voltage ground check monitor circuits) to its Galatia Mine 56-1 (I.D. No. 11-02752) located in Saline County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirements that low- and medium-voltage resistance grounded systems include a fail-safe ground check circuit to monitor continuously the grounding circuit to assure continuity. The ground check circuit shall cause the circuit breaker to open when either the ground or pilot check wire is broken.

2. As an alternate method, petitioner proposes to use 480 volt, three phase power distribution, without the need of the ground check circuit in the No. 6 Shop. In further support of this request petitioner states that:

(a) The maintenance shop is constructed with concrete floors with the roof and rib wire meshed and sealed with a nonhazardous pressure applied fibrous sealant;

(b) Galvanized rigid conduit will be used throughout the shop area. The conduit will be supported by strut fastened to conventional expansion shells mounted in the roof;

(c) All electrical panels, starters, boxes, etc., will be of type NEMA 12;

(d) All 480 volt, three phase equipment will be stationary and connected by galvanized rigid conduit;

(e) All equipment will be bonded to the grounding system through the conduit system and through a ground wire pulled in the conduit system;

(f) Power will be fed to NEMA 12 electrical panels from a mine duty power center by MSHA approved cables and protected at the power center by MSHA approved ground monitor, ground fault, under voltage release, thermal and magnetic overload protection;

(g) All exposed metal parts of the overhead crane and its accessories will be metallically joined together into a continous electrical conductor and will be connected to the grounded conduit enclosing the crane supply conductors and to the copper grounding conductor associated with the crane supply conductors. Grounding circuit continuity for the trolley frame and bridge frame will be assured through the use of grounding collectors and grounding conductors; and

(h) The design and installation of the system will conform to the 1987 National Electrical Code.

3. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 4, 1987. Copies of the petition

are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Date: July 29, 1987.

[FR Doc. 87-17732 Filed 8-4-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-169-C]

Petition for Modification of Application of Mandatory Safety Standard; the NACCO Mining Co.

The NACCO Mining Company, 56854 Pleasant Ridge Road, Alledonia, Ohio 43902 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Powhatan No. 6 Mine (I.D. No. 33-01159) located in Belmont County, Ohio. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that trolley wires and trolley feeder wires, high-voltage cables and transformers not be located inby the last open crosscut and be kept at least 150 feet from pillar workings.

2. Petitioner states that the longwall mining systems will increase in width and have over 1200 connected horsepower. In order to supply power to such a mining system from a power system limited to 1,000 volts, the following problems arise:

(a) The ampacity requirements at 1,000 volts are such that very large and heavy cables must be used. Accident information indicates that a large number of electrical-related injuries are strains and sprains incurred during cable handling;

(b) Poor voltage regulation resulting in motor overheating and lack of torque to be applied to the face conveyor, and

(c) A diminished safety factor when approaching the interrupting limits of the available circuit breakers at 1000 volts.

3. As an alternate method, petitioner proposes to use high voltage (not to exceed 4,160 volt) cables to supply power to permissible longwall face equipment in or inby the last open crosscut, with specific equipment and conditions as outlined in the petition.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 4, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Dated: July 28, 1987.

[FR Doc. 87-17733 Filed 8-4-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-172-C]

Petition for Modification of Application of Mandatory Safety Standard; Old Ben Coal Co.

Old Ben Coal Company, 200 Public Square, Cleveland, Ohio 44114-2375 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Mine No. 24 (I.D. No. 11-00589) located in Franklin County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that trolley wires and trolley feeder wires, high-voltage cables and transformers not be located inby the last open crosscut and that they be kept at least 150 feet from pillar workings.

2. Petitioner states that the longwall mining equipment presently in use is powered by 950 volt, a.c. electricity to face electrics controller, the stage loader, paneline, and shearer. Such equipment is subject to unacceptable voltage drops across the system which causes a decrease in the working torques of the drive motors. This leads to excessive strain on equipment and high current loads in the electric circuitry. In order to maintain compliance with overcurrent protection with the 950 volt system, it is necessary to split the loads and increase the number of cables. This doubles the amount of cable handling and electrical connections that has to be done.

3. As an alternate method, petitioner proposes to use high-voltage (not to exceed 2,400 volt) cables to supply power to permissible longwall face equipment in or inby the last open crosscut, with specific equipment and conditions as outlined in the petition.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 4, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Date: July 30, 1987.

[FR Doc. 87-17734 Filed 8-4-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-176-C]

Petition for Modification of Application of Mandatory Safety Standard; S & S Anthracite, Inc.

S & S Anthracite, Inc., RD 1, Box 67A2, Williamstown, Pennsylvania 17098 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Buck Mountain Slope (I.D. No. 36-05619) located in Schuylkill County, Pennsylvania. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Petitioner states that no such safety catch or device is available for the steeply pitching and undulating slopes with numerous curves and knuckles present in the main haulage slopes of this anthracite mine.

3. Petitioner further believes that if "makeshift" safety devices were installed they would be activated on knuckles and curves when no emergency existed and cause a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope, above the main connecting device. The hoisting ropes would have a factor of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 4, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Date: July 28, 1987.

[FR Doc. 87-17735 Filed 8-4-87; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Humanities, Advisory Committee Meeting; Change

This is to announce a change in the location of a portion of the National Council on the Humanities meeting to be held in Philadelphia, PA on August 6-7, 1987. The August 7, 1987 meeting will be held in the Sheraton Society Hill Hotel at 1 Dock Street in lieu of the Second National Bank at 420 Chestnut Street as was previously announced. The Endowment's prior notice was published in the **Federal Register** on July 13, 1987 on page 26191. Any questions concerning this change should be directed to Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786-0322.

Stephen J. McCleary,

Advisory Committee, Management Officer.

[FR Doc. 87-17767 Filed 8-4-87; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrences for Fourth Quarter CY 1986; Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974, as amended, requires the NRC to disseminate information on abnormal occurrences (i.e., unscheduled incidents or events which the Commission determines are significant from the standpoint of public health and safety). The following incidents at NRC licensees were determined to be abnormal occurrences (AOs) using the criteria published in the **Federal Register** on February 24, 1977 (42 FR 10950). These abnormal occurrences are described below, together with the remedial actions taken. These events are also being included in NUREG-0090, Vol. 9, No. 4 ("Report to Congress on Abnormal Occurrences: October-December, 1986"). This report will be available in the NRC's Public Document Room, 1717 H Street, NW., Washington, DC about three weeks after the publication date of this **Federal Register** Notice.

Nuclear Power Plants

AO 86-20 Loss of Low Pressure Service Water Systems at Oconee

One of the general AO criteria notes that major deficiencies in design, construction, use of, or management controls for licensed facilities or material can be considered an abnormal occurrence. In addition, one of the AO examples notes that a major deficiency in design, construction, or operation having safety implications requiring immediate remedial action can be considered an abnormal occurrence.

Date and place—On October 1, 1986, Duke Power Company (the licensee) twice attempted an electrical load shed surveillance test of circuits on Oconee Unit 2, which was shut down for refueling at the time. During both tests, the low pressure service water (LPSW) system was lost. Investigation revealed a questionable design feature which was also applicable to Units 1 and 3. Therefore, the LPSW systems for all three units were considered inoperable and on October 2, 1986, orderly shutdowns of Units 1 and 3 (both operating at 100% power at the time) were commenced.

Oconee Units 1, 2, and 3 each utilize a Babcock & Wilcox-designed pressurized water reactor; the facility is located in Oconee County, South Carolina.

Background—At Oconee, the condenser circulating water (CCW) system takes suction from Lake Keowee and supplies water to the main condensers. Unlike most nuclear power plants, the CCW pumps at Oconee also perform safety-related functions which include: supplying a source of water to the LPSW system, the cooling water pump for the standby shutdown facility (SSF) emergency diesel generator (EDG), a supply to the SSF auxiliary service water (ASW) pump, and the primary source for cooling the turbine-driven auxiliary feedwater pump for long-term cooling. The LPSW system supplies cooling water for the decay heat removal function of the low pressure injection system and other safety-related equipment. The LPSW system pumps take suction on the upstream side of the condenser from the CCW system crossover lines between Oconee Units 1, 2, and 3.

Each of the four CCW pump motors for each Oconee unit is capable of being powered from either of two emergency hydro-generators. However, the Oconee plant is designed to accommodate a loss (shedding) of the CCW pumps and still provide LPSW pump suction through a siphon arrangement. The siphon is necessary because of a high point in the CCW piping just downstream of the CCW pumps and upstream of the LPSW pump suction. This high point may be as much as 25 feet above the level of Lake Keowee (depending upon lake level).

Nature and probable consequences—On October 1, 1986, while Unit 2 was in a refueling outage, the Unit 2 load shed test was performed. At Oconee, a load shed of non-essential loads is initiated when emergency power is required via the underground feeder from Keowee Hydro Station. The load shed protects this power path from overload.

When the load test was initiated, the condenser circulating water pumps were deenergized. Normally, this causes the gravity flow system to automatically align and to allow the flow of water from the Lake Keowee intake structure through the condenser and discharging to the Keowee tailrace into Lake Hartwell. The elevation difference and a siphon effect are used to cause the condenser circulating water to continue to flow. This mode of operation of the CCW system is referred to as the emergency condenser circulating water (ECCW) system. For this test, the condenser gravity drain to the Keowee tailrace was blocked because this was not part of the test.

After about an hour, the LPSW pumps began to cavitate and stop pumping. One LPSW pump was stopped by the control room operator, and a second LPSW pump was observed to have low discharge pressure and cycling amps.

Various high temperature alarms for the components cooled by LPSW were received in the control room. CCW flow was restored by restarting a CCW pump and the plant was restored to its normal power condition without any plant damage or system upsets. Prior to the occurrence, two LPSW pumps were operating with approximately 13,000 gpm/pump. The CCW crossover header, which provided suction for the LPSW pumps, was being supplied by the Unit 2 CCW pumps at the time.

In the evening of October 1, 1986, the test was repeated, but this time the gravity drain feature was also tested. The results were the same as in the first test, i.e., loss of LPSW system function due to loss of LPSW pump suction. NRC Region II was advised of these results late in the evening, and concurred with the licensee that Units 1 and 3 [operating at 100% power] could continue to operate until the test data could be fully evaluated. At 9:00 a.m. on October 2, 1986, evaluation of the tests revealed that the operation of this design feature (the ECCW system) was questionable for Units 1 and 3, and that this resulted in inoperability of all LPSW systems for Oconee. As a result, an orderly shutdown of the two operating units was begun as required by Technical Specification 3.3.7. Both units reached cold shutdown conditions by October 3, 1986.

The licensee's analysis of the event showed that the loss of suction to the LPSW pumps was caused by a loss of the previously described siphon. The CCW pump discharge flange is normally nine feet below the surface of Lake Keowee when the lake is at full level. However, because of drought conditions, the lake level was about six feet below the flange at the time of the load shed test. During operation at these reduced lake levels, minor water leakage of the flange had been observed. This leakage was insignificant during plant operation. However, with the CCW pumps off (shedded), air inleakage at this flange caused the high point in the CCW system piping to drain and resulted in a loss of siphon flow.

Siphon flow, if initiated, could not be sustained in the system, as originally designed and built, during low lake level conditions because of air inleakage at the CCW pump discharge flange. It appears that previous surveillance tests were not of sufficient duration to determine that siphon flow was sustained. Since the large volume of water contained in the CCW lines provided LPSW flow for about an hour before the loss of LPSW suction, it appears that load shed testing personnel, in the past, may have been misled into thinking siphon flow had been sustained.

As mentioned briefly in the "Background" information above, the Oconee CCW system is designed to also provide suction and discharge (heat sink) for the cooling water pump for the SSF EDG and a supply for the SSF ASW pump. The SSF was designed to be a backup means to achieve and maintain the plant in a hot shutdown condition. Analysis performed subsequent to the above load shed test showed that if siphon flow were lost in the CCW system pipe, the CCW system could not provide an adequate heat sink for SSF operation to meet its design basis of 72 hours of operation. In addition, when the CCW pumps are not operating, the CCW system should provide emergency gravity-siphon CCW system flow to the main condensers to recover condensate for DHR following certain postulated events until the DHR system is in operation. The gravity flow is possible because the CCW system discharge from the main condenser is shifted to an alternate pipe that discharges downstream of Lake Keowee dam at an elevation well below the CCW system intake. This feature of the CCW system also was disabled by the loss of siphon.

The safety significance of the October 2, 1986 event at Oconee is that the event revealed an unanticipated failure mode which resulted in the loss of the ECCW system and the safety-related functions of the LPSW system. This situation has existed ever since the first Oconee unit went into operation in 1973.

Cause or causes—The root cause of this incident is the inadequate design and testing of the ECCW system. This led to a failure of the ECCW system to perform its intended function as described in the FSAR under all assumed conditions. Inadequate original design evaluation of the ECCW system and the lower than normal lake level due to extreme drought conditions of Lake Keowee are contributing factors to the cause of this incident.

Actions Taken to Prevent Recurrence

Licensee—The licensee modified the discharge flange on all CCW pumps to prevent air inleakage when the lake level is below the discharge flange. The LPSW pumps were successfully tested for several hours with the CCW pumps off and the lake level below the discharge flange. The emergency CCW gravity-siphon flow to the main condensers and the SSF EDG cooling water pump also were successfully tested under the above conditions. In addition, the SSF cooling water pump was modified to take a separate and independent suction from Lake Keowee.

The licensee inspected each continuous vacuum priming (CVP) line at the CCW system intake for blockage. Unit 3 lines were clear and vacuum was established on Unit 3 intake high point vents. Unit 1 and Unit 2 lines were found blanked off with blind flanges which prevented the CVP pumps from developing adequate vacuum on the CCW system intake high point vents to overcome air inleakage at the pumps. These flanges had apparently not been removed at the completion of the original system hydrostatic testing. The flanges were removed and a vacuum was established on Units 1 and 2 intake high point vents.

Successful testing was performed on the condensate steam air ejector, the turbine bypass valves (TBV), and the siphon effect. By October 23, 1986, all three units were returned to service.

Further corrective actions planned by the licensee include: (a) Review and analyze the seismicity of the CCW system, (b) develop a program to include CCW system piping in a routine inspection, (c) review the validity of the testing program to ensure that systems and components are tested adequately, and (d) review Technical Specifications to determine if any revisions are necessary.

NRC—The NRC Resident Inspectors for the Oconee site were observing the Unit 2 load shed test in progress on October 1, 1986, and observed the failures. They observed licensee actions to assure that the Units remained in a stable condition and notified Region II. Initial investigation of the circumstances associated with this event began while surveillance test data was being analyzed.

On October 4, 1986, the Deputy Director of the Division of Reactor Projects, Region II, went to the site to observe the licensee's repairs for a fix of the problem, to review the potential of the proposed fix to solve the problem, and to assess the overall significance of the event.

On October 8, 1986, a meeting between NRC and licensee personnel was held in the NRC Region II Office to discuss actions being taken and planned by the licensee to repair and demonstrate operability of the Oconee units. Actions to be taken and required conditions prior to restart of the units were also discussed.

The NRC Resident Inspectors witnessed the repairs and the subsequent testing to confirm the overall adequacy of the licensee's corrective action prior to restart of the units.

On October 14, 1986, an NRC Management Meeting with the licensee was held in Bethesda, Maryland, to review the completed modifications and test results. The licensee presented the results of the surveillances which were conducted following the described modifications to the pumps.

NRC Inspection Reports No. 86–26 and No. 86–33 concerning the incident were forwarded to the licensee on October 23, 1986, and December 1, 1986, respectively. On December 22, 1986, an NRC Enforcement Conference was held at the NRC Region II Office to discuss the event with the licensee. On February 5, 1987, the NRC issued a Notice of Violation to the licensee regarding the operability of the ECCW system. The violation was classified as Severity Level IV (on a scale where Levels I and V are the most and least severe, respectively).

On January 30, 1987, the NRC issued Inspection and Enforcement Information Notice No. 87–06 to all nuclear power reactor facilities holding an operating license or a construction permit to inform them of the Oconee event.

AO 86–21 Degraded Safety Systems Due to Incorrect Torque Switch Settings on Rotork Motor Operators at Catawba and McGuire Nuclear Stations

One of the AO examples notes that a major deficiency in design, construction, or operation having safety implications requiring immediate remedial action can be considered an abnormal occurrence.

Date and place—On October 23, 1986, Duke Power Company (the licensee) discovered that numerous safety-related valves at Catawba Nuclear Station were degraded due to incorrect torque switch settings. On October 28, 1986, a similar situation was also found at the licensee's McGuire Nuclear Station. Catawba Units 1 and 2, and McGuire Units 1 and 2 are Westinghouse-designed pressurized water reactors. The Catawba Station is located in York County, South Carolina and the McGuire Station is located in Mecklenburg County, North Carolina.

Background—At Catawba and McGuire, and many other plants, Rotork Actuators are used for remote control of plant valves. Many of these valves are in safety-related systems. The actuators are driven by electric motors. The size of the motor and the actuator depends on the size of the valve and the force or torque necessary to open and close the valve. Rotork Actuators have five torque switch settings which the licensee had assumed represented 40, 55, 70, 85 and 100 percent of the maximum rated torque output. The required torque switch setting for each actuator is determined based on the maximum differential pressure expected on its accociated valve during anticipated events.

If incorrect torque switch settings are used, the valves may not perform as designed (e.g., the actuator motor may switch off before the valves complete their travel) thereby possibly degrading their function to avoid, or mitigate, the consequences of a transient or a design basis accident. Improper torque switch settings, on motor operators manufactured by various vendors, have been a contributing cause in a number of significant events, one of the most serious of which was the complete loss of main and auxiliary feedwater event at Davis-Besse on June 9, 1985. The Davis-Besse event was reported as abnormal occurrence No. 85–7 in NUREG–0090, Vol. 8, No. 2 ("Report to Congress on Abnormal Occurrences: April–June 1985").

On November 15, 1985, the NRC issued IE Bulletin No. 85–03 to all holders of nuclear power reactor operating licenses or construction permits for action. The Bulletin described various events (including the June 9, 1985 event at Davis-Besse) during which motor-operated valves failed on demand, in a common mode, due to improper switch settings. The Bulletin also described numerous previously issued NRC reports, Information Notices, Bulletins, and Circulars (as far back as 1972) involving problems with torque switches.

Bulletin No. 85–03 requested licensees to develop and implement a program to ensure that switch settings on certain safety-related motor-operated valves are selected, set, and maintained correctly to accommodate the maximum differential pressures expected on these valves during both normal and abnormal events within the design basis. It was during the licensee's followup to the Bulletin that the problem at Catawba and McGuire was discovered.

Nature and Probable Consequences

Catawba Nuclear Station (CNS). On October 23, 1986, with both CNS units in cold shutdown, a valve was being repaired. The motor and worm gear had been replaced and the valve's actuator was being calibrated per CNS plant procedure. After setting the torque switch to the specified setting, per procedure, while the valve was on the test bench, the torque output was checked. The result indicated the torque output was lower than required. Subsequently, a performance curve (percent torque output versus torque switch setting) was obtained. As stated above, the licensee had assumed that setting 1 represents 40 percent of rated torque and setting 5 represents 100 percent of rated torque.

A linear or straight curve had been assumed by the licensee for the range from 40 percent to 100 percent. However, results of the performance curve indicated a non-linear relationship between percent torque output versus torque switch setting. Also, the curve obtained was generally lower than the linear relationship previously thought to be correct.

Based on these results, the valve being tested at CNS was determined to be incapable of performing its intended function. Subsequent review indicated that at CNS this situation was not unique to the single valve discussed. Fifty-three valves were determined to potentially be affected. Systems which contained safety-related valves (many of which were containment isolation valves) which could potentially be affected were:

(a) Chemical and volume control systems
(b) Component cooling system
(c) Residual heat removal system
(d) Ice condenser refrigeration system
(e) Safety injection system
(f) Nuclear service water system
(g) Containment hydrogen purge system
(h) Breathing air system
(i) Instrument air system
(j) Containment air release and addition system

McGuire Nuclear Station (MNS). Based on the above event at CNS, it was determined at MNS on October 28, 1986 that the charging line outside containment isolation valves for both MNS units were technically inoperable. In fact, analysis of the two valves, which would be required to close during safety injection, indicated that they may not be able to do so under differential pressure conditions which could be encountered following a loss-of-coolant accident.

Unit 1 was operating at 100 percent and Unit 2 was operating at 47 percent of full power. With both trains of the emergency core cooling system thus inoperable, the licensee commenced shutdown of both Units. A plan was established to inspect all safety-related Rotork motor operators and perform a detailed engineering evaluation on each affected valve to determine the appropriate corrective action to ensure its operability.

Cause or causes—The cause of the problem appears to be poor communication between the motor operator vendor and the licensee. The vendor subsequently stated that

whenever the factory torque setting is changed in the field, an individual calibration curve or bench test is required to accurately determine torque output. In fact, based on verbal communication with the vendor, the licensee utilized a linear or straight line curve for the relationship between percent torque versus torque switch setting.

Actions Taken to Prevent Recurrence

Licensee—The licensee took the following corrective steps:

(a) Operability requirements for all safety-related Rotork motor operators were evaluated individually.

(b) Corrective action for each motor operator evaluated was performed if required.

(c) Corrective maintenance procedures for Rotork motor operators were revised to require a bench test of the operator when setting torque switches.

(d) A detailed inspection of each safety-related Rotork motor operator installed was performed.

(e) All significant discrepancies found during inspection were corrected.

(f) A new document which specifies the required torque output (in terms of torque output, and not torque switch setting) for each valve with a Rotork motor operator was completed and approved.

(g) The licensee committed to implement a program by November 15, 1987, to ensure that torque switch settings on *all* safety-related motor operated valves are selected, set, and maintained correctly. This commitment was made in accordance with the previously discussed NRC IE Bulletin No. 85–03.

NRC—The NRC monitored the licensee's corrective actions to assure that they were responsive. Subsequently, NRC met with the licensee and Rotork to follow progress on the issue.

On November 3, 1986, the NRC issued IE Information Notice No. 86–93 which described the McGuire event, to all nuclear power reactor facilities holding an operating license or a construction permit.

AO 86–22 Secondary System Pipe Break Resulting in Death of Four Persons at Surry Unit 2

One of the AO examples notes that a major deficiency in design, construction, or operation having safety implications requiring immediate remedial action can be considered an abnormal occurrence.

Date and place—On December 9, 1986, with both Surry Units 1 and 2 operating at 100% reactor power, a Unit 2 reactor trip (scram) followed by a main feedwater (MFW) line rupture occurred. Eight individuals were injured by the escaping steam and water. Four of those injured subsequently died.

The Surry Power Station consists of two Westinghouse-designed pressurized water reactors. The station is operated by Virginia Electric and Power Company (the licensee) and is located in Surry County, Virginia.

Nature and probable consequences—On December 8, 1986, Unit 2 had completed a refueling outage and had returned to full power operation. Unit 1 was also operating at 100% power.

On December 9, 1986, at about 2:20 p.m. (EST), a low-low level in the "C" steam generator (S/G) of Unit 2 caused an automatic reactor trip and an automatic start of the two motor-driven auxiliary feedwater pumps. The reactor trip also resulted in a trip of the Unit 2 main turbine-generator.

The control room operators noted the S/G code safety valves lifting and regulated S/G pressure through the atmospheric dump valves. Approximately 30 seconds after the trip, the unit's electrical busses auto-transferred to offsite power. A small steam release noise was heard followed by a very loud noise approximately five seconds later.

A shift supervisor, who was in the turbine building observing construction activity around the MFW pumps, realized that a large break had occurred and ran to the control room to alert the control room operators. He also told them that people had been injured. All secondary pumps were secured and the break isolated. Water to the S/Gs was supplied by the auxiliary feedwater system.

The primary system responded normally to the loss of load transient. Reactor coolant temperature, pressure, and pressurizer level were stabilized in the desired band.

A notification of unusual event was declared at 2:27 p.m. At 2:30 p.m., ground and air ambulances were called to take the injured people to the hospital. At 2:40 p.m., the unusual event was upgraded to an Alert in order to ensure accountability of all station personnel.

Unit 2 was stabilized by 2:34 p.m. with two reactor coolant pumps running and primary system pressure and temperature being maintained by relieving steam to the atmosphere. No radioactive releases resulted from the event and a cooldown was initiated.

At 3:48 p.m., accountability of personnel was completed and at 4:25 p.m., the Alert was terminated. At 3:55 a.m. on December 10, 1986, Unit 2 was placed on the residual heat removal system; at 7:04 a.m., the Unit achieved cold shutdown conditions.

Later investigation showed that an 18-inch suction line to the A train main feedwater pump had ruptured at the elbow where the line connects to the 24-inch condensate header. At the time of the rupture, contractor personnel employed by Daniel Construction Company of Greenville, South Carolina, and by Insulation Specialities, Inc., of Hopewell, Virginia, were doing instrument line relocation and pipe insulation work in the general area of the ruptured pipe. As a result of the escaping steam and water, six of these individuals were hospitalized for treatment of severe burns. Three were evacuated directly from the site by helicopter, and three others were taken off site by ambulance. The other two, who were less severely injured, were treated at a clinic and released.

One of those hospitalized died the afternoon of December 10, 1986, and another victim died on December 11, 1986. Two others died several days later. The other two remained in serious to critical condition. One of the two improved and was later released but the other was still in serious condition more than a month after the accident.

The escaping steam and water also caused various system interactions which complicated the licensee's handling of the event. For example, one important complication was that water and steam saturated a security card reader which shorted out the entire plant card reader system. As a result, key-cards would not open plant doors. Security personnel responded to the control room and provided access control while doors into the control room were opened for easy access and to improve control room ventilation. Guards admitted personnel on the basis of personal recognition and excluded non-essential personnel. The card reader system returned to service approximately 20 minutes after the pipe break and functioned normally thereafter.

An operator reported being delayed in the stairway outside the control room as a result of the card reader failure. Due to the hot water conditions on the turbine building basement floor and the discharge of the Halon fire suppression system in the emergency switchgear rooms below the control room and the carbon dioxide fire suppression system in the cable tray rooms above the control room (see discussion below), the operator had no safe way to exit the stairway other than the control room itself. The operator was admitted to the

control room by someone opening the door from inside the control room. The licensee is considering installing electronic override switches which would permit the opening of electronically locked doors in emergency situations.

Another important complication was that within minutes of the feedwater pipe rupture event in the Unit 2 turbine building, portions of the Unit 2 turbine building sprinkler system actuated. Sixty-two sprinkler heads opened in the immediate area of the feedwater pipe rupture due to the high heat levels associated with the event. As they opened, these sprinkler heads immediately began discharging water to cool turbine building atmosphere.

Water short-circuited control systems in the area of the Halon and carbon dioxide fire suppression systems; as a result, the systems activated. Control room habitability became a concern because doors were blocked open to allow better control room access without recognizing that carbon dioxide had been discharged in the areas above. The carbon dioxide was apparently coming into the control room from the turbine building hallway. Control room personnel in the main control room annex and near the main control room door experienced shortness of breath, dizziness and nausea. However, once they recognized that carbon dioxide was present, the control room operators took appropriate corrective actions and initiated control room emergency air supply fans which placed the main control room at a higher pressure than the turbine building. This action assisted in diluting and exhausting the existing carbon dioxide levels and kept any additional carbon dioxide from infiltrating into the main control room.

About 3:30 p.m. on December 9, 1986, a decision was made by NRC Region II management to send an inspection team to the site. This team consisted of Regional-based personnel and the senior resident inspectors from North Anna and Surry. The Region II inspection team arrived on site about 9:30 p.m. on December 9, 1986, to assess the operational status of the unit and to inspect the damaged area of the Unit 2 turbine building. During the morning of December 10, 1986, the team's status was upgraded to an Augmented Inspection Team (AIT), and an engineer from the NRC Office of Nuclear Reactor Regulation, knowledgeable in water hammer phenomena, was assigned to the team. The AIT was tasked with the job of examining the licensee's response to the incident and performing a separate investigation.

Following the termination of the Alert classification on December 9, 1986, licensee management initiated recovery activities. An organization was established and resources identified for evaluating the incident and recommending recovery actions. The licensee's preliminary findings resulting from the Unit 2 main feed pump suction pipe rupture indicated that there may have been signficiant thinning of the pipe wall due to a corrosion/erosion mechanism not fully understood at the time. Since the same mechanism could similarly affect Unit 1, at 12:30 p.m. on December 10, 1986, the licensee decided to shut down Unit 1. The shutdown was initiated at 5:30 p.m. on December 10, 1986, and the unit was off the line at 10:47 p.m. Subsequently, the unit was placed in a cold shutdown condition.

Based on the licensee's investigation and the NRC Region II AIT inspection/investigation, it has been concluded that the following factors attributed to the main feedwater pipe rupture events.

1. *Pipe wall thinning on "A" main feed pump suction line.* The 18-inch suction line which supplies the "A" Train Main Feed Pump was fabricated using ASTM A-106, Grade B, Extra Strong, carbon steel seamless pipe and ASTM A-234, Grade B, Extra Strong, WPB carbon steel wrought fittings which had a nominal wall thickness of .50 inches ±10% at installation.

Since installation, the bulk single-phase corrosion/erosion mechanism had subsequently reduced the original wall thickness. Ultrasonic wall thickness measurements and micrometer measurements taken on the elbow following the failure showed a gradually sloping wall thickness loss over much of the suction line. At several locations, usually near welds, localized cavities had been formed in the elbow inner surface by the corrosion/erosion process. The remaining wall thickness of these localized areas has been measured as low as .048 inches while adjacent locations were .090 to .140 inches in thickness. Using the code minimum wall equation and assuming an internal pipe pressure of 600 psig, a temperature of 370°F, and an ultimate strength of 60,000 psi results in a calculated burst thickness of .090 inches and a yield thickness of .173 inches. This difference in the pipe thickness directly contributed to the pipe failure.

2. *Main steam trip valve and instrument air pressure.* Surry Unit 2 tripped as designed when a low-low S/G water level protection signal occurred on the "C" Steam Generator Reactor Protection System Instrumentation. This occurrence was a result of the unplanned closure of the "C" main steam trip valve (MSTV). The MSTV closure was initiated by a slight reduction in instrument air pressure combined with valve misassembly. The "C" MSTV would not be expected to close with the slight reduction in instrument air pressure; however, the investigation revealed that the valve disc had not been in a fully open position because of misalignment of the valve bonnet that occurred when the valve was overhauled during the past refueling outage. This slight reduction in instrument air pressure allowed enough air pressure decrease for the steam flow to force the disc shut. This directly contributed to the trip, but not to the pipe rupture.

3. *Main feed pump discharge check valve.* The licensee's inspection of the 2A main feed pump check valve revealed two hardware deficiences, i.e., a missing disc hinge pin and a displaced seat-disc assembly. Further investigation showed that these deficiencies did not contribute to the cause of the break, but may have permitted an additional amount of water to be discharged through the break.

Cause or causes—The investigations have indicated that the rupture of the suction line elbow resulted from the combination of wall thinning due to bulk single-phase corrosion/erosion and a normal feed pump suction pressure transient. The root causes appear to be a design deficiency (associated with piping configuration and flow velocity) and operational circumstances associated with water chemistry.

Actions Taken to Prevent Recurrence

Licensee—The licensee developed a comprehensive plan for inspection, evaluation, and modification/replacement, as necessary for components (e.g., piping, main steam trip valves, main feed pump discharge check valves), systems (e.g., fire protection system) and procedures (e.g., security plan, emergency plan and communications). The licensee also developed a station startup plan. On January 14, 1987, the licensee forwarded to the NRC a report entitled "Surry Unit 2, Reactor Trip and Feedwater Pipe Failure Report", which provided detailed information on the event, together with the station recovery plan and corrective actions for NRC review and concurrence prior to station restart. As discussed below under "NRC Actions," the licensee's plans and actions were acceptable to the NRC. Subsequently, Surry Units 1 and 2 were returned to service on February 23, 1987 and March 20, 1987, respectively.

The licensee also operates the North Anna nuclear power station which consists of two units similar to those of Surry. The facility is located in Louisa County, Virginia. Subsequently, when pipe wall thinning was found at Surry Units 1 and 2, the licensee decided to inspect similar piping at North Anna Unit 1. Therefore, on December 25, 1986, power was reduced from 100%, reaching 20% on December 26, 1986. Approximately 4900 ultrasonic inspections were made on North Anna Unit 1 piping. No measurements indicated pipe wall thickness below the required minimum. The feedwater pump suction piping and header wall thicknesses were within original pipe manufacturing specifications, and the high pressure drain pump dischange piping was in more than 15 percent below the original specifications. Since no abnormal conditions were found, Unit 1 was returned to full power on December 27, 1986. North Anna Unit 2 and additional Unit 1 piping inspections will be performed during future outages.

NRC—As previously mentined, an NRC AIT was sent to the Surry facility on December 9, 1986. The AIT conducted inspections during the remainder of the week ending December 12, 1986, to ascertain the circumstances involved in the accident. An executive summary was transmitted to the Region II office on December 17, 1986. This summary provided the significant facts concering the event. The AIT did not conclude its insection at that time due to the ongoing activities by the licensee to develop a root cause analysis, which required subsequent inspection activities.

AIT activities continued during the weeks of December 22 and 29, 1986, and January 12, 1987. An AIT exit meeting with plant management was held on January 14, 1987, after review of the licensee's investigative report and proposed corrective actions which were presented to the NRC on January 12, 1987. In addition to the AIT inspection activities, inspectors knowledgeable in security, fire protection systems, water chemistry and check valve design were assigned to review specific concerns in these areas. Where applicable, their inspection findings were incorporated into the AIT report.

The AIT Inspection Report was forwarded to the licensee on February 10, 1987. The forwarding letter stated that the AIT concurred in the licensee's planned actions in order to restart the plant. The forwarding letter also included a Notice of Violation regarding maintenance procedures for overhauling a main steam trip valve. The violations was classified as Severity Level IV (on a scale in which Levels I and V are the most and least significant, respectively).

On December 16, 1986, the NRC issued Inspection and Enforcement Information Notice No. 86–106 ("Feedwater Line Break") to all nuclear power reactor facilities holding an operating license or a construction permit. The Notice alerted addressees of a potentially generic problem with feedwater pipe thinning and other problems related to the Surry Unit 2 event. Supplement 1 to that Notice, issued February 13, 1987, provided additional information about thinning of piping walls which led to the pipe break. Supplement 2 to the Notice, issued March 18, 1987, provided information about potentially generic systems interaction problems that were caused by the release of large quantities of feedwater.

Other NRC Licensees (Industrial Radiographers, Medical Institutions, Industrial Users, etc.)

AO 86–23 Release of Americium 241 Inside a Waste Storage Building at Wright=Patterson Air Force Base

One of the AO examples notes that serious deficiency in management/procedural controls in major areas can be considered an abnormal occurrence.

Date and place—On September 18 and October 6, 1986, a drum containing radioactive waste was opened to inspect its contents at Wright-Patterson Air Force Base, located near Dayton, Ohio. Opening the dum caused a significant release of americium-241 inside the waste storage building, resulting in extensive contamination of the facility; significant efforts and costs have been incurred in decontaminating the facility, as well as in the investigations being performed by the NRC and other agencies.

Background—The United States Air Force (USAF) holds a license, issued by the NRC on June 26, 1985, which grants the USAF the authority to issue Permits to Air Force locations where the NRC has regulatory jurisdiction. The management and control of this license are the responsibilities of the USAF Radioisotope Committee. The Executive Secretary of this Committee is located at Brooks Air Force Base near San Antonio, Texas. Wright-Patterson Air Force Base is the holder of a USAF Radioactive Material Permit issued by the Committee on December 18, 1985, as a conversion of a previously issued NRC specific license.

Nature and probable consequences—In response to a request by the USAF Radioisotope Committee, the Wright-Patterson Radiation Safety Officer and another individual began an inventory on September 18, 1986 of radioactive waste drums which were in storage at the Air Base. Five drums were not labeled as to their contents. When one of the unlabeled drums was opened, the two individuals performing the inspection noticed that their alpha radiation detector had gone "off scale" (caused by a radiation level in excess of the measuring scale). The individuals immediately left the storage building and were assisted by two additional individuals in removing their protective garments. The two individuals who had opened the drum and one of the additional technicians has some minor radioactive contamination remaining on their hands, necks, and shoes. They subsequently decontaminated themselves using soap and water.

Subsequent radiation surveys revealed the presence of radioactive contamination inside the building. There were also detectable releases outside the structure, but these were below NRC release criteria for unrestricted areas. The waste storage building is located in a remote controlled-access munitions storage area.

On October 1, 1986, the Air Force Radiological Assistance Team and a private contractor (Chem-Nuclear Services) arrived at the Air Base to assist in decontamination work and repackaging of the waste. Because of an unexplained high radiation level emanating from one of the drums, the drum was opened on October 6, 1986, and the contents transferred to a larger drum. The drum which was opened on October 6 was the same drum that was opened on September 18, and the reopening resulted in further release of radioactive materials inside the building. Although they were wearing anti-contamination clothing, the workers received contamination on their personal clothing, and one individual received an uptake (inhalation) of airborne americium-241, which may have exceeded the NRC limit of 3.8 nanocuries. The actual uptake is in the process of being determined, pending further testing and analysis. The preliminary evidence, however, is that the uptake is below the level at which detectable medical effects would be expected.

A technician reentered the building three days later and determined that the removable surface contamination levels has increased to as high as 2,875,000 disintegrations per minute. This level of contamination requires cleanup to prevent personnel contamination or release to the environment. Workers in the facility would have to wear

respiratory protection. For an area that is open to the public, the NRC guidelines call for removal of contamination above 20 disintegrations per minute. In addition to the surface contamination, the measurement of airborne radioactivity in the building was approximately one million times the NRC limit for a restricted area.

Actual decontamination work began October 30, 1986, and continued until November 18, 1986. At that time all radioactive waste drums had been examined and repackaged (with the exception of the durm which was the source of the americium-241 contamination). Most radioactive contamination was successfully decontaminated by the Air Force's contractor. Approximately 100 microcuries of contamination remained in the building, awaiting a decision on further decontamination work or dismantling and disposal of the building. Access to the building remains restricted.

The drum containing the americium-241 (estimated by external measurements to be 1.6 to 2.2 curies) will be transferred to a Department of Energy facility for storage.

The costs to date (as of mid to late February 1986) for decontamination, repackaging, and disposal are approximately $500,000. Additional costs will be incurred during final disposition of the storage building.

Subsequent investigation by the Air Force and by the NRC determined that the barrel containing the americium-241 had originated at a former NRC licensee's facility and had been accepted by an individual at the Air Base for disposal in the 1970s. (The circumstances of the transfer of the waste remain under investigation.) The waste barrel had apparently remained in storage since that time.

Cause or causes—The root cause appears to be attributed to deficient management/procedural controls. However, the event remains under investigation by the NRC Office of Investigations, and a complete understanding of all contributing causes awaits their report.

Actions Taken To Prevent Recurrence

Licensee—The licensee's investigation of the incident is continuing. The Radiation Safety Officer and two other individuals associated with the handling of the incident have been removed from any work involving NRC-licensed radioactive materials; this was documented by a Confirmatory Action Letter issued by NRC Region III on February 5, 1987.

The licensee has provided information to other Air Force bases on handling practices for opening waste drums and the NRC's reported requirements.

In addition, the USAF will have to decide whether further decontamination attempts should be undertaken, or whether the waste storage building should be dismantled and disposed of as radioactive waste.

NRC—After the NRC learned of the scope of the contamination incident, NRC inspection personnel were dispatched from Region III to review the circumstances of the incident and to monitor the licensee's decontamination activities. Personnel from Oak Ridge Associated Universities were also retained by the NRC to perform radiation surveys at the Air Base and to assist the NRC in reviewing the decontamination plans and activities.

Region III issued a Confirmatory Action Letter on October 27, 1986, documenting the Air Force's agreement (a) not to enter the building without NRC authorization; (b) to provide training for fire protection personnel; (c) to maintain a fire and security watch at the site; (d) to notify the NRC promptly of any problems concerning the contaminated building such as fire, damage due to storms, or detection of contamination outside the building; and (e) to provide an Incident Report to the NRC within seven days.

The NRC is continuing its investigation of the circumstances surrounding the contamination incident and its handling by the Air Force, including the reporting of this incident to NRC. On February 19, 1987, the NRC issued a letter to the Air Force requiring it to submit written information on how it will assure (a) that the NRC receives complete, timely, and accurate information; (b) that appropriate individuals will be fully aware of NRC reporting requirements; and (c) that NRC-licensed activities will be conducted in compliance with NRC regulations. This information is necessary for the NRC to determine whether the license should be modified or other enforcement action taken.

AO 86-24 Therapeutic Medical Misadministration

The general AO criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurence.

Date and place—On October 6–8, 1986, a patient at the Cleveland Clinic Foundation, Cleveland, Ohio, received a series of cobalt-60 therapeutic radiation exposures which resulted in a radiation exposure that was about 67 percent greater than the prescribed dosage.

Nature and probable consequences—A 58-year-old female patient received two radiation treatments a day for three consecutive days, October 6–8, 1986, for treatment of bone marrow disease. Because of an error in calculating treatment time, these treatments resulted in the patient receiving a radiation doze of approximately 2,000 rads head-to-waist, as opposed to the intended 1,200 rads.

The patient was discharged form the hospital on October 10, 1986, but was readmitted on October 20, 1986, for symptoms believed to result from the radiation exposure (unable to swallow, fever, and chills). she was discharged after treatment, but later admitted to Cleveland Metropolitan Hospital Burn Clinic on November 10, 1986, with skin burns. The patient died on November 18, 1986.

The licensee did not discover the therapeutic treatment error until November 11, 1986, when a dosimetrist reviewed the patient's treatment records and checked the calculations. NRC regulations stipulate that such misadministrations be reported to the NRC within 24 hours after they are discovered; however, the licensee did not report it to the NRC until November 17, 1986. The delay was apparently due to the licensee's failure to realize that a misadministration of this type requires immediate notification.

A panel of NRC medical consultants reviewed the case and concluded that the radiation treatment had "minimal effect, if any, upon the fatal outcome of her disease." The skin burns were not attributable to the radiation treatment, but rather to a variety of drugs (i.e., chemotherapy) given to the patient prior to and in addition to her radiation tratments.

Cause or causes—The misadministration was caused by an error in the calculations performed to determine the exposure time to deliver the desired radiation dosage. The physicist who performed the calculations used the distance from the cobalt-60 radition source to the patient, instead of the distance from the exterior of the radiation therapy device to the patient. The physicist entered the measurement into a programmable calculator that already accounted for the internal distance from the radiation source to the exterior of the device. Therefore, the internal distance was added twice with the result that a longer treatment time was scheduled. (The further the source is from the patient, the longer the treatment time required.)

In 1982 Cleveland Clinic adopted new procedures as a result of a therapeutic misadministration at that time. These new procedures included a system of dual verification of all dose calculations prior to the first day of treatment. In this case, however, the procedure was not followed and there was no recheck of the physicist's calculations prior to treatment.

Actions Taken to Prevent Recurrence

Licensee—The licensee has adopted revisions to its procedures providing that all dose calculations will be independently performed by two qualified individuals and that, prior to the first treatment, the technologist will verify that the duplicate calculations have been performed. In addition, the treatment data will be reviewed weekly by the chief technologist. A quality assurance audit by the licensee's Radioisotope Committee is to be performed quarterly for a year and then annually thereafter.

NRC—On November 20, 1986, NRC Region III issued a Confirmatory Action Letter documenting the licensee's agreement to institute the improvements in its procedures listed above.

A special NRC inspection was conducted beginning November 20, 1986. The inspection identified two violations of NRC requirements, i.e., failure to report the therapeutic misadministration within 24 hours and failure to obtain approval of the licensee's Radioisotope Committee for physicians to use NRC-licensed materials. (This second violation is not directly related to the misadministration.) On April 15, 1987, the NRC issued a proposed civil penalty of $2,500, which the licensee subsequently paid.

The NRC retained a special medical panel to review the case, consisting of two physicians and a physicist. As previously mentioned, the panel concluded that the patient's deteriorating condition, ending in her death, was not the result of the misadministration.

AO 86-25 Suspension of License for Servicing Teletherapy and Radiography Units

The general AO criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence. In addition, Example 11 of "For All Licensees" in Appendix A notes that serious deficiency in management or procedural controls in major areas can be considered an abnormal occurrence.

Date and place—On October 10, 1986, the NRC Office of Inspection and Enforcement issued an Order suspending certain NRC-licensed service activities of Advanced Medical Systems, Inc., of Geneva, Ohio. This action was taken after the NRC determined that the firm had been using untrained and unqualified employees to service cobalt-60 teletherapy units.

Nature and probable consequences—Advanced Medical Systems (AMS) is licensed by the NRC to install, service, maintain, and dismantle radiography and teletherapy units. (A teletherapy machine contains cobalt-60 and is used in medical facilities for the radiation treatment of cancer. A radiography unit contains cesium-137 or cobalt-60 and is used to make X-ray like pictures of metal products and welds.) AMS is also licensed to possess cobalt-60 and cesium-137 for manufacturing the sealed sources used in the teletherapy and radiography units. This source manufacturing, which is performed at a separate AMS facility in Cleveland, Ohio, was not affected by the NRC Order.

By a special safety inspection conducted on September 17 through November 12, 1986 at AMS, the NRC confirmed allegations that since the Spring of 1985, and as recently as September 1986, licensee employees were directed to perform certain service and maintenance activities on teletherapy equipment at medical facilities even though these individuals lacked (1) NRC authorization, (2) the required training to perform the directed maintenance, and (3) the appropriate radiation detection and monitoring equipment or the required service manuals.

Only those AMS technicians who are specifically named on the NRC license, or who were approved by the AMS Safety Committee, may service safety-related components on a teletherapy unit. Proir to either NRC or AMS Safety Committee approval, the technician must have had 40 hours of classroom and 40 hours of laboratory training; approximately six months of on-the-job training or prior related employment; and satisfactorily completed a written examination.

The potential safety consequences of work performed by an unqualified or unauthorized technician is that a faulty repaired or serviced teletherapy unit could expose the AMS repairman, a medical patient, or a hospital technician to excessive radiation.

Through the course of its inspection efforts, NRC Region III determined that unqualified AMS repairmen had serviced teletherapy units at seven medical institutions in the midwestern and eastern United States. An Order was sent to each institutions by the NRC's Office of Inspection and Enforcement requiring the institution to perform full calibration measurements on its teletherapy units prior to the treatment of patients, unless "those calibration requirements have been satisfactorily completed *subsequent* to maintenance or service by AMS representatives." In addition, each institution was required to have its teletherapy unit(s) fully inspected and serviced within 90 days of the Order by technicians other than AMS; until the full inspection and servicing were completed, each licensee was to perform periodic spot-checks of its teletherapy unit(s) every seven days.

The NRC's inspection of AMS also disclosed that the firm has been installing a defective teletherapy unit timer. Operational malfunction of the timer could result in radiation misadministrations to patients and possible excessive radiation exposures to teletherapy unit operators.

Cause or causes—The cause of this event was the apparent disregard of NRC's regulations and requirements by the licensee.

Actions Taken to Prevent Recurrence

Licensee—The NRC's October 10, 1986, Suspension Order required AMS to make available to the NRC all employee training records on the servicing of teletherapy units, all leak test records of sealed cobalt-60 sources, and all invoice and service reports of teletherapy unit maintenance and service work.

AMS was given 20 days from the date of the Order to show-cause why the Order should not have been issued.

On December 23, 1986, the licensee met with NRC Region III officials in Glen Ellyn, Illinois, seeking a rescission of the October 10, 1986 Order. On January 7, 1987, the NRC denied the licensee's request, in part because the licensee failed to "provide reasonable assurance of the protection of the public health and safety . . ."

In a letter dated January 23, 1987, the licensee agreed to perform all work on teletherapy units with only licensed, qualified technicians. AMS also agreed to conduct more frequent field inspections of their employees' work, including conducting a field audit of an individual's first job, followed by quarterly audits for the next six months, and semiannual audits thereafter. AMS also committed to bringing in an outside consultant semiannually to independently audit their service and repair program.

NRC—On October 29, 1986, the NRC issued Inspection and Enforcement

Bulletin No. 86–04 to all NRC licensees authorized to use cobalt-60 teletherapy units. The Bulletin directed licensees to instruct their technicians on how to recognize defective timers and the mitigating actions to be taken if a malfunction occurs. It also required the licensees to notify the NRC of the presence of any defective timer and the corrective actions taken.

On February 2, 1987, the Regional Administrator of NRC Region III relaxed the October 10, 1986 Order, following a review of the licensee's stated corrective actions. In addition to the licensee's commitments described above, Region III required AMS to (1) notify a Regional Branch Chief within 24 hours of a teletherapy unit service request, (2) provide a description of the work to be done, (3) name the individual assigned to perform the work, and (4) notify the NRC of the date the work is to be performed.

The licensee has asked for a hearing on the Suspension Order. A hearing date before an NRC Administrative Law Judge has not yet been scheduled.

On April 8, 1987, the NRC issued Inspection and Enforcement Information Notice No. 87–18, to caution applicable licensees against using nonlicensed maintenance personnel to service their teletherapy equipment.

AO 86–26 Diagnostic Medical Misadministration

The general AO criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurence.

Date and place—On October 21, 1986, a patient at St. Luke's Hospital, Racine, Wisconsin, received a whole body iodine-131 diagnostic scan while the intended procedure was to be a thyroid scan.

Nature and probable consequences—On October 6, 1986, a patient received a diagnostic thyroid scan using iodine–123, an accelerator-produced radioisotope (accelerator-produced radioisotopes are not subject to NRC regulation, but are under State jurisdiction). The attending physician then gave oral instructions for an iodine-131 scan because the previous scan was not definitive. The nuclear medicine technologist erroneously arranged for a whole body scan instead of a thyroid scan as intended by the physician. The whole body scan involved 1.53 millicuries of iodine-131, which is approximately 30 times the normal 50 microcurie dosage for a thyroid scan.

After the scan was performed on October 21, 1986, the attending physician discovered the error. The whole body scan, however, did provide the physician with the diagnostic information desired.

The radiation exposure, while in excess of that intended, did not result in any immediate medical effects, according to the licensee. Had a typical dosage of iodine-131 for a therapeutic procedure been administered (i.e., 4 to 6 millicuries), rather than the 1.53 millicuries actually administered, a significant reduction in thyroid activity could have resulted. Thyroid damage, however, can be compensated for through the use of medication.

Cause or causes—The misadministration was caused by the nuclear medicine technologist's misinterpreting the attending physician's oral instruction. The physician requested an "iodine-131 scan," which the technologist incorrectly assumed to be whole body scan. Typically, the licensee uses iodine-123 for thyroid scans and iodine-131 for either thyroid scans or whole body scans.

Actions Taken To Prevent Recurrence

Licensee—The licensee has revised its procedures for prescribing radioiodine for medical procedures and provided training on the revised procedures. All prescriptions are now to be in written form and will be reviewed. by a nuclear medicine physician and verified by the technologist prior to administration of the radiopharmaceutical to the patient.

NRC—The NRC conducted a special inspection on December 15, 1986, to review the circumstances of the misadministration. The inspection did not identify any violations of NRC requirements, but determined that improvements were needed in the patient prescription process to preclude similar misadministrations in the future.

NRC Region III issued a Confirmatory Action Letter on January 9, 1987, documenting the licensee's agreement to change its procedures. The changes will be incorporated into the facility's NRC license.

The NRC also retained a medical consultant to evaluate the misadministration and its possible medical effects. The consultant's report is pending.

On April 15, 1987, the NRC issued Information Notice No. 85–61, Supplement 1 ("Misadministrations to Patients Undergoing Thyroid Scans") to licensees which described various misadministrations and corrective actions taken by some licensees which have been found effective to prevent such misadministrations. Iformation Notice No. 85–61, previously issued on July 22, 1985, discussed several other similar misadministrations.

AO 86–27 Diagnostic Medical Misadministration

The general AO criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and place—On November 18, 1986, a patient at Toledo Hospital, Toledo, Ohio, received a misadministration of a radiopharmaceutical when the wrong radioactive material was administered. It is estimated that the patient's thyroid received a dose of about 6,760 rads.

Nature and probable consequences—The physicians of a 62-year old female patient planned a bone scan for the patient as an outpatient at the Diagnostic Center at Toledo Hospital. The bone scan normally involves a 20 millicurie dose of technetium-99m MDP. The hospital's procedures provide that the referring physician's office notify the Diagnostic Center by telephone of the scheduled procedure. The procedure is then scheduled, and the hospital's nuclear medicine department is notified to order the radiopharmaceutical.

In this instance, the physician's office notified the Diagnostic Center, but kept no record of the telephone conversation. The intended procedure was a bone scan, but the Center's receptionist recorded a "total body scan, rule out metastases, carinoma." This was interpreted by the nuclear medicine department as an order for a thyroid metastatio disease scan, which is also known as a "total body scan." Toledo Hospital normally uses a 20 millicurie dose of iodine-131 for such a procedure, which is usually performed on patients who have had their thyroid removed. (The organ principally affected by an iodine dose is the thyroid.) The nuclear medicine department confirmed with the Center's receptionist that the thyroid metastatic disease scan was the prescribed procedure. The receptionist, however, did not verify the procedure with the referring physician's office.

On November 18, 1986, the patient was administered the iodine-131. She returned to the Diagnostic Center the following day and said she was scheduled for a bone scan. Since the Center had no bone scan scheduled, the error was consequently discovered.

The patient had previously been diagnosed as having mild hypothyroidism (underactive thyroid) and was taking medication to make up for the decreased thyroid function. The iodine-131 dossage was estimated to cause a 6,760 rad dose to the thyroid, while other organs received a relatively

small dose. (A rad is a standard measure of absorbed dose.) This dose to the thyroid is less than would normally be expected for 20 millicuries of iodine-131, because of the patient's reduced thyroid function. If the patient had had a normally functioning thyroid, the expected dose would have been three to seven times what this patient is estimated to have actually received.

Nevertheless, the 6,760 rad thyroid dose is expected to significantly decrease the patient's thyroid function, necessitating an increase in the medication (thyroxin) the patient was already receiving. The prescribed thyroxin dosage was increased to three times the original prescribed dose. Both the hospital and the patient's physician plan to continue to monitor the patient.

Cause or causes—The apparent cause of the misadministration was a failure to accurately communicate the prescribed procedure to the hospital's Diagnostic Center. The precise method of failure could not be determined since the patient's physician did not have a record of the telephone conversation in which the procedure was scheduled.

Actions Taken to Prevent Recurrence

Licensee—The hospital has instituted a change in its procedures for scheduling outpatient diagnostic doses. All prescriptions for nuclear medicine procedures are to be in written form and reviewed by a nuclear medicine physician and verified by a technologist prior to the administration of the radiopharmaceutical to the patient.

NRC—NRC Region III conducted a special inspection at Toledo Hospital on November 25, 1986, to review the circumstances of the misadministration. No violations of NRC requirements were found during the inspection. NRC Region III issued a Confirmatory Action Letter to the hospital on November 21, 1986, documenting the hospital's agreement to change its procedures for scheduling procedures involving radiopharmaceuticals. The NRC also retained a medical consultant to review the possible health effects of the misadministation.

AO 86-28 Immediately Effective Order Modifying License and Order to Show Cause Issued to an Industrial Radiography Company

One of the general criteria notes that major deficiencies in management controls for licensed facilities or material can be considered an abnormal occurrence.

Date and place—On December 30, 1986, the NRC issued an Order to Met-Chem Testing Laboratories of Utah, Inc. of Salt Lake City that in effect prohibits the company from involving a senior management employee in the performance or supervision of any NRC licensed activities.

Background—The licensee is the holder of both a general license pursuant to 10 CFR 150.20 and a specific license (License No. 43-26821-01) pursuant to 10 CFR Part 30, issued by the NRC. The general license authorizes the licensee to conduct the same activity in non-Agreement states pursuant to the provisions of 10 CFR 150.20 as the licensee is authorized to conduct by its specific license from the State of Utah, an Agreement State. The NRC specific license authorizes the licensee to use the licensed materials in performing industrial radiography and replacing sources, and to use an EON Model 64-764 calibrator (which contains a readioactive source) for calibration of survey instruments at locations where NRC maintains jurisdiction. The NRC license for industrial radiography was issued in July 1986.

Nature and probable consequences—The NRC Order was issued to remove the senior vice president from any assignment or position influencing or involving the performance or supervision of any licensed activities. This action was taken following an NRC investigation initiated in 1985 as a result of inspector observations made during a routine inspection. The NRC decided to issue the Order after an NRC investigator obtained a sworn statement on August 21, 1986, from the senior vice president in which he admitted that while employed as the office manager for the predecessor radiography company (Met-Chem Engineering Laboratories, Inc.), he had typed a letter and forged on it the signature of a radiographer for the purpose of explaining away an overexposure indicated on the radiographer's film badge.

The overexposure, while not clinically significant, was reportable according to NRC regulations. The letter falsely stated that the radiographer's dosimeter and film badge were left in a shirt pocket and the shirt was placed in an area near a radiation source resulting in an overexposure reading, but not an overexposure to the radiographer himself.

Had the NRC been provided with correct information, inspection actions regarding the overexposure would have been taken against Met-Chem Engineering Laboratory, Inc., the now defunct former company. Further, had the NRC known that a senior management employee of the licensee had withheld reportable information concerning radiation exposures, the specific license for the present company would not have been issued. The false statements made by the senior vice president call into question his candor in dealing with the NRC, and demonstrate that there was no longer reasonable assurance that the licensee would comply with NRC requirements while the individual was involved in licensed activities.

Cause or causes—The employee willfully made false statements to, and withheld information from, the NRC. On August 13, 1986, the employee denied to an NRC inspector and an NRC investigator any knowledge of how the forged letter was generated. However, on August 21, 1986, he admitted that he had indeed generated, and signed, the letter.

The employee has stated that the reasons he wrote the forged letter were (1) he did not want anything to stop the sale of certain Met-Chem Engineering Laboratories, Inc. properties to a third party, and (2) he did not want the NRC to know about the overexposure because he believed it would not have been desirable to have the NRC looking into the matter during the sale negotiation period.

Actions Taken to Prevent Recurrence

Licensee—The licensee responded to the NRC Order on January 15, 1987. The licensee stated that the employee terminated employment at Met-Chem Testing Laboratories during November 1986, to accept employment with a company which neither has a radioactive materials license nor handles any radioactive materials.

The licensee held meetings with all authorized users of radioactive materials to restate the instructions they are given during training, which includes total compliance to NRC requirements and to be honest and cooperate totally with NRC personnel. On January 5, 1986, the authorized users of radioactive materials signed a statement that they have read and understand the December 31, 1986 NRC Order.

NRC—The NRC Order contained the following provisions, effective immediately:

(1) License No. 43-26821-01 is amended by adding the following conditions:

The employee shall be removed from any assignment or position influencing or involving the performance or supervision of any licensed activities (e.g., as an authorized user), including the supervision of any Radiation Safety Officer (RSO).

(2) The licensee shall show cause in the manner hereinafter provided why

the license amendment set out in paragraph (1) above should not become permanent.

(3) The employee shall be removed from any assignment or position influencing or involving the performance or supervision of any licensed activities permitted under the general license issued pursuant to 10 CFR § 150.20.

(4) The licensee shall show cause in the manner hereinafter provided why the provisions in paragraph (3) above should not become permanent.

(5) Prior to conducting any licensed activities after receipt of this Order, the licensee shall (a) notify in writing all personnel involved in the performance and supervision of licensed activities at Met-Chem Testing Laboratories of Utah, Inc. of this Order and the importance of strict adherence to NRC requirements and complete candor with NRC personnel, and (b) certify to the NRC that each Authorized User and RSO has read the notification and Order and understands its contents.

(6) The NRC Region IV Regional Administrator may relax or rescind any of the above provisions for good cause shown by the licensee.

The NRC is evaluating the licensee's response to the Order, to determine whether it is satisfactory, and/or whether further enforcement action is required.

Dated in Washington, DC, this 31st day of July 1987.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 87-17798 Filed 87-4-87; 8:45 a.m.]

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[Docket No. 50-287; Facility Operating License No. DPR-55]

Environmental Assessment and Finding of No Significant Impact; Duke Power Co., Oconee Nuclear Station, Unit 3

The United States Nuclear Regulatory Commission (the Commission) is considering the issuance of a proposed amendment which would allow the use of multielement spent fuel casks in the Oconee Unit 3 spent fuel pool. Oconee Nuclear Station, Unit 3 is operated by Duke Power Company (the licensee) and is located in Oconee County, South Carolina.

Environmental Assessment

Identification of the proposed action: The proposed amendment would revise the Technical Specification 3.8.13.b to allow use of the multielement spent fuel casks in the Oconee Unit 3 spent fuel pool.

On July 26, 1985, the Commission issued Amendment Nos. 44 and 25 to the licenses of the McGuire Nuclear Station, Units 1 and 2, to allow the receipt, possession and storage at McGuire of the irradiated spent fuel assemblies from the Oconee Nuclear Station. The McGuire licenses had limited such receipt of Oconee spent fuel at McGuire only in NFS-4 (NAC-1) and NLI-1/2 casks, which are single-element casks.

On August 29, 1986, the Commission issued Amendment Nos. 61 and 42 to the licenses of McGuire Units 1 and 2 to authorize the use of Transnuclear, Inc. multielement spent fuel shipping casks, Model Numbers TN-8 and TN-8L, for receipt of irradiated Oconee fuel.

The proposed amendments to the Oconee Unit 3 license would authorize the use of the TN-8 and TN-8L multielement spent fuel casks in the Oconee Unit 3 spent fuel pool. The proposed amendments would increase the region of Oconee Unit 3 spent fuel racks within the spent fuel pool; with limits on the spent fuel cask movement from 31 to 33 rows. No change is needed for the Oconee Units 1 and 2 Technical Specifications for their combined spent fuel pool. This change was requested in the licensee's application for amendments dated November 19, 1985. Additional information in support of the requested change was provided in the licensee's letters dated June 16, 1986, February 18, 1987 and June 5, 1987.

The need for the proposed action: In its March 20, 1986 amendment application to the McGuire licenses on this issue, the licensee stated that to maintain acceptable reserve spent fuel storage capacity (needed for potential full core off-loading, reload batch and upender access) in the Oconee spent fuel pools, the licensee needs to use a multielement spent fuel shipping cask. The licensee states that in addition to maintaining the necessary shipment rate, multielement casks have the advantage of fewer shipments (and hence lower probability of adverse offsite impact), lower station manpower requirements and reduced total radiation exposure to personnel.

A. Transportation

TN-8 and TN-8L are multielement truck casks which are physically capable of accommodating up to three PWR fuel assemblies. The two models have the same dimensions, but TN-8L is about one ton lighter than TN-8's forty tons because it has fewer external cooling fins and, hence, a lower maximum authorized heat load. These casks have received a Certificate of Compliance for Radioactive Materials Packages, which was recently reviewed by the Commission (Certificate No. 9015, Revision 12, expiration date January 31, 1991). Such certificates are issued by the Commission to certify that the packaging (i.e., cask) and contents meet applicable safety standards of 10 CFR Part 71, "Packaging and Transportation of Radioactive Material." By letter dated June 17, 1986, the Commission acknowledged Duke Power Company as a registered user of TN-8 and TN-8L shipping casks pursuant to § 71.12 of 10 CFR Part 71.

In meeting the requirements for obtaining a Certificate of Compliance, it was demonstrated that adequate containment exists under both normal and accident conditions. To satisfy normal condition requirements, the cask was required to withstand continuous exposure, i.e., equilibrium conditions, to direct sunlight at an ambient temperature of at least 130°F in still air and continuous exposure to an ambient temperature of at least −40°F in the shade in still air. It was also required to withstand rough handling which is typified by a one-foot free-fall on an unyielding surface in a manner that produces maximum damage or other conditions representative of rough handling, and vibrations normally incident to the mode of transport. Under these normal conditions (which are really fairly severe abnormal conditions), no release of radioactive material or coolant was allowed and shielding effectiveness was not allowed to be reduced. In addition, contamination of liquid or gaseous primary coolants could not exceed certain specified low levels.

The attendant accident condition requirements for cask qualification were much more severe. The cask was required to withstand very severe impact puncture, fire and immersion in water test criteria (Impact is defined as a thirty foot free-fall onto an unyielding surface, in a manner that produces maximum damage. Puncture is represented by a forty inch free-fall onto a six inch diamater pin, mounted on an unyielding surface, at an altitude to produce maximum damage. Fire resistance requirements are that the cask withstand an exposure to an all-enveloping thermal radiating environment of at least 1475°F for thirty minutes and no external cooling for three hours thereafter. The cask was also required to withstand immersion in water. The 10 CFR Part 71 regulations required sequential application of the above conditions.) The cask was able to withstand immersion in water after it had been subjected successively to

these impact, puncture and fire conditions.

No changes in the offsite or onsite transportation routes are involved with the proposed amendments. The transportation routes were previously approved by the Commission (see McGuire Nuclear Station, Units 1 and 2 Amendment Nos. 61 and 42 dated August 29, 1986 and the related Environmental Assessment (51 FR 30593). Upon arrival at the McGuire site, the multielement casks would be transported to the same unloading points designated for the single-element casks.) A given multielement cask would be transported either to the unloading point for Unit 1 or to the unloading point for Unit 2, but not to both. The licensee states that the contents of a given multielement cask will not be divided between the two McGuire spent fuel pools.

By letter dated January 15, 1987, the licensee addressed paragraphs (a) and (c) of 10 CFR 51.52, "Environmental effects of transportation of fuel and waste–Table S–4." Although the letter is associated with another amendment application on extending the expiration dates of the operating licenses, the information is pertinent here also. In a February 18, 1987 letter, the licensee submitted additional information on the transportation of Oconee spent fuel to the McGuire Nuclear Station. In an August 5, 1986 letter, the licensee gave information with respect to McGuire on the cask transportation issue. Paragraph (c) consists of a Table S–4 which represents the contribution to environmental costs of transportation of fuel (and waste) to and from a "typical" reactor. The types of reactors, fuel and modes of transportation for which Table S–4 applies are set forth in various subparagraphs of paragraph (a). A summary of the licensee's evaluation follows.

Oconee and McGuire are both light-water cooled nuclear power reactors with thermal power ratings of 2568 and 3411 megawatts, respectively, which is in accordance with the maximum power level of 3800 megawatts specified by subparagraph (a)(1). All shipments of Oconee irradiated fuel to McGuire will be by truck, which is consistent with subparagraph (a)(5) which recognizes use of truck, rail or barge. Table S–4 is based on an annual refueling and an assumption of sixty spent fuel shipments per reactor year. Presently, Oconee Nuclear Station is on an eighteen-month refueling cycle which would require less than 30 spent fuel shipments per reactor year. Reducing the number of fuel shipments will reduce the overall impacts associated with population exposure and accidents discussed in Table S–4. Table S–4 represents the contribution of such transportation to annual radiation dose per reactor year to exposed transportation workers and to the general public. Presently, Oconee Nuclear Station is authorized to slightly exceed the fuel enrichment and average fuel irradiation levels that are specified in 10 CFR 51.52(a) (2) and (3) as the bases for Table S–4. The radiation levels of the transport fuel casks are limited by the Department of Transportation and are not dependent on fuel enrichment and/or irradiation levels. Therefore, the estimated doeses to exposed individuals per reactor year will not increase over that specified in Table S–4.

The expected heat content of the fully loaded cask in transit will be less than 10,200 BTU/hr, which represents less environmental impact from heat discharge than the impact of the 250,000 BTU/hr/cask in Table S–4. Shipments with the multielement cask would occur once per week and, therefore, the impact from traffic density would not exceed the density of less than one truck per day in Table S–4. With respect to weights specified in Table S–4, the licensee will observe truck weight limitations specified by Federal and State regulations and will obtain overweight permits from the State of North Carolina and the State of South Carolina; these permits ensure that repetitive overweight shipments will not have any significant adverse effect on the roadways.

Radiological exposure to transportation workers would be less than the four man-rem per reactor year of Table S–4 (i.e., Department of Transportation (DOT) regulations limit exposure in occupied areas of the truck to a maximum of two millirem per hour; at this limit, the three and a half hour trip 52 times a year with two people in the vehicle would not exceed an annual dose of 0.73 man-rem; actual exposures would be much less than the DOT limit.) There are no planned stops between Oconee and McGuire Stations, and therefore, no radiological exposure to onlookers is expected. The total population within a one mile wide corridor along the 172 mile route is about 124,000 people (which is small compared to the total population of 600,000 used in Table S–4) and the dose rates from the proposed casks are lower than those in Table S–4, therefore, annual doses to the general public from exposure to the casks in transit would be less than the 3 man-rem of Table S–4.

The environmental risk associated with accidents in transit (both radiological and non-radiological) would be small and less than the risks in Table S–4 because the 8,944 miles per year for the proposed actions is less than the 155,000 vehicle miles per year upon which Table S–4 is based.

The Commission has reviewed the licensee's evaluation pursuant to 10 CFR 51.52 and finds that the reactor fuel and proposed transport mode meet the conditions of paragraph (a) to 10 CFR 51.52 and, therefore, are the type upon which Table S–4 is based. Accordingly, Table S–4 appropriately represents the environmental costs of transportation for the proposed amendments. The Commission finds that these environmental impacts are small and do not represent any significant adverse impact on the quality of the human environment.

The environmental impacts associated with the transhipment of Oconee spent fuel to the McGuire and Catawba Nuclear Stations were previously evaluated by the staff (Final Environmental Statement related to the operation of Catawba Nuclear Station, January 1983) and the Atomic Safety and Licensing Appeal Board (ASAB–651, 14 NRC 307 (1981)) and found to be insignificant. These impacts would not be changed by the proposed license amendments. The current authorization to ship such spent fuel is limited to 300 fuel assemblies.

B. Handling

In support of its request for authorization to use TN–8 and TN–8L multielement spent fuel casks for shipping Oconee irradiated fuel to McGuire, the licensee provided cask drop analyses (which evaluated the consequences of dropping or tipping, or a combination of both, of TN–8 and TN–8L casks in the Oconee spent fuel handling building), discussed the effects of the change upon the guidelines of NUREG–0612, "Control of Heavy Loads at Nuclear Power Plants," and identified plant operating procedures and training associated with the use of the new casks.

Control procedures and plant cask handling procedures restrict the travel path of the cask and thus provide additional assurance that the cask will not fall and tip into the spent fuel pool. The procedures require the cask to follow a prescribed path which restricts the cask approach to the cask pit to either side (i.e., the cask is precluded from approaching the cask pit in the direction of the spent fuel pool.) The prescribed path will further cause the cask's center of gravity to be located over the spent fuel cask pit such that

any tipping of a dropped cask would be within the confines of the cask pit. The prescribed path also precludes the cask from passing over or near safety-related equipment and restricts the cask to areas designed to accommodate a dropped cask with only negligible damage to the structural concrete.

The staff has reviewed the licensee's analyses of the fuel cask drop accident and concludes that with the administrative control procedures, there is little likelihood that the cask will enter the spent fuel pool should it break free as postulated during cask handling. The staff also concludes that such an accident would not cause significant structural damage or damage to any safety-related equipment.

In April 1983, the staff completed a review of the Oconee Units 1, 2 and 3 overhead handling systems and programs used to handle heavy loads in the vicinity of the reactor vessel, near the spent fuel in the spent fuel pool, or in other areas where load drop may damage safe shutdown systems or spent fuel. The staff review was based upon the guidelines of NUREG–0612. Plants conforming to these guidelines (1) have developed and implemented, through procedures and operator training, safe load travel paths such that, to the maximum extent practical, heavy loads are not carried over or near irradiated fuel or safe shutdown equipment, and (2) have provided sufficient operator training, handling system design, load-handling instructions and equipment inspection to ensure reliable operation of the handling systems. The staff concluded that these systems and programs for Oconee met the guidelines of NUREG–0612. The information provided by the licensee for that NUREG–0612 review was reevaluated along with the above cask drop accident analyses, including the plant operating procedures associated with the use of the TN–8 and TN–8L spent fuel casks, the physical characteristics of the TN–8 and TN–8L spent fuel casks, use of the associated handling equipment, and plant staff training. The staff finds that in addition to the acceptability of the cask drop analyses and the procedures discussed above, the licensee is providing sufficient operator training, the handling system design has sufficient capability to handle the casks, and the load-handling instructions and equipment inspection will ensure reliable operation of the handling systems. The staff concludes that the cask handling system and association procedures at Oconee meet the guidelines of NUREG–0612 for the TN–8 and TN–8L spent fuel casks, and therefore, that the probability of a cask drop event during handling of the multielement casks remains very unlikely and is not increased by the proposed license amendment.

The cask qualification requirements, which were met in obtaining a Certificate of Compliance (discussed above) imposed more severe conditions on the structural integrity of the cask and containment of its contents than would be experienced during handling at the Oconee site. These results provide assurance that the fuel and cask would remain intact in the event of a dropped cask handling at the Oconee site. In addition, as discussed above, a dropped cask would not enter the spent fuel pool nor cause significant damage to any safety-related equipment. Therefore, the radiological consequences would be no more severe than those associated with the use of the single-element casks.

Accordingly, we conclude that the handling aspects of the proposed amendments continue to represent only very small risks to the environment, do not result in any adverse change in our previous Final Environmental Statement (FES) conclusions, and will not result in any significant adverse impact on the quality of the human environment.

C. Occupational Radiological Exposure

The licensee states that one advantage of the multielement cask is that it results in less handling, only one third as many shipments, and therefore, less occupational exposure for the same number of fuel assemblies. The licensee has determined that the average radiation dose to workers at Oconee and McGuire stations using the single-element casks is 215 person-millirems for each individual shipment (i.e., 645 millirems for 3 individual shipments.) If, instead, the 3 spent fuel assemblies had been shipped using the TN–8 and TN–8L multielement cask, the licensee estimates that the dose to all workers would have been no more than 615 person-millirems. Therefore, use of the multi-element cask is estimated to result in a reduction in occupational exposure of at least 10 person-millirems for each spent fuel asembly slippage.

D. Cumulative Effects

The proposed amendments would not increase the maximum number (i.e., 300) of Oconee spent fuel assemblies authorized for receipt for storage at McGuire Nuclear Station. The licensee states that it intends to deliver all spent fuel, including that shipped to McGuire Nuclear Station, to the Department of Energy for disposal pursuant to contract, and that it has no plans for other transfer of Oconee spent fuel at McGuire. Accordingly, we conclude that the proposed amendments do not involve any cumulative adverse impacts.

E. Additional Non-Radiological Effects

In addition to the radiological and non-radiological effects associated with transportation as discussed above, the licensee states that certain minor modifications to the Oconee Nuclear Station are necessary to accommodate the additional handling tools and larger envelope of the multielement cask. These modifications include: (1) Enlarging a grating opening in the decontamination pit, (2) adding grating at the bottom of the decontamination pit, (3) adding permanent lighting in the decontamination pit, (4) purchasing a new crane hook adapter, (5) fabricating and mounting a new spent fuel handling tool/crane hook adapter storage bracket in the transfer canal area, and (6) fabricating and mounting a storage stand for the cask primary lift beam on one wall of the decontamination pit. The Commission agrees that these are relatively simple modifications which do not (1) adversely affect any major structural components or use of the facility, or (2) create any adverse impact upon the environment.

F. Conclusion

The environmental impacts from use of the multielement cask are accounted for by the values contained in Table S–4 of 10 CFR 51.52, and, in accordance therewith, are small. Additionally, no new transportation routes are involved with the proposed amendments and the multielement casks have been certified to applicable requirements of 10 CFR Part 71. As a result of these considerations, transportation using the multielement cask as would be authorized by the proposed amendments will not result in adverse environmental impacts significantly affecting the human environment. Handling control procedures and analyses demonstrate that there is little likelihood that the cask could enter the spent fuel pool if dropped from the handling crane, or that it would cause significant structural damage or damage to any safety-related equipment. The cask and its fuel contents would remain intact if dropped during handling and the radiological consequences, therefore, would be no more severe than those previously evaluated by the Commission and found acceptable in the FES. Use of the multielement cask is estimated to result in a reduction in occupational exposure to workers because it involves less handling and fewer shipments than the single element casks. The proposed

amendments involve no adverse cumulative impacts. Minor modifications at Oconee Nuclear Station to accommodate the larger cask will not create any adverse impact to the environment. The proposed amendments do not otherwise involve significant non-radiological effects.

Therefore, we conclude that the proposed amendments will not result in significant adverse environmental impacts.

Alternative to the proposed actions: Since we have concluded that adverse environmental effects of the proposed action are not significant, any alternatives to the actions proposed would not result in substantial improvement in the quality of the environment and, therefore, need not be evaluated. The principal alternative would be to deny the requested amendments. That alternative, in effect, is the same as the "no action" alternative. Neither alternative would reduce environmental impacts of plant operation but would result in increased occupational exposure and reduced operational flexibility associated with reserve storage capacity in the Oconee spent fuel pool.

Alternative use of resources: This action does not involve the use of resources not previously considered in connection with the U.S. Nuclear Regulatory Commission's Final Environmental Statement dated March 1972 relative to this facility.

Agencies and persons consulted: The Commission staff reviewed the licensee's request of November 19, 1985 supplemented on June 16, 1986, February 18, 1987 and June 5, 1987, and did not consult other agencies or persons.

Finding of no significant impact: The Commission has determined not to prepare an environmental impact statement for the proposed license amendments.

Based upon this environmental assessment, the Commission, staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for amendments dated November 19, 1985, and its supplements dated June 16, 1986, February 18, 1987 and June 5, 1987. Also, see the Commission's approval for the McGuire Nuclear Station, amendments dated August 29, 1986 and environmental assessment (51 FR 30593). These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC and at the Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina 29691.

Dated at Bethesda, Maryland, this 30th day of July 1987.

For the Nuclear Regulatory Commission.

B.J. Youngblood,

Director, Project Directorate II-3, Division of Reactor Projects—I/II.

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[Docket Nos. 50-272 and 50-311]

Environmental Assessment and Finding of No Significant Impact; Public Service Electric and Gas Co., et al., Salem Nuclear Generating Station, Units 1 and 2

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a partial exemption from the requirements of Appendix J to 10 CFR Part 50 to Public Service Electric and Gas Company, et al. (the licensee) for the Salem Nuclear Generating Station, Units 1 and 2, located at the licensee's site in Salem County, New Jersey.

Environmental Assessment

Identification of proposed actions: Licensee's request for exemption and the bases therefor are contained in a letter dated April 11, 1986. By letters dated August 29, 1986 and March 13, 1987, the licensee requested a slightly revised exemption that would additionally allow the door seal leakage rate test of III.D.2(b)(iii) to be used when the maintenance affecting the airlocks sealing capability was performed only on the door gaskets. The proposed exemption would partially relieve the licensee from the requirement of conducting a full pressure airlock leakage test, pursuant to Paragraph III.D.2(b)(ii) of Appendix J to 10 CFR Part 50, whenever airlocks are opened during periods when containment integrity is not required. Licensee would rely, instead, on the door seal leakage test described in Paragraph III.D.2(b)(iii) when the airlocks are opened when the reactor is in cold shutdown (Mode 5) or refueling (Mode 6) and when no maintenance has been performed on the airlock that could affect its sealing ability, unless the maintenance is performed only on the door seals (gaskets) themselves. If maintenance that could affect sealing ability has been performed on an airlock, other than the door gaskets, a full pressure airlock test must still be performed. Door seal testing will be done after each opening, after maintenance which could affect the airlock door gaskets, and prior to establishing containment integrity.

The need for the proposed actions: The proposed exemption is from performance of the leakage rate test required by Paragraph III.D.2(b)(ii) of 10 CFR Part 50, Appendix J, which takes at least 8 hours per airlock. Exemption from full pressure leakage tests on airlocks opened during a period when containment integrity is not required, would provide the licensee with greater plant availability over the lifetime of the plant.

Environmental impact of proposed actions: The proposed exemption would permit the substitution of an airlock seal leakage test (Paragraph III.D.2(b)(iii) of Appendix J, 10 CFR Part 50) for the full pressure airlock test otherwise required by Paragraph III.D.2(ii) when the airlock is opened while the reactor is in a cold shutdown or refueling mode. If the tests required by III.D.2(b) (i) and (iii) are current, if no maintenance (other than on door gaskets) has been performed on the airlock, and if the airlock has been properly sealed, this exemption will not affect containment integrity and does not affect the risk of facility accidents. Thus, post-accident radiological releases will not be greater than previously determined nor does the proposed exemption otherwise affect radiological plant effluents, nor result in any significant occupational exposure. Likewide, the exemption does not affect non-radiological plant effluents and has no other environmental impact.

Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with the proposed exemption.

Alternative to the proposed actions: Because we have concluded that there is no measurable environmental impact associated with the proposed exemption, any alternatives to the exemption will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested exemption. Such action would not reduce environmental impacts of Salem Units 1 and 2 operations and would result in reduced operational flexibility or uwarranted delays in power ascension.

Alternative use of resources: These actions do not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to Operation of Salem Nuclear Generating Station, Units 1 and 2," dated April 1973.

Agencies and persons consulted: The NRC reviewed the licensee's request

that supports the proposed exemption. The NRC staff did not consult other agencies or persons.

Findings of No Significant Impact

Based upon the foregoing environmental assessment, we conclude that the proposed exemption will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to the proposed actions, see the licensee's requests for the exemption dated April 11, 1986, August 29, 1986, and March 13, 1987, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Salem Free County Public Library, 112 W. Broadway, Salem, New Jersey 08079.

Dated at Bethesda, Maryland, this 28th day of July 1987.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I–2, Division of Reactor Projects I/II.

[FR Doc. 87–17793 Filed 8–4–87; 8:45 am]

BILLING CODE 7590–01–M

Meeting Agenda of the Advisory Committee on Reactor Safeguards

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on August 6–8, 1987, in Room 1046, 1717 H Street, NW., Washington, DC. Notice of this meeting was published in the **Federal Register** on July 20, 1987.

Thursday, August 6, 1987

8:30 a.m.–8:45 a.m.: Report of ACRS Chairman (Open)—The ACRS Chairman will report briefly regarding items of current interest to the Committee.

8:45 a.m.–10:15 a.m.: Tennessee Valley Authority (TVA) Nuclear Activities (Open)—Review proposed TVA Nuclear Performance Plan-Corporate and proposed restart of TVA nuclear power plants.

10:30 a.m.–12:30 p.m.: Fire Protection (Open)—Discuss proposed scoping plan for a research program regarding fire protection provisions in nuclear power plants.

1:30 p.m.–1:50 p.m.: Preparation for Meeting with NRC Commissioners (Open)—Discuss comments regarding ACRS reports to the NRC on:

- Plan for Implementation of NRC Safety Goals, report dated May 13, 1987.
- Draft NUREG–1150, Reactor Risk Reference Document, report dated July 15, 1987.
- Integrated Safety Assessment Program, report dated July 15, 1987.

2:00 p.m.–3:30 p.m.: Meeting with NRC Commissioners (Open)—Discuss items noted above.

3:45 p.m.–6:15 p.m.: Requirements for Reactor Operators (Open)—Consider proposed degree requirements for nuclear power plant operators.

Friday, August 7, 1987

8:30 a.m.–10:20 a.m.: Management Allocation of Resources for Advisory Functions (Closed)—Discuss ACRS role in review of regulatory matters.

This session will be closed to discuss information that involves the internal personnel rules and practices of NRC and information the release of which would represent a clearly unwarranted invasion of personal privacy.

10:30 a.m.–12:00 Noon: Meeting with NRC Commissioners (Closed)—Discuss management allocation of resources for advisory functions.

This session will be closed to discuss information that involves the personnel rules and practices of NRC and information the release of which would represent a clearly unwarranted invasion of personal privacy.

1:00 p.m.–1:30 p.m.: Standardized Westinghouse PWR Plant (Open)—Briefing and discussion of proposed NRC plan for review of the proposed Westinghouse improved standardized nuclear power plant design (RESAR SP/90).

1:30 p.m.–3:00 p.m.: General Design Criterion–4 (Open)—Review proposed revision of GDC–4 to include consideration of leak-before-break criteria in the design of nuclear power plants.

3:15 p.m.–5:15 p.m.: Nuclear Power Plant Operating Experience (Open)—Briefing and discussion regarding recent operating events and incidents at nuclear facilities.

5:15 p.m.–5:45 p.m.: Future ACRS Activities (Open)—Discuss anticipated ACRS activities and items proposed for consideration by the full Committee.

5:45 p.m.–6:30 p.m.: Appointment of New ACRS Members (Open/Closed)—Discuss qualification of candidates proposed for appointment to the ACRS.

Portions of this session will be closed as required to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy and information that involves the internal personnel rules and practices of NRC.

Saturday, August 8, 1987

8:30 a.m.–12:00 Noon: Preparation of ACRS Reports to the NRC (Open)—Discuss proposed reports to NRC regarding items considered during this meeting.

1:00 p.m.–2:00 p.m.: Nuclear Safety Board (Open)—Discuss ACRS role in support of a nuclear safety board to provide oversight of DOE activities.

2:00 p.m.–3:00 p.m.: Miscellaneous (Open)—Complete discussion of items considered during this meeting.

Procedures for the conduct of participation in ACRS meetings were published in the **Federal Register** on October 20, 1986 (51 FR 37241). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, R.F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)) and information related to the internal personnel rules and practices of the agency (5 U.S.C. 552b(c)(2)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F.

Fraley (telephone 202/634–3265), between 8:15 a.m. and 5:00 p.m.

Dated: July 30, 1987.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 87–17799 Filed 8–4–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–261]

Carolina Power & Light Co., H.B. Robinson Steam Electric Plant, Unit No. 2; Exemption

I

The Carolina Power & Light Company (CP&L or the licensee) is the holder of Operating License No. DPR–23 that authorizes operation of the H.B. Robinson Steam Electric Plant, Unit No. 2. The license provides, among other things, that the H.B. Robinson Steam Electric Plant, Unit No. 2, is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

The station is a single-unit pressurized water reactor at the licensee's site located in Darlington County, South Carolina.

II

On November 19, 1980, the Commission published a revised Section 50.48 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants. The revised § 50.48 and Appendix R became effective on February 17, 1981. Section III of Appendix R contains 15 subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. One of these subsection, III.J, is the subject of the licensee's exemption request.

Section III.J, of Appendix R to 10 CFR Part 50, Emergency Lighting, requires 8-hour battery powered lighting units in areas needed for operation of safe shutdown equipment and along access and egress routes thereto.

III

By letter dated June 29, 1984, as supplemented January 16, 1985, CP&L requested approval of exemption from the technical requirements of section III.J of Appendix R to 10 CFR Part 50 concerning the need for 8-hour battery powered lighting units in areas needed for operation of safe shutdown equipment and along access routes. The exemption request relates to the access routes to the charging pump room, component cooling water heat exchanger room, battery room, safety injection pump room and the service water intake structure. The licensee also requested an exemption for the containment and residual heat removal (RHR) pit areas where manual, cold shutdown operations are required and/or where possible repairs may be needed. The staff's evaluation of the licensee's request is provided below.

The reason for requiring 8-hour battery powered emergency lighting is to ensure that at least minimal lighting is available for the performance of manual actions necessary for safe shutdown after a fire. Usually manual actions are required for valve alignment, repairs and pump control operations. The licensee has stated that a fire on the ground level at the south end of the auxiliary building hallway would pervent access to dedicated shutdown equipment in the charging pump room and the component cooling water heat exchanger room. Similarly, a fire in the emergency switchgear room would prevent access to the DC distribution panels in the battery room. A fire at the north end of the auxiliary building hallway on the ground level would prevent access to the SI–864 A and B valves in the safety injection pump room. Also, manual operation of service water valve V6–12D, located at the intake structure, would require emergency lighting. The licensee has stated that due to the numerous alternate access pathways, a large number of fixed emergency lighting units would have to be installed, and the routing of associated cabling to provide the necessary electrical power for redundant lighting is not practicable.

The licensee justified the proposed exemptions for the limited circumstances where a fire may prevent access through the south end of the auxiliary building to the above stated areas. The licensee's justification is based on the availability of an assured alternate path where 8-hour battery powered lighting units are provided. In the areas where lighting units would not be installed, dedicated portable, hand-held lighting would be provided for the operator to perform the necessary functions. The licensee justifies this approach on the basis that the availability of dedicated portable hand-held lighting provides a level of emergency lighting equivalent to that required by Section III.J for the above areas.

The technical requirements of section III.J of Appendix R are not expressly met at the intake structure and along the access route to the safety injection pump room because fixed, individual 8-hour battery powered lighting units are not provided for safe shutdown.

At the north end of the auxiliary building, the staff was concerned about the availability of a reliable means of illumination and whether the path of travel would be unobstructed and easily traversed. The licensee has identified alternate access paths to the required equipment or alternate equipment that would provide the same functions. For example, the alternate access route to the charging pump room is from the second level of the auxiliary building adjacent to the non-regenerative and seal water heat exchangers, to the component cooling water heat exchanger from the turbine building via the exterior door in the south wall of the room, and to the battery room via the chemical batch addition room. These alternate routes are provided with fixed, 8-hour battery powered units. Furthermore, the alternate access route to the safety injection pump room follows the exterior of the auxiliary building along the east and north sides of the safety injection pump room exterior door. Portable hand-held lighting will be provided for operator access to the safety injection pump room. Permanent emergency lighting is provided inside the safety injection pump room to operate the required equipment. Portable lights will be provided in the control room for performing the required functions at the service water intake structure. These portable lights will provide adequate illumination for the operators to access the intake structure and operate valve V6–12D.

Since the only manual actions required inside the containment and RHR pit are for the operation of valves for cold shutdown, sufficient time is available for the licensee to take appropriate action to re-energize the normal containment lighting units prior to containment entry.

Based on the above evaluation of alternate access routes and provison for portable, hand-held lighting, the staff concludes that adequate lighting will prevail to access areas and perform necessary safe shutdown functions. Therefore, the licensee's request for exemptions from the requirements of section III.J of Appendix R for certain paths to the charging pump room, component cooling water heat exchanger room, DC distribution panels in the battery room and safety injection pump room is acceptable and should be granted. Furthermore, the staff concludes that the installation of 8-hour battery powered emergency lighting units inside the containment would not significantly improve the level of fire protection for this fire area. Therefore, their omission is an acceptable exemption from section III.J of Appendix

R, and application of the regulation in this particular circumstance is not necessary to achieve the underlying purpose of the rule.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), that (1) these exemptions as described in Section III are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security and (2) special circumstances are present for the exemptions in that application of the regulation in these particular circumstances is not necessary to achieve the underlying purposes of Appendix R to 10 CFR Part 50. Therefore, the Commission hereby grants the following exemptions from the requirements of section III.J of Appendix R to 10 CFR Part 50:

1. Access and egress routes to the:
a. Charging pump room;
b. Component cooling water heat exchanger room;
c. Battery room;
d. Safety injection pump room; and
e. Service water intake structure.
2. Containment and RHR pit areas where manual, cold shutdown operations and required and/or where possible repairs may be needed.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment.

For further details with respect to this action, see the request for exemption dated June 29, 1984, as supplemented January 16, 1985, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Hartsville Memorial Library Home and Fifth Avenues, Hartsville, South Carolina 29535.

This exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 30th day of July, 1987.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 87-17794 Filed 8-4-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-352-OLA (TS Iodine); ASLBP No. 87-550-03-LA]

Hearing on Issuance of Amendment to Facility Operating License; Philadelphia Electric Co. (Limerick Generating Station, Unit 1)

July 28, 1987.

Before Administrative Judges Sheldon J. Wolfe, Chairman, Dr. Richard F. Cole, and Dr. Peter A. Morris.

On March 12, 1987, at 52 FR 7675, 7691-93, the Nuclear Regulatory Commission published a notice captioned "Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity For Hearing." Among other things, the notice stated that:

> Generic Letter No. 85-19, "Reporting Requirements on Primary Coolant Iodine Spikes" was issued on September 27, 1985 to all licensees and holders of construction permits. The Generic Letter stated that the NRC staff had determined that the reporting requirements for iodine spiking could be changed from a short term report (Special Report or Licensee Event Report) to an item which is to be included in the Annual Report. The information to be included in the Annual Report would be similar to that previously required in the Licensee Event Report but would be changed to more clearly designate certain desired information. Accordingly, by application dated August 19, 1986, the licensee requested that the Limerick Technical Specification (TS) Section 3.4.5. BASES Section 3/4.4.5 and Section 6.9.1.5 be amended to incorporate the revised reporting requirements as described in the Model TS accompanying Generic Letter No. 85-19.

The notice also provided that, by April 13, 1987, any person whose interest might be affected by this proceeding and who wishes to participate as a party must file a written petition for leave to intervene in accordance with the Commission's "Rules of Practice" in 10 CFR Part 2. On May 7, 1987, an Atomic Safety and Licensing Board was established to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered. The Board's Administrative Judges are Richard F. Cole, Peter A. Morris, and Sheldon J. Wolfe, who will serve as Chairman of the Board.

Mr. Robert L. Anthony and Air and Water Pollution Patrol (AWPP) filed petitions for a hearing and leave to intervene. As indicated in its Memorandum and Order issued today, July 28, 1987 (unpublished), the Atomic Safety and Licensing Board provisionally grants the two petitions for leave to intervene and provisionally orders a hearing.

Pursuant to 10 CFR 2.751a, the Board will conduct a special prehearing conference at the following location at 9:00 a.m. on September 29, 1987: Old Customs Courtroom, U.S. Customs House, Courtroom 300, Second & Chestnut Streets, Philadelphia, Pennsylvania 19106. Counsel for the Licensee and for the Staff, Mr. Anthony and the Chairman of AWPP are directed to appear. This special prehearing conference is held in order to:

(1) Permit identification of the key issues in the proceeding;

(2) Take any steps necessary for further identification of the issues;

(3) Consider all intervention petitions to allow the presiding officer to make such preliminary or final determination as to the parties to the proceeding, as may be appropriate; and

(4) Establish a schedule for further actions in the proceeding.

In order that the Board will have sufficient time within which to review contentions proposed by Mr. Anthony and by AWPP and to review the responses of the Licensee and the NRC Staff, pursuant to §§ 2.711 and 2.712, the two Petitioners shall serve, by personal delivery or by express mail so that the Licensee, the Staff and the Board will receive on August 28, 1987, a supplement to each petition for leave to intervene which must include a list of the contentions which they seek to have litigated in the matter, and set forth the bases for each contention with reasonable specificity as required by § 2.714(b). Contentions shall be limited to matters within the scope of the amendment under consideration. The Licensee and the NRC Staff shall serve, by personal delivery or by express mail in order that Petitioners and the Board will receive on September 16, 1987 their responses to the proposed contentions.

The public is invited to attend the prehearing conference but members of the public may not participate in this conference. An opportunity will be provided for any person who wishes to make an oral or written statement in this proceeding but who has not filed a petition for leave to intervene. Any person may request permission to make a limited appearance in order to set forth his position on the issues pursuant to provisions of 10 CFR 2.715 of the Commission's "Rules of Practice." Subject to the conditions set forth in subsequent Orders, limited appearances will be permitted at the time a § 2.752 prehearing conference is held and also at the beginning of the hearing, if any. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Whether a hearing is ultimately held will depend upon whether one or more contentions suitable for hearing develop in the prehearing procedures to follow this Notice of Hearing.

Dated at Bethesda, Maryland, this 28th day of July, 1987.

It is so ordered.

For the Atomic Safety and Licensing Board.

Sheldon J. Wolfe,

Chairman, Administrative Judge.

[FR Doc. 87-17800 Filed 8-4-87; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Northwest Conservation and Electric Power Plan; Proposed Model Conservation Standards; Hearing Schedule

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of public hearing regarding model conservation standards for new and existing structures, utility, customer, and governmental conservation programs, and other consumer actions for achieving conservation except in areas for which model conservation standards already exist.

SUMMARY: On April 23, 1983, the Pacific Northwest Electric Power and Conservation Planning Council (Council) adopted, pursuant to the Pacific Northwest Electric Power and Conservation Act. Pub. L. 96-501, 94 Stat. 2697, 16 U.S.C. 839 *et seq.* (the Act), a Northwest Conservation and Electric Power Plan (Power Plan), including model conservation standards (MCS) for new residential and commercial structures, and for buildings converting to electric space conditioning (48 FR 24493, June 1, 1983). The most recent amendments of the MCS were adopted by the Council at its January 14, 1987, meeting (52 FR 9738, March 26, 1987). At its March 11, 1987 meeting, the Council voted to enter rulemaking to add to the existing MCS, model standards for all sectors and end-uses of electricity not already covered. On April 2, 1987, the Council published a notice of proposed amendments and opportunity to comment (52 FR 10646).

DATES AND ADDRESSES: The public comment period regarding the proposed amendments closes at 5 p.m. Pacific time on September 11, 1987. All written comments must be received by that date in the Council's central office. The Council's address is 850 SW Broadway, Suite 1100, Portland, Oregon 97205. Public hearings on the proposed amendments will be held in each of the four Northwest states, as required by the Act, at the times and places listed below.

- August 12, 1987, 1:30 p.m.—Kalispell, Montana. Outlaw Inn, 1701 Highway 93 South.
- August 21, 1987, 1:00 p.m.—Spokane, Washington. Sheraton Hotel, Trentwood Mead Room, N. 322 Spokane Falls Court.
- August 24, 1987, 3:00 p.m.—Salem, Oregon. Oregon Department of Energy. Conference Room D, 625 Marion NE. (corner of Marion and Church).
- September 10, 1987, 1:30 p.m.—Idaho Falls, Idaho. City Council Chambers. The Electric Building, 140 S. Capital.

Guidelines for Presenting Oral Comments at Hearings

1. To reserve a time period for presenting oral comments at a hearing, contact Ruth Curtis, Information Coordinator, at the Council's central office (850 SW. Broadway, Suite 1100, Portland, Oregon 97205 or (503) 222-5161 (toll free 1-800-222-3355 in Idaho, Montana, and Washington or 1-800-452-2324 in Oregon)) not later than the day before the hearing.

2. Those who do not reserve time periods will be permitted to present oral comments as time permits.

3. Each speaker will be allowed 15 minutes during the hearing.

SUPPLEMENTARY INFORMATION: The Act states that "Model conservation to be included in the [Council's] plan shall include, but not be limited to, standards applicable to (A) new and existing structures, (B) utility, customer, and governmental conservation programs, and (C) other consumer actions for achieving conservation." Section 4(f)(1). Upon consideration of a petition requesting that the Council adopt model standards for the particular conservation activities related to residential weatherization in the region, the Council now proposes to amend the Power Plan by adopting model standards applicable to all areas not covered by the existing MCS, including residential weatherization.

Edward Sheets,

Executive Director

[FR Doc. 87-17722 Filed 8-4-87; 8:45 am]

BILLING CODE 0000-00-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

July 30, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

British Petroleum (The) P.L.C., Warrants (File No. 7-0282)

USX Corporation, $3.50 Convertible, Exchangeable, Cumulative Preferred Stock (File No. 7-0283)

Oppenheimer Capital, L.P., Shares of Beneficial Interest (File No. 7-0284)

Putnam High Income Convertible & Bond Fund, Shares of Beneficial Interest (File No. 7-0285)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 20, 1987 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-17718 Filed 8-4-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24749; File No. SR-NASD-87-29]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

On July 1, 1987, the National Association of Securities Dealers, Inc.

("NASD"), submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, a proposed rule change to introduce a new NASDAQ Workstation service on a pilot basis.

The Workstation service will allow NASDAQ Level 3 subscribing firms to substitute certain personal computer terminals for existing equipment that is owned by the NASD. In addition to all of the functions currently available with the NASDAQ Harris standard terminal, the Workstation service will offer new market monitoring features including a market minding/limit alert and dynamic updating of bid/ask quotations. Also, the software associated with the Workstation service will permit subscribers to create their own customized screen displays. Approximately 90 firms are expected to participate in the pilot, which is scheduled to operate from July 31 to October 1, 1987.

The proposed rule change was noticed in Securities Exchange Act Release No. 24675 (July 2, 1987), 52 FR 26109 (July 10, 1987). No comments were received.

The new NASDAQ Workstation service is designed to enhance the provision of data to, and the data management capabilities of, market makers in the NASDAQ system. The Commission believes this service is designed to foster greater efficiency in the securities markets. The service in effect represents a new technology for delivering current Level 3 services, with enhancements such as the market monitoring features. The Commission believes it is appropritate to introduce the service on a pilot basis to allow subscribers to familiarize themselves with the service and allow the NASD to evaluate the service's effectiveness and prepare enhancements where necessary. In this connection the Commission notes that there will not be any charge for the service during the pilot phase. The question of fees and charges, if the service is approved on a permanent basis, will be addressed in a separate rule filing.

For these reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association, and, in particular, the requirements of Sections 11A, 15A and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the proposal in the Federal Register in that: (1) The proposed rule change has been published for comment for fourteen days, and no comments have been received; and (2) the NASD and the firms intending to participate in the pilot phase have made preparations to commence the pilot on July 31, 1987.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: July 27, 1987.

[FR Doc. 17719 Filed 8–4–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–24753; File No. SR–NYSE–87–22]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange, Inc. Relating to Reduced Initial Fee for Changes in State of Incorporation or Holding Company Formations

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 15, 1987, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") 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. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

(a) The text of the proposed amendments to Paragraph 902.02 of the NYSE Listed Company Manual appears below. Additions are *underscored*; deletions are [bracketed].

Reduced Initial Fee

A reduced fee [equaling one-fourth of the basic initial fee] *of $5,000* will apply to a company which either changes its state of incorporation or forms a holding company which replaces a listed company.

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. 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) *Purpose*—The purpose of this proposed rule change is to amend the fee for changes in the state of incorporation or holding company formations. NYSE-listed companies are presently charged a listing fee for technical changes to their corporate form. These fees, as set forth in paragraph 902.02 of the NYSE Listed Company Manual, currently equal one-fourth of the basic initial fee that applies to original listings and to listings of additional shares, new issues of stock, warrants or other similar securities.

The proposed rule change would result in a fee of $5,000 for changes in the state of incorporation or holding company formations.

The application of the fee is effective July 6, 1987.[1]

Statutory Basis—The basis under the Act for this proposed rule change is the requirement under section 6(b)(4) that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that this proposed rule change will not impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments regarding this proposed rule change. The Exchange has not received any unsolicited written comments from

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[1] The NYSE has indicated that, compared with the current requirement that a company pay a fee for changes in its state of incorporation or for holding company formations of 25% of the company's basic initial listing fee, the new flat fee of $5,000 will not constitute an increase in the fees charged to any currently listed domestic company and, indeed, would result in a reduction in the fee for the vast majority of such companies.

members or other interested parties regarding this rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 under the Act in that it changes a due, fee or other charge imposed by the NYSE. In this regard, we note that the fee change will result in a decrease for almost all the domestic companies listed on the NYSE that change their state of incorporation or establish a holding company formation. At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 repsect 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 NYSE. All submissions should refer to File No. SR–NYSE–87–22 and should be submitted by August 26, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Date: July 28, 1987.

[FR Doc. 87–17720 Filed 8–4–87; 8:45 am]

BILLING CODE 8010–01–M

[File No. 81–751]

Application and Opportunity for Hearing; Cablevision of Baton Rouge, Ltd.

July 30, 1987.

Notice is hereby given that Cablevision of Baton Rouge, Ltd. ("Applicant") has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended, (the "1934 Act") for an order exempting Applicant from the registration requirements of section 12(g) of the 1934 Act.

For a detailed statement of the information presented, all persons are referred to the application which is on file at the offices of the Commission in the Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

Notice is further given that any interested person not later than August 24, 1987, may submit to the Commission in writing his views or any substantial facts bearing on the application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponement thereof. At any time after that date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–17777 Filed 8–4–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–24433]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

July 30, 1987.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 24, 1987 (except as to SEC File No. 70–7417) to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicants(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Mississippi Power Company (70–7392)

Mississippi Power Company ("Mississippi"), 2992 West Beach, Gulfport, Mississippi 39501, a wholly owned subsidiary of The Southern Company, a registered holding company, has filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10, 12(b) and 12(d) of the Act and Rules 43, 44, 45 and 50(a)(5) thereunder.

Since 1925, Mississippi has sold electric appliances through its retail sales division ("Division"). Mississippi now proposes to acquire all the capital stock of Electric City Merchandise Company ("Electric City"), a corporation to be formed at the direction of Mississippi. Following the acquisition, Mississippi proposes to conduct through Electric City, appliance sales activities in the states in which Mississippi and its associate companies provide retail electric service.

Mississippi will transfer its Division employees and assets to Electric City, along with approximately $300,000 in cash, in exchange for all of the initially issued capital stock of the subsidiary.

Mississippi further proposes, to issue and sell secured or unsecured notes, from time to time on or before December 31, 1992, so that not more than $10,000,000 aggregate principal amount of notes will be outstanding at any onetime. The maturities of such notes will be five years or less, which maturities may extend beyond the

December 31, 1992 date on or before which such notes may be issued and sold. Such notes will be issued solely for the purpose of financing the business of Electric City and will bear interest at a rate not in excess of 150 basis points over the prime rate in effect at Morgan Guaranty Trust Company of New York. Mississippi may secure its obligations under such notes by granting a subordinated security interest in property of Mississippi. Assuming a prime rate of 8.25%, borrowings under this arrangement would be at a rate of 9.75%.

To the extent the issuance and sale of the notes are not excepted pursuant to Rule 50(a)(20 from the competitive bidding requirements of Rule 50, Mississippi requests that the issuance and sale be excepted pursuant to Rule 50(a)(5) for reasons that such requirements are impracticable with respect to such notes and are necessary for the protection of investors or consumers to assure the maintenance of competitive conditions. During the same period, Mississippi proposes to subscribe for and purchase additional capital stock and/or make additional capital contributions or cash advances to Electric City to an aggregate of $17 million.

Mississippi (or its affiliated assignee) presently has an option to purchase a sales outlet which it now leases at Gulfport, Mississippi. The option price, including cost of acquisition, is not expected to exceed $4 million. If the option is exercised, Electric City proposes to finance the purchase through the issuance and sale of a promissory note maturing no more than 30 years from the date of issuance and secured by a first deed of trust upon the acquired premises. It is requested that the proposed issuance and sale of the note be excepted from the competitive bidding requirements of Rule 50, pursuant to Rule 50(a)(5). Mississippi proposes to guarantee the obligations of Electric City under the note. Lastly, Mississippi proposes to guarantee the credit of Electric City up to an aggregate of $10 million at any one time outstanding.

New England Hydro-Transmission Electric Company, Inc., et al. (70–7401)

New England Hydro-Transmission Electric Company, Inc. ("NEH–M"), 25 Research Drive, Westborough, Massachusetts 01582 and New England Hydro-Transmission Corporation ("NEH–NH"), Four Park Street, Concord, New Hampshire 03301, wholly owned subsidiaries of New England Electric System ("NEES"), a registered holding company, have filed an application pursuant to Rule 50(a)(5) promulgated under the Act.

By order dated February 9, 1987 (HCAR No. 24315), the Commission authorized NEES to acquire all of the common stock of two new special purpose subsidiaries, NEH–M and NEH–NH. Subject to further Commission authorization, later this year, NEH–M and NEH–NH will issue common stock such that NEES will own 51% and certain qualified Phase II participants will own 49%. It is stated that NEH–M and NEH–NH will have responsibility for the high voltage direct current portion of the Phase II facilities to be constructed, owned, and operated in Massachusetts and New Hampshire, respectively. The Phase II participants, including New England Power Company, a wholly owned generating subsidiary of NEES, which, subject to further Commission authorization, will have about an 18% participation in the project, have agreed to support the full costs of NEH–M and NEH–NH in connection with the Phase II project. The current estimated total cost of Phase II is approximately $547 million of which $256 million is expected to be incurred by NEH–M, $178 million by NEH–NH, $109 million by NEP and $4 million by Boston Edison.

NEH–M and NEH–NH believe that retention of an investment banking firm or firms is necessary to determine the appropriate structure for the nonequity financing. Applicants believe an exception from the competitive bidding requirements of Rule 50 should be granted pursuant to Rule 50(a)(5) because:

—NEH–M and NEH–NH are new, special purpose corporations with no publicly held securities and no operating history.

—NEH–M and NEM–NH were formed to provide for the project financing, ownership, and operating of a single asset.

—The primary credit behind the nonequity financing involves complex contractual arrangements with a large number of supporting direct and indirect participants, including a consortium of 20 investor-owned utilities and 35 municipals and cooperatives.

—Approximately 12% of the supporting participants either have credit ratings below investment grade or do not have credit ratings.

—At least seven regulatory commissions at the state and federal level are involved in reviewing and approving the project in one way or another.

—NEH–M and NEM–MN require the expertise of an investment banking firm to determine which markets and types of debt securities are the most feasible or desirable for the nonequity financing.

NEH–M and NEH–NH have had preliminary discussions with representatives of five investment banking firms (Goldman, Sachs, & Co., Morgan Stanley & Co. Incorporated, Salomon Brothers Inc., PaineWebber Incorporated and Merrill Lynch) concerning the structure of the nonequity financing of the Phase II facilities. Assuming that the request for an exception from competitive bidding is granted, it is expected that the service of one or more of them will be utilized. In determining which firm or firms to retain, the applicants will compare relative costs and the ability of each firm to provide the requested services.

Any specific financing by NEH–M and NEH–NH will require approval of the Commission and will be the topic of future filings with the Commission after NEH–M and NEH–NH have retained an investment banking firm and agreed on a structure for such financing.

Southwest Electric Cooperative (70–7412)

Southwest Electric Cooperative ("Cooperative"), P.O. Box 150, Bolivar, Missouri 65613, has filed an application for exemption from the provisions of the Act pursuant to section 3(a)(1) thereof.

Cooperative, which is incorporated under the Missouri Rural Electric Cooperative Act, is a nonprofit rural electric cooperative which serves approximately 22,000 retail customers. Its operations are confined to Polk, Hickory, Greene, Camden, Dallas, Benton, Dade, Webster, and Cedar counties, all in Missouri. It is financed by the Rural Electrification Administration of the United States Department of Agriculture ("REA") and is designated MISSOURI 53, POLK. It sells electric energy to its consumer members. Cooperative generates no power of its own, purchasing power from Sho-Me Power Corporation, Marshfield, Missouri, and KAMO Electric Cooperative, Vanita, Oklahoma. It owns 100% of the stock of Southwest Electric Service Co. ("Service"), a Missouri corporation which is an electric utility company under section 2(a)(3) of the Act.

Missouri law limits the service area of rural electric cooperatives to communities with populations no greater than 1,500 persons. Service was created as a wholly owned subsidiary of Cooperative to quality under Missouri law to serve Cooperative members and new customers in areas which may

cease to be rural due to annexation by municipalities that have populations in excess of 1,500. Cooperative intends, subject to the approval of the Missouri Public Service Commission and the REA, to transfer to Service facilities and members of Cooperative which are in the annexed areas. Service will not generate power, and Cooperative will be its sole power supplier. All of its sales will be made to consumers within the State of Missouri.

Cooperative asserts that the public interest does not demand its registration as a holding company. Cooperative is owned by the several thousand consumer members of the rural electric cooperative. These consumer members elect from their own members those persons who serve on the board of directors of the Cooperative. This board elects, in turn, the persons who serve on the board of directors of Service. It is stated that the election of directors and the management of the affairs of both Cooperative and Service are effectively audited and regulated by the REA.

Howard Electric Cooperative (70–7415)

Howard Electric Cooperative ("Cooperative"), P.O. Box 391, Highway 5 North, Fayette, Missouri 65248, has filed an application for exemption from the provisions of the Act pursuant to section 3(a)(1) thereof.

Cooperative, which is incorporated under the Missouri Rural Electric Cooperative Act, is a nonprofit rural electric cooperative which serves approximately 2,200 retail customers. Its operations are confined to Howard, Randolph, Boone, and Chariton counties, all in Missouri. It is financed by the Rural Electrification Administration of the United States Department of Agriculture ("REA") and is designated MISSOURI 22, HOWARD. It sells electric energy to its consumer members. Cooperative generates no power of its own, purchasing power from Central Electric Power Cooperative, Jefferson City, Missouri. It owns 100% of the stock of Howard Electric Service Co. ("Service"), a Missouri corporation which is an electric utility company under section 2(a)(3) of the Act.

Missouri law limits the service area of rural electric cooperatives to communities with populations no greater than 1,500 persons. Service was created as a wholly owned subsidiary of Cooperative to qualify under Missouri law to serve Cooperative members and new customers in areas which may cease to be rural due to annexation by municipalities that have populations in excess of 1,500. Cooperative intends, subject to the approval of the Missouri Public Service Commission and the REA, to transfer to Service facilities and members of Cooperative which are in the annexed areas. Service will not generate power, and Cooperative will be its sole power supplier. All of its sales will be made to consumers within the State of Missouri.

Cooperative asserts that the public interest does not demand its registration as a holding company. Cooperative is owned by the several thousand consumer members of the rural electric cooperative. These consumer members elect from their own members those persons who serve on the board of directors of the Cooperative. This board elects, in turn, the persons who serve on the board of directors of Service. It is stated that the election of directors and the management of the affairs of both Cooperative and Service are effectively audited and regulated by the REA.

Western Massachusetts Electric Company (70–7417)

Western Massachusetts Electric Company ("WMECO"), 174 Brush Hill Avenue, Springfield, Massachusetts 01090, a subsidiary of Northeast Utilities, a registered holding company, has filed an amendment to its application-declaration pursuant to 6(b), 9(a), 10 and 12(c) of the Act and Rules 42, 46 and 50(a)(5) thereunder.

A notice was issued (HCAR No. 24425, July 16, 1987) giving interested persons until August 10, 1987 to request a hearing on WMECO's proposal to issue and sell up to 2,400,000 shares of Class A money market preferred stock, at $25 par value per share on or before December 31, 1987 under an exception from competitive bidding.

By amendment WMECO requests preliminary authorization to begin negotiations so that selection of a lead underwriter for the money market preferred stock may be made. WMECO submits that the proposed transaction is unique and complex, in so far as money market preferred stock typically has a dividend rate established for short term successive periods, normally 49 days, through a bidding process among holders and prospective purchasers. WMECO may proceed with preliminary negotiations.

North Central Missouri Electric Cooperative, Inc. (70–7418)

North Central Missouri Electric Cooperative ("Cooperative"), Highway E-West, P.O. Box 220, Milan, Missouri 63556, has filed an application for exemption from the provisions of the Act pursuant to section 3(a)(1) thereof.

Cooperative, which is incorporated under the Missouri Rural Electric Cooperative Act, is a nonprofit rural electric cooperative which serves approximately 3,900 retail customers. Its operations are confined to Linn, Sullivan, and Putnam counties, all in Missouri. It is financed by the Rural Electrification Administration of the United States Department of Agriculture ("REA") and is designated MISSOURI 56, SULLIVAN. It sells electric energy to its consumer members. Cooperative generates no power of its own, purchasing power from N.W. Electric Power Cooperative, Inc., Cameron, Missouri. It owns 100% of the stock of North Electric Service Co. ("Service"), a Missouri corporation which is an electric utility company under section 2(a)(3) of the Act.

Missouri law limits the service area of rural electric cooperatives to communities with populations no greater than 1,500 persons. Service was created as a wholly owned subsidiary of Cooperative to qualify under Missouri law to serve Cooperative members and new customers in areas which may cease to be rural due to annexation by municipalities that have populations in excess of 1,500. Cooperative intends, subject to the approval of the Missouri Public Service Commission and the REA, to transfer to Service facilities and members of Cooperative which are in the annexed areas. Service will not generate power, and Cooperative will be its sole power supplier. All of its sales will be made to consumers within the State of Missouri.

Cooperative asserts that the public interest does not demand its registration as a holding company. Cooperative is owned by the several thousand consumer members of the rural electric cooperative. These consumer members elect from their own members those persons who serve on the board of directors of the Cooperative. This board elects, in turn, the persons who serve on the board of directors of Service. It is stated that the election of directors and the management of the affairs of both Cooperative and Service are effectively audited and regulated by the REA.

Farmers' Electric Cooperative, Inc. (70–7423)

Farmers' Electric Cooperative, Inc. ("Cooperative"), Highway 36 East, P.O. Box 310, Chillicothe, Missouri 64601, has filed an application for exemption from the provisions of the Act pursuant to Section 3(a)(1) thereof.

Cooperative, which is incorporated under the Missouri Rural Electric

Cooperative Act, is a nonprofit rural electric cooperative which serves approximately 10,000 retail customes. Its operations are confined to Caldwell, Carroll, Chariton, Clinton, Daviess, Dekalb, Linn, Livingston, and Ray counties, all in Missouri. It is financed by the Rural Electrification Administration of the United States Department of Agriculture ("REA") and is designated MISSOURI 42, CALDWELL. It sells electric energy to its consumer members. Cooperative generates no power of its own, purchasing power from N.W. Electric Power Cooperative, Inc., Cameron, Missouri. It owns 100% of the stock of Farmers' Electric Service Co. ("Service"), a Missouri corporation which is an electric utility company under section 2(a)(3) of the Act.

Missouri law limits the service area of rural electric cooperatives to communities with populations no greater than 1,500 persons. Service was created as a wholly owned subsidiary of Cooperative to qualify under Missouri law to serve Cooperative members and new customers in areas which may cease to be rural due to annexation by municipalities that have populations in excess of 1,500. Cooperative intends, subject to the approval of the Missouri Public Service Commission and the REA, to transfer to Service facilities and members of Cooperative which are in the annexed areas. Service will not generate power, and Cooperative will be its sole power supplier. All of its sales will be made to consumers within the State of Missouri.

Cooperative asserts that the public interest does not demand its registration as a holding company. Cooperative is owned by the several thousand consumer members of the rural electric cooperative. These consumer members elect from their own members those persons who serve on the board of directors of the Cooperative. This board elects, in turn, the persons who serve on the board of directors of Service. It is stated that the election of directors and the management of the affairs of both Cooperative and Service are effectively audited and regulated by the REA.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-17778 Filed 8-4-87; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-32421]

Environmental Impact Statement on Protocol to the Vienna Convention for the Protection of the Ozone Layer

ACTION: Notice.

SUMMARY: On August 1, 1984, the Environmental Protection Agency (EPA) and the State Department announced our intent to prepare an environmental impact statement (EIS) on a possible protocol to the Vienna Convention for the Protection of the Ozone Layer (Convention) being negotiated under the auspices of the United Nations Environment Program (UNEP) (49 FR 30823). At that time, negotiations on both the Convention and protocol were scheduled to be completed by April 1985. While the Convention was successfully completed within that timeframe, the parties failed to reach agreement on a protocol. Instead, a resolution was passed at the March 1985 Diplomatic Conference setting in motion a year of workshops and studies leading to the resumption of negotiations in December 1986.

During this hiatus in the negotiations, EPA and the State Department jointly or independently held numerous domestic workshops and public briefings on key issues related to possible controls to protect the ozone layer, while also actively participating in related activities organized by UNEP. These public meetings and reviews have continued since the resumption of negotiations.

Substantial progress toward a protocol has been made since the negotiations resumed in December 1986. Discussions among nations have advanced from a wide range of possible approaches to limiting ozone-depleting chemicals during the initial negotiating sessions to the point where an agreement now appears possible. According to UNEP's current timetable, a Diplomatic Conference is scheduled for Montreal in mid-September of this year.

This update to the previous notice of intent provides a summary of recent activities concerning the protocol negotiations, sets forth proposed changes in the scope of the EIS to reflect these new developments, and invites comments from interested parties.

Upon completion of the draft EIS now scheduled for mid-January, its availability will be announced in the **Federal Register** and comments will be solicited. A final EIS will be prepared reflecting comments received during public review and is scheduled for completion by May 1988.

DATE: Comments may be submitted in writing by September 4, 1987.

ADDRESS: Written comments or suggestions on the scope of the EIS may be submitted in writing notice to: Stephen Seidel, PM-221, U.S. Environmental Protection Agency, Washington, DC 20460. A public docket has been established and copies of comments received will be available for review at the Public Information Reference Unit, (202) 382-5926, EPA headquarters Library, 401 M Street, SW., Washington, DC 20460 between the hours of 8:30 and 4:30 p.m. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Stephen Seidel at (202) 382-2787 US EPA or Suzanne Butcher at (202) 647-9312 U.S. Dept. of State.

SUPPLEMENTARY INFORMATION: The August 1, 1984 **Federal Register** notice indicated that the State Department and EPA were the lead agencies in regard to U.S. participation in international negotiations related to a protocol to the Vienna Convention for the Protection of the Ozone Layer which would establish specific obligations to limit and reduce use of chlorofluorocarbons (CFCs) and possibly other ozone-depleting chemicals. In support of this process they are jointly preparing an EIS addressing the environmental impact of such a protocol. The EIS is being prepared pursuant to section 102 (2)(c) of the National Environmental Policy Act (NEPA) and in furtherance of Executive Order 12114 (E.O. 12114), "Environmental Effects Abroad of Major Federal Actions" (see sections 2-3(a) and 2-4 (b)(i)). Because any protocol is likely to include measures that could significantly affect the ozone layer, it has been determined that Agency action with respect to the protocol should be treated as a major federal action necessitating preparation of an EIS under E.O. 12114 and NEPA.

In the period since the August 1984 notice was published, significant progress has taken place in several important areas: scientific understanding of potential changes to the ozone layer and their possible human health and environmental effects has substantially improved; extensive analysis of economic issues and control options for limiting use of ozone-depleting chemicals have been completed; and substantial progress in the negotiations following their resumption in December 1986 has

occurred. Activities in each of these areas have included extensive public participation. Most of these activities were announced and described as part of EPA's Stratospheric Ozone Protection Plan (51 FR 1257; January 10, 1986).

Developments Related to Scientific Understanding

While scientific uncertainties remain, substantial evidence supports the theory linking CFCs with some depletion. The state of knowledge concerning atmospheric research related to ozone was examined and synthesized in an extensive international risk assessment published in 1986. This three-volume document, *Atmospheric Ozone: 1985* was prepared under the auspices of the World Meteorological Organization, United Nations Environment Program, National Aeronautics and Space Administration, National Oceanographic and Atmospheric Administration and other national and international organizations. Copies of this document may be obtained by writing to the address provided above.

Drawing extensively from these volumes, in fall 1986 EPA issued its own draft risk assessment, "An Assessment of the Risks from Trace Gases that Can Modify the Stratosphere." This five-volume document presents the current state of knowledge in the the areas of atmospheric change and its potential effects on human health and the environment. The report was made available for public review and comment (51 FR 40510; November 7, 1986), and was also reviewed by EPA's Science Advisory Board (SAB) at public meetings held on November 24–5, 1986 and January 26–7, 1987. A revised executive summary of that document, which responds to comments by the public and the SAB, is available by contacting the address provided above. Revisions to the body of the document should be completed by the end of the summer and will be available to the public at that time.

Two meetings of UNEP's Coordinating Committee on the Ozone Layer (CCOL) were held during 1986 involving scientists from throughout the world. Reports summarizing the current state of science were issued for background use by nations preparing for the next round of protocol negotiations. UNEP also brought together in April 1987 an international panel of atmospheric modellers to evaluate the effects on potential depletion of control options being considered as part of a protocol. Their report (the report of the Wurzburg meeting) has also been used by negotiators as part of their deliberations. In addition, UNEP and EPA co-sponsored a conference on the "Health and Environmental Effects of Climate Change and Ozone Modification" in June 1986. Papers from this conference have been published in a four-volume set available by contacting the address listed above.

Finally, one area of scientific inquiry that has received widespread attention involves the recent discovery of large seasonal losses of ozone over Antarctica. Data describing this phenomenon were first published in 1985 by the British Antarctic Survey team (Nature, 315; May 16, 1985, p. 207). Since the discovery of the so-called "ozone hole,' the first National Ozone Expedition has travelled to Antarctica to conduct experiments aimed at improving our understanding of its possible causes and implications, if any, for global ozone levels. While substantial uncertainties remain, initial evidence from the expedition shows the existence of anomalous chlorine chemistry. An expedition planned for this October will seek to further improve scientific understanding of this seasonal loss in ozone.

Economic Issues and Control Options

Along with adoption of the Vienna Convention at the Diplomatic Conference in March 1985, the Conference of Plenipotentiaries on the Protection of the Ozone Layer passed a resolution calling for studies and a workshop "leading to a more common understanding of possible scenarios for global production, emissions, and use of CFCs and other substances affecting the ozone layer and the costs and effects of various control measures." The U.S. actively participated in UNEP-sponsored workshops in March and September of 1986 related to these issues. To encourage widespread public input from interested parties in the U.S., EPA organized public meetings prior to each of these UNEP sessions (51 FR 5091, February 11, 1986; 51 FR 21576, June 13, 1986). These conferences were held in February and July of 1986 and each was attended by more than 100 members of the public.

EPA has also initiated a series of detailed engineering and cost studies to evaluate specific options for reducing the use of CFCs and other ozone-depleting chemicals. Information is currently being collected for more than 600 control options and will be incorporated into the analysis used for the EIS.

Progress of Protocol Negotiations

Negotiations on a protocol to limit CFC emissions can be traced back to 1982 when the Ad Hoc Working Group of Legal and Technical Experts first discussed options for limiting CFCs. Early discussions focussed on the extension of policies previously implemented by individual nations or groups of countries. These options had been used in developing the control alternatives described in the August 1984 notice.

The year of workshops and analysis provided nations with an opportunity to reevaluate prior positions based on additional information. By the resumption of negotiations in December 1986, the substance of proposals differed markedly from the prior round of talks. Despite this change in thinking, substantial disagreements existed concerning most key aspects of the negotiations including the basic approach to controls and their stringency, timing, and coverage.

At the follow-on negotiating sessions held in February and April, substantial differences continued to exist concerning treatment of important issues essential to any agreement, but a growing consensus was emerging that a protocol to limit ozone-depleting substances was warranted and differences among approaches were beginning to narrow. While no final agreement has yet been reached, enough progress has now been achieved that it appears likely that a protocol will be adopted at the Diplomatic Conference scheduled for September in Montreal.

On-going negotiations are focussed on the provisions of a draft protocol text developed by the UNEP Executive Director. This text calls for: a freeze on the fully halogenated CFCs at 1986 levels to take effect one year after entry into force of the protocol; a 20 percent reduction from those levels 4 years after entry into force of the protocol; and an additional 30 percent reduction from those levels 8 to 10 years after entry into force. (The earliest expected date for entry into force of the protocol is late 1988.) It also calls for periodic review of the protocol provisions based on scientific, econmic, environmental and technical considerations to determine if more or less stringent restrictions are warranted. Furthermore, it proposes that Halon 1211 and 1301 be frozen at 1986 levels three years after entry into force.

Throughout the course of these negotiations, EPA and the State Department have held a number of public meetings and briefings to solicit the advice of interested parties. For example, the Agencies held a meeting on October 14, 1985 at the State Department to discuss the issues of stringent, timing and coverage prior to the resumption of negotiations.

Additional briefings have been held periodically, typically prior to and following official negotiating sessions.

In addition, EPA prepared a preliminary assessment of the economic and environmental impacts of protocol options. This analysis was presented and discussed at a series of briefings for representatives from the interested public, including industry, the environmental community and congressional staff. This preliminary assessment will be further refined and expanded as part of the EIS.

Scope of the EIS

The alternatives to be examined in the draft EIS will reflect the altered focus of the negotiations. These alternatives also reflect comments received from the public at the scoping session (held on August 13, 1984) following the August 1984 notice.

—No international action (i.e., also assumes no unilateral U.S. action);
—No international action, but the U.S. acts unilaterally;
—An international protocol providing for:
Ban on CFCs in aersols or other uses;
Ban on growth in production capacity;
Freeze on production; or
Scheduled phase-down on production or use (e.g., 20%, 50% or more)

The draft EIS will also examine the timing, participation and coverage of controls (e.g., CFC–11, –12, –113, –114 and –115 and Halon 1211 and 1301 in various combinations). Some nations have proposed that fewer chemicals be included under the protocol, while others have sought broader coverage (e.g., adding CFC–22 and methyl chloroform). Other issues that will be examined in the EIS include:

—Allocation of Limits: various approaches for allocating limits have been proposed (e.g., Canada proposed a formula based on each nation's population and wealth);
—Trade Provisions: different provisions have been proposed to restrict trade of bulk ozone-depleting chemicals, or products made with or containing CFCs, between parties to the protocol and non-parties;
—Developing Countries: different approaches have been discussed concerning the treatment of developing countries which are not yet large consumers or producers of CFCs;
—Definition of Compliance: different approaches have been proposed for measuring compliance with restrictions. Options discussed included directly using a nation's production of the subject chemicals, its consumption (defined as production + imports − exports + credit for destruction and permanent encapsulation), or some variation of the two.

The August 1984 notice also included a preliminary list of issues to be addressed in the draft EIS. These issues included: effects of CFCs and other gases on ozone; impact of protocol options on possible changes in ozone and UV–B radiation; the effects of such changes on a range of human health and environmental conditions; and the socio-economic impacts of limiting ozone-depleting chemicals. In addition, based on comments received during the scoping process, the draft EIS will explicitly take into consideration the potential health, safety, and energy impacts from actions to reduce the use of CFCs and Halons.

Interested parties are invited to comment on the appropriateness of the revised list of alternatives and issues in light of developments since the August 1984 notice. Comments should be submitted within 30 days of publication of this notice and should be sent to Stephen Seidel, Environmental Protection Agency, at the address given above.

Richard Elliot Benedick,

Deputy Assistant Secretary of Environment, Health and Natural Resources, U.S. Department of State.

Date: July 30, 1987.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation, U.S. Environmental Protection Agency.

Date: July 24, 1987.

[FR Doc. 87–17741 Filed 8–4–87; 8:45 am]
BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Roster of Approved Trustees

The following is a list of Banks currently on the Maritime Administration's Roster of Approved Trustees:

Roster of Approved Trustees

Allied Bank of Texas, P.O. Box 4441, Houston, Texas 77210
Ameritrust Company, N.A., 900 Euclid Avenue, Cleveland, Ohio 44101
BT Trust Company of California, N.A., 343 Sansome Street, San Francisco, California 94163
Bank of New Orleans and Trust, Company (the), P.O. Box 52499, New Orleans, Louisiana 70152
Bankers Trust Company, 16 Wall Street, New York, New York 10015
Centerre Trust Company of St. Louis, 510 Locust Street, St. Louis, Missouri 63101
Chase Manhattan Bank, N.A., One Chase Manhattan Plaza, New York, New York 10015
American Security Bank, N.A., 1501 Pennsylvania Avenue, NW., Washington, DC 20013
Amsouth Bank N.A., 31 North Royal Street, Mobile, Alabama 36621
Bank of America National Trust & Savings Assoc., P.O. Box 37105, San Francisco, California 94137
Bank of New York (the), 21 West Street, New York, New York 10015
Boatmen's National Bank of St. Louis (the), P.O. Box 236, St. Louis, Missouri 63116
Chase Lincoln First Bank, N.A., 20 Clinton Avenue South, Rochester, New York 14604
Chemical Bank, 55 Water Street, New York, New York 10021
Citibank, N.A., 111 Wall Street, New York, New York 10015
Connecticut National Bank (the), 777 Main Street, Hartford, Connecticut 06115
Farmers and Merchants National Bank of Bridgeton, New Jersey (the), 53 South Laurel Street, Bridgeton, New Jersey 08302
Fifth Third Bank (the), 38 Fountain Square Plaza, Cincinnati, Ohio 45202
First City National Bank of Houston, P.O. Box 2557, Houston, Texas 77001
First Interstate Bank of Oregon, N.A., P.O. Box 2971, Portland, Oregon 97208
First National Bank of Commerce, 210 Barrone Street, New Orleans, Louisiana 70112
First National Bank of Boston (the), P.O. Box 2016, Boston, Massachusetts 02106
First National Bank and Trust Company of Evanston, 800 Davis Street, Evanston, Illinois 60204
Connecticut Bank and Trust Company (the), One Constitution Plaza, Hartford, Connecticut 06115
Continential Illinois National Bank and Trust Company of Chicago, 231 South LaSalle Street, Chicago, Illinois 60693
Fidelity Bank, N.A., Great Valley Corporate Centre, 14 Great Valley Parkway, Malvern, Pennsylvania
First City National Bank of Beaumont, P.O. Box 3391, Beaumont, Texas 77704
First Interstate Bank of California, 707 Wilshire Boulevard, P.O. Box 3666, Los Angeles, California 90051
First Interstate Bank of Washington, N.A., P.O. Box 21927, Seattle, Washington 98111

First National Bank of Minneapolis, 120 South Sixth Street, Minneapolis, Minnesota 55402
First National Bank of Chicago (the), One First National Plaza, Chicago, Illinois 60670
First Pennsylvania Bank, N.A., 15th & Chestnut Street, Philadelphia, Pennsylvania 19101
First Security Bank of Utah, N.A., 79 South Main Street, Salt Lake City, Utah 84110
First Trust Company, Inc., First National Bank Building, Saint Paul, Minnesota 55101
Interfirst Bank Dallas, N.A., P.O. Box 6031, Dallas, Texas 75222
Irving Trust Company, One Wall Street, New York, New York 10015
Mbank Dallas, N.A., 108 S. Akard Street, Dallas, Texas 75201
Maine National Bank, 400 Congress Street, Portland, Maine 04104
Manufacturers Hanover Trust Company of California, 50 California Street, San Francisco, California 94111
Mellon Bank (East) N.A., Bala Cynwyd, Philadelphia, Pennsylvania 19004
Mercantile Bank National Association, 721 Locust Street, St. Louis, Missouri 63101
First Tennessee Bank, N.A., 165 Madison Avenue, Memphis, Tennessee 38103
Hibernia National Bank in New Orleans, 313 Carondelet Street, New Orleans, Louisiana 70112
Interfirst Bank Houston, N.A., 1100 Louisiana, Houston, Texas 77002
Key Bank, N.A., 60 State Street, Albany, New York 12207
Mbank Houston, N.A., P.O. Box 3285, Houston, Texas 77253
Manufacturers Hanover Trust Company, 40 Wall Street, New York, New York 10015
Mellon Bank, N.A., Mellon Square, Pittsburgh, Pennsylvania 15230
Mercantile-Safe Deposit and Trust Company, Two Hopkins Plaza-P.O. Box 2258, Baltimore, Maryland 21203
Meridian Bank, 35 North Sixth Street, Reading, Pennsylvania 19601
Morgan Guaranty Trust Company of New York, 30 West Broadway, New York, New York 10015
Northern Trust Company, (The) 50 South LaSalle Street, Chicago, Illinois 60690
Peoples National Bank of Washington, 1414 Fourth Avenue, Seattle, Washington 98111
Rainier National Bank, P.O. Box 3966, Seattle, Washington 98124
Rhode Island Hospital Trust National Bank, One Hospital Trust Plaza, Providence, Rhode Island 02903
Seattle Trust and Savings Bank, P.O. Box 90, Seattle, Washington 98111
Shawmut Bank of Boston, N.A., One Federal Street, Boston, Massachusetts 02106
Texas Commerce Bank National Association, 712 Main Street, Houston, Texas 77002
Trust Services of America, Inc., 700 Wilshire Boulevard, Los Angeles, California 90017
NCNB National Bank of Florida, 600 N. Florida Avenue, Tampa, Florida 33602
Norwest Bank Minneapolis, N.A., 8th and Marquette, Minneapolis, Minnesota 55479
Philadelphia National Bank (The), Broad & Chestnut Streets Philadelphia, Pennsylvania 19101
Republicbank Houston, N.A., 1010 Milam, Houston, Texas 77002
Seattle-First National Bank, P.O. Box 35886, Seattle, Washington 98124
Security Pacific National Bank, P.O. Box 30376, Los Angeles, California 90030
State Street Bank and Trust Company, 225 Franklin Street, Boston, Massachusetts 02110
Terrebone Bank and Trust Company, 720 East Main Street, Houma, Louisiana 70360
United States Trust Company of New York 45 Wall Street, New York, New York 10005
United Virginia Bank, 919 East Main Street, Richmond, Virginia 23219
Whitney National Bank of New Orleans, P.O. Box 61260, New Orleans, Louisiana 70161
Wells Fargo Bank, N.A., 475 Sansome Street, San Francisco, California 94111
Wilmington Trust Co., 10th & Market Streets, Wilmington, Delaware 19899

Dated: July 30, 1987.

By Order of the Maritime Administrator.

Joel C. Richard,

Assistant Secretary.

[FR Doc. 87-17707 Filed 8-4-87; 8:45 am]

BILLING CODE 4910-81-M

National Highway Traffic Safety Administration

[Docket No. T87-01; Notice 1]

Insurer Reporting Requirements; Report to Congress Motor Vehicle Theft Law Enforcement Act of 1984

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comments.

SUMMARY: This notice announces publication by NHTSA of a report to Congress pursuant to Title VI of the Motor Vehicle Information and Cost Savings Act (Pub. L. 93-513), which requires that the Secretary shall transmit to the Congress two reports (October 1987 and October 1990, respectively) on motor vehicle theft. The first of these reports is to provide information on the theft and recoveries of stolen motor vehicles; information on the extent to which motor vehicles stolen annually are dismantled to recover parts or exported, and a description of the market for such stolen parts; the rating rules and plans motor vehicle insurers use to establish the premiums for vehicles considered more likely to be stolen; the actions taken by such insurers to reduce premiums they charge for comprehensive insurance coverage because of a reduction in motor vehicle thefts; and actions taken by insurers to assist in deterring or reducing thefts of motor vehicle thefts. The agency seeks public review and comment on this first report before forwarding a final version to Congress as required by Title VI.

DATE: Comments must be received no later than September 21, 1987.

ADDRESS: Interested persons may obtain a copy of the report free of charge by contacting Barbara Kurtz, Office of Market Incentives, National Highway Traffic Safety Administration, Room 5313, 400 Seventh Street SW., Washington, DC 20590 (202-366-4808). The report can be requested in two forms: A 50-page text, or the 50-page text with 400 pages of tables which form the appendices. The requestor should specify whether the text, or the text with appendices are desired. Comments should refer to Docket No. T87-01; Notice 1, and can be submitted (preferably in 10 copies) to: Docket Section, NHTSA, Room 5109, 400 Seventh Street SW., Washington, DC. 20590. (Docket hours are 8:00 am to 4:00 pm, Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Barbara Kurtz, Office of Market Incentives, NHTSA, 400 Seventh Street SW., Washington, DC 20590 (202-366-4808).

SUPPLEMENTARY INFORMATION: The Motor Vehicle Theft Law Enforcement Act of 1984 (the Theft Act) was implemented to enhance detection and prosecution of motor vehicle theft (Pub. L. 98-547). The Theft Act added a new Title VI to the Motor Vehicle Information and Cost Savings Act, which requires the Secretary of Transportation to issue a theft prevention standard for identifying major parts of certain high-theft lines of passenger cars. The Theft Act also addressed several other actions to reduce motor vehicle theft, such as: Increased criminal penalties for those who traffic in stolen vehicles and parts; curtailment of the exportation of stolen motor vehicles and off-highway mobile equipment; establishment of penalties

for dismantling vehicles for the purpose of trafficking in stolen parts; and development of ways to encourage decreases in premiums charged consumers for motor vehicle theft insurance.

Section 614 of the Theft Act directs the Secretary to submit two reports to the Congress on motor vehicle theft. The first report is required in October 1987—three years after enactment of Title VI in October 1984, and the second report is required in October 1990—five years after enactment of the theft prevention standard in October 1985. The first report is to contain the following information as specified in Sections 614(a)(2)(A)–(E) of the Theft Act:

(A) Data on the number of trucks, multipurpose passenger vehicles (MPV's), and motorcycles stolen and recovered annually;

(B) Information on the extent to which trucks, MPV's, and motorcycles, stolen annually, are dismantled to recover parts or are exported;

(C) A description of the market for such parts;

(D) Information concerning the premiums charged by insurers of comprehensive insurance coverage for trucks, MPV's, and motorcycles including any increase in such premiums charged because any such motor vehicle is a likely candidate for theft; and

(E) An assessment of whether the identification of parts of trucks, MPV's, and motorcycles is likely to (i) have a beneficial impact in decreasing the rate of theft of such vehicles; (ii) improve the recovery rate of such vehicles; (iii) decrease the trafficking in stolen parts of such vehicles; (iv) stem the export and import of such stolen vehicles or parts; or (v) have benefits which exceed the costs of such identification.

The first report to the Congress also should include a recommendation on whether, and to what extent, the identification of trucks, MPV's, and motorcycles should be required by statute (Section 614(a)(3)).

In addition to the requirements set forth for the first report to Congress, the second report, due in October 1990, is required to include an evaluation of the effectiveness of the Federal Motor Vehicle Theft Prevention Standard (49 CFR Part 541) and an assessment of whether the theft standard should be extended to other classes of motor vehicles.

Title VI was designed to impede the theft of motor vehicles by creating a theft prevention standard which requires manufacturers of designated high-theft car lines to mark or inscribe them with a vehicle identification number. The theft standard became effective in Model Year 1987 for designated high-theft car lines.

Section 612 of the Theft Act requires subject insurers or designated agents to report annually to the Department on theft and recovery of vehicles; ratings rules, and plans used by insurers to reduce premiums due to a reduction in motor vehicle thefts; and actions taken by insurers to assist in deterring thefts. The subject insurance companies received more than 57 percent of the total premiums paid for *all* forms of motor vehicle insurance issued within the United States for 1984. Rental and leasing companies also are required to provide annual theft reports to the Department.

Annual insurer reports are intended to aid in implementing the Theft Act and in fulfilling the Department's requirements to report to Congress on the effects of the Act. The first insurer reports were due to the Department on January 31, 1987, and disclosed the following:

(1) The 31 insurance companies subject to the Department's regulation reported that 65,310 vehicles were stolen in 1985, with 44,665 recovered, yielding a 68-percent recovery rate.

(2) On hundred and forty rental/leasing companies reported the theft of 13,385 vehicles in 1985. Based on data from several of these companies, 92 percent of such stolen vehicles were recovered.

(3) Based on data from 23 of the 31 insurance companies, an estimated $856,693,346, or 38 percent, of their comprehensive claims were paid due to theft.

A detailed and explanatory report to Congress on motor vehicle theft has been prepared and is available upon request. This report addresses the data in the first annual insurer reports submitted by the designated insurance companies and rental or leasing companies, describes their theft and recovery data, and provides required comprehensive insurance coverage information on motor vehicle theft. The report is available in two forms: a 50-page text, or the 50-page text with 400 pages of tables which form the appendices. Either the text, or the text with appendices can be requested.

Interested persons are invited to submit comments on NHTSA's report to Congress as discussed above. It is requested but not required that 10 copies of comments be submitted. A 45-day comment period is provided. 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 submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies, from which 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 512).

All comments received before the close of business on the comment closing date indicated above will be accepted, and will be available for examination in the docket at the above address both before and after that date. The agency 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. Those persons desiring to be notified upon receipt of their comments in the public docket should enclose, in the envelope with their comments, a self-addressed stamped post card. Upon receiving the comments, the docket supervisor will return the post card by mail.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 87–17791 Filed 8–4–87; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 87–96]

Current Fee Charged Proprietors of Warehouse Facilities

AGENCY: Customs Service, Treasury.

ACTION: Notice of annual fee.

SUMMARY: This document advises the public of the 1987 annual fee charged proprietors of Customs bonded warehouses. The fee is charged to reimburse the Customs budget for services rendered including audit, inspection, and related costs. The fee is projected on the basis of actual resources that have been allocated to the various Customs regions to support the positions authorized for the program.

EFFECTIVE DATE: September 4, 1987.

FOR FURTHER INFORMATION CONTACT: John Holl, Office of Inspection and Control (202–566–8151), or Marcus Sircus, Regulatory Audit Division (202–566–2812).

SUPPLEMENTARY INFORMATION:

Background

Section 19.5, Customs Regulations (19 CFR 19.5), provides that each warehouse proprietor granted the right to operate a warehouse facility is charged an annual fee which is determined under section 555, Tariff Act of 1930, as amended (19 U.S.C. 1555).

The annual fee for warehouse proprietors was implemented as a 3-tiered fee structure by T.D. 85–196, published in the **Federal Register** on December 6, 1985 (50 FR 50032). The 3-tiered fee structure assigns a warehouse to a tier based upon the individual warehouse size or volume. The tier assignment for 1987 for existing warehouses was determined by the total number of entries or lots listed in Column A of the most recent Customs Form 300 properly filed with Customs before November 15, 1986. The tier assignment for new warehouses which have not yet had to file Customs Form 300, or class 7 warehouses, will be based upon the number of entries or lots in the warehouse at any time during Fiscal Year 1986.

The bonded warehouse fee for 1987 is $950 for Tier 1, $2,375 for Tier 2, and $4,750 for Tier 3. The fee is based on the actual resources for 34 Customs and 10 Bureau of Alcohol, Tobacco, and Firearms (BATF) positions authorized for the audit-inspection program. The BATF officers are responsible underf T.D. 86–193, published in the **Federal Register** on October 21, 1986 (51 FR 37362), for conducting spot checks and audits of bonded warehouses containing only alcoholic beverages. The total calculation came to $1,929,792, and was rounded to $1,930,000. The calculation included salary, 37 percent fringe benefits (§ 24.17(d), Customs Regulations (19 CFR 24.17(d)), 15 percent overhead (§ 24.21(a)), Customs Regulations (19 CFR 24.21(a)), and 1.3 percent Medicare compensation costs (§ 24.17(f)), Customs Regulations (19 CFR 24.17(f)).

Currently, there are 1,027 Tier 1 locations, 273 Tier 2 locations, and 64 Tier 3 locations for a total of 1,364 locations. If Customs collects the above-stated fee from each of them, the total collected will be $1,928,025.

The 1987 fee is 5 percent lower in each tier than the annual fees of $1,000, $2,500 and $5,000 because of a reduction in Customs staffing for conducting audits. This reduction was partially counterbalanced by a 3 percent employee salary increase, a reduced number of bonded warehouses to share Customs costs, and the highest average grade of BATF officers (GS–11) who conduct spot checks, compared with that of Customs Inspectors (GS–9).

New Facilities

New bonded warehouses approved after October 1, 1986, will automatically pay the Tier 1 fee. However, if a new warehouse (never previously approved) is approved after January 31, 1987, the Tier 1 fee will be prorated over the full and fractional number of months remaining in Calendar Year 1987.

Determination

It has been determined that the annual fee for warehouse proprietors for Calendar Year 1987 is as follows:

Bonded Warehouses

Tier 1 (0–100 entries or lots)=$950.
Tier 2 (101–500 entries or lots)=$2,375.
Tier 3 (501 or more entries or lots)=$4,750.

Dated: July 28, 1987.

Michael H. Lane,

Acting Commissioner of Customs.

[FR Doc. 87–17706 Filed 8–4–87; 8:45 am]

BILLING CODE 4820–02–M

Fiscal Service

Financial Guidelines for Qualification of Surety Companies

AGENCY: Financial Management Service, Treasury.

ACTION: Proposed guideline and request for comments.

SUMMARY: The proposed guideline will supplement and strengthen the current financial standards which require that a company must be able to carry out its contracts in order to be authorized to provide surety bonds under 31 U.S.C. 9304.

DATES: The proposed additional financial guideline for companies seeking or holding Treasury Authority is proposed to become effective December 31, 1987. Under the proposed guideline, companies holding a Treasury Cretificate of Authority at December 31, 1987, will have until December 31, 1990 to meet the additional financial standard.

Comment Deadline: All comments or inquiries received on or before October 4, 1987 will be given due consideration.

ADDRESS: Comments or inquiries may be mailed to Surety Bond Branch, US Treasury Dept.—FMS, 1725 I St., NW., Rm. 1008A, Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT: Terry L Boyer, Telephone—(202) 634–2214.

SUPPLEMENTARY INFORMATION:

Executive Order 12291—5 U.S.C. 601 nt . . .

The Department of the Treasury has determined that this proposal is not major for purposes of E.O. 12291. Therefore, no regulatory impact analysis is required.

Background

The Secretary of the Treasury is authorized by 31 U.S.C. 9305 to decide whether each surety company that wishes to do business with the United States is able to carry out its contracts. The regulations issued to administer this responsibility are set forth in 31 CFR Part 223 entitled "Regulations Governing Surety Companies Doing Business with the United States." The guidelines applied in assessing a company's financial condition are in the "Instructions Relating to the Submission of Annual and Quarterly Financial Statement of Surety Companies to the Treasury Department" see 31 CFR 223.6 and 223.9. These Instructions are transmitted to surety companies annually with the Treasury's Annual Letter to Surety Companies Reporting to the Treasury.

Treasury believes that its minimum combined capital and surplus requirement ($500,000) is too low. A strong financial commitment to a company's net worth is necessary to encourage proper management and financial responsibility. In addition, every company should maintain sufficient surplus to protect it against financial impairment. Treasury has determined that a minimum total combined surplus of $2,000,000 is necesssary to promote the financial responsibility and surplus protection expected of companies holding a Treasury Certificate of Authority. This proposed guideline will bring Treasury minimum financial guidelines in line with State Insurance Department requirements. Of the companies presently certified by the Treasury Department, 97 percent would meet this additional guideline. We expect this would increase to 99 percent by December 31, 1990.

The Department of the Treasury will therefore adopt the following financial guideline:

Combined Capital and Surplus

In no instance shall a company's combined capital and surplus (Policyholders' Surplus), after adjustment for Treasury rating purposes, fall below $2,000,000. Companies holding a Treasury Certificate of Authority at December 31, 1987, and not meeting this minimum requirement, may continue to qualify for a Treasury Certificate of Authority, provided the minimum requirement is obtained by December 31, 1990.

Dated: July 28, 1987.

Mitchell A. Levine,

Assistant Commissioner, Comptroller Financial Management Service.

[FR Doc. 87-17507 Filed 8-4-87; 8:45 am]

BILLING CODE 4810-35-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 150
Wednesday, August 5, 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).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., August 7, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 87–17820 Filed 8–3–87; 10:10 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., August 14, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 87–17821 Filed 8–3–87; 10:10 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., August 21, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 87–17822 Filed 8–3–87; 10:10 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., August 28, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 87–17823 Filed 8–3–87; 10:10 am]
BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

"FEDERAL REGISTER" ANNOUNCEMENT OF PREVIOUS CITATION: Vol. 52, No. 145 (July 29, 1987), P. 28415.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: July 30, 1987, 10:00 a.m.

CHANGES: Time and date changed to July 31, 1987, 3:00 p.m.

Listed Below is the Revised Agenda

Commission Meeting, Friday, July 31, 1987, 3:00 p.m.
Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, MD

Open to the Public

Methylene Chloride: Final Rule

The Commission will consider a final rule that, if issued, would declare products which contain methylene chloride to be hazardous substances under section 3(a) of the Federal Hazardous Substances Act.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301–492–6800.

Sheldon D. Butts,
Deputy Secretary.
July 31, 1987.

[FR Doc. 87–17875 Filed 8–3–87; 3:12 pm]
BILLING CODE 6355–01–M

FARM CREDIT ADMINISTRATION

SUMMARY: Notice is hereby given pursuant to the Government in the Sunshine Act (5 U.S.C. 552(e)(3)), that the regular meeting of the Farm Credit Administration Board (Board) scheduled for August 4, 1987, has been cancelled. The next meeting of the Board is scheduled for August 18, 1987.

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.

Dated: July 27, 1987.

William A. Sanders, Jr.,
Secretary, Farm Credit Administration Board.

[FR Doc. 87–17862 Filed 8–3–87; 11:37 am]
BILLING CODE 6705–01–M

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Monday, August 3, 1987 at 3:00 p.m.

PLACE: Room 117, 701 E Street, NW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints: Certain Cellular Mobile Telephones and subassemblies and Component Parts Thereof (Docket Number 1404).
5. Inv. 701–TA–283 (F) and 731–TA–346 (F) (Certain Acetylsalicylic Acid (Aspirin) from Turkey)—briefing and vote.
6. Inv. 701–TA–285 & 286 (F) and 731–TA–365 & 366 (F) (Industrial Phosphoric Acid from Belgium and Isreal)—briefing and vote.
7. Inv. 731–TA–348 (F) (Certain Malleable Cast-Iron Pipe Fittings from Thailand—briefing and vote.
8. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523–0161.

Stephen McLaughlin,
Acting Secretary.
July 30, 1987.

[FR Doc. 87–17779 Filed 7–31–87; 4:43 pm]
BILLING CODE 7020–02–M

SECURITIES AND EXCHANGE COMMISSION

PLACE: 450 Fifth Street, NW., Washington, DC.

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 held a closed meeting on Friday, July 31, 1987 at 10:00 a.m., to consider the following item.

Legislative matter relating to enforcement program.

Commissioner Peters, as duty officer, determined that Commission business required the above change.

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: Douglas Michael at (202) 272-2014.

Jonathan Katz,

Secretary.

July 31, 1987.

[FR Doc. 87-17774 Filed 7-31-87; 4:42 pm]

BILLING CODE 8010-01-M

federal register

Wednesday
August 5, 1987

Part II

Department of Education

34 CFR Part 673

Income Contingent Loan Program Demonstration Project; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 673

Income Contingent Loan Program Demonstration Project

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Higher Education Amendments of 1986 authorize the Secretary to implement an Income Contingent Direct Loan Program Demonstration Project (ICL Demonstration Project) beginning with the 1987–88 award year. The Secretary is issuing regulations to implement the ICL Demonstration Project. The ICL Demonstration Project will examine the feasibility of a direct loan program which uses the income contingent repayment method in order to increase the economic and full use of direct student loan funds.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Ms. Carney McCullough or Mr. William L. Moran, Division of Policy and Program Development, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, SW., [Regional Office Building 3, Room 4100], Washington, DC 20202. Telephone number: (202) 732–4888.

SUPPLEMENTARY INFORMATION: During the past decade, higher education costs have escalated and, as a result, students are borrowing more. By the time of graduation, many students have incurred a substantial debt. Repayment of such debt on a short-period, fixed-payment basis commencing shortly after graduation often forces students to pay substantial sums at a time when earnings are at their lowest. Income-sensitive loan repayment, on the other hand, is an equitable and reasonable approach to student debt manageability. The flexibility afforded by this type of repayment plan accommodates changes in the borrowers' financial circumstances.

The Income Contingent Direct Loan Program Demonstration Project explores the feasibility of a direct loan program which uses an income contingent repayment plan. The ICL Demonstration Project will be conducted for five years beginning with the 1987–88 academic year, and ten institutions have recently been selected to participate in the ICL Demonstration Project. In the fiscal year 1988 budget, the Secretary has requested a major expansion of the Income Contingent Loan (ICL) Program. However, the Secretary emphasizes that these regulations implement the ICL Demonstration Project only.

Revisions to the Notice of Proposed Rulemaking

On March 5, 1987, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register**, 52 FR 6924—6939. Final regulations for Subpart B were published in the May 12, 1987 **Federal Register**, 52 FR 17900–17904. The Secretary is publishing final regulations for Subparts A, C, and D in this document. Several changes have been made to the NPRM and the following is a listing of those changes. A full discussion of the changes is contained in the Appendix of Comments and Responses. Sections 673.24, 673.25, and 673.26 are applicable to the 1987–88 award year only because the Secretary intends to use his discretion to implement the need analysis provisions found in the Higher Education Act of 1965, as amended, beginning with the 1988–89 award year. The Secretary continues to review the repayment matrix in § 673.43(b)(5) and may propose revisions in the future. The Secretary will publish an NPRM for Subpart E—Due Diligence after publishing the final due diligence requirements for the Perkins Loan Program; the due diligence requirements of the ICL Program will follow closely those used for the Perkins Loan Program.

Section 673.2 Definitions.

The Secretary has revised the Initial Repayment Period to include the remainder of the calendar year in which the end of the grace period falls plus the following calendar year, rather than the following two years, as proposed in the NPRM. The Secretary believes that the revised definition allows sufficient time for borrowers to establish a financial foundation before beginning income contingent repayment.

Section 673.22 Student eligibility and selection requirements.

The Secretary has revised the student eligibility standards in order to permit an institution to use some ICL funds for otherwise eligible borrowers who have not demonstrated financial need for the loan under customary Title IV methodology. The institution must first make ICL assistance reasonably available to students who have demonstrated financial need for the loan. Only after ICL assistance has been made available to students with financial need, may the institution use those ICL funds not needed to meet these commitments for the award year to make loans to students who have not demonstrated financial need at all, or who wish to borrow to meet their expected family contribution under ICL or other Title IV programs.

In accordance with the terms of the Compact of Free Association for the Federated States of Micronesia and for the Marshall Islands and in anticipation of the implementation of the Compact of Free Association for Palau, the Secretary has deleted § 673.22(a)(4)(v) of the NPRM which allowed citizens of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau to be eligible for an ICL. Implementation of the Compact of Free Association for Palau, which would have established the Republic of Palau, was delayed by a plebiscite on December 2, 1986. Therefore, the Trust Territory of the Pacific Islands, of which Palau is the only remaining entity, continues to exist, and until the Compact is enacted, its permanent residents meet the citizenship and residency requirements of § 673.22(a)(4)(iv).

Section 673.29 Making and disbursing loans.

Because there are no loan application or loan origination fees in the ICL Program, the Secretary has deleted § 673.29(a)(1)(xi) of the NPRM which required institutions to provide borrowers with information concerning the amount of any charges collected by the institution at or prior to the disbursement of the loan and any deduction of those changes from the proceeds of the loan.

Section 673.31 Use of Funds.

The Secretary has revised § 673.31(b) to mirror the practice in the Perkins Loan Program by allowing an administrative cost allowance of 5% of the funds expended each award year under the ICL Program.

Section 673.41 Permissible charges to students.

The Secretary has modified § 673.41(a)(1) to reflect the legislative changes resulting from the Higher Education Technical Amendments of 1987. The rate of interest to be charged on an ICL shall be, at the institution's discretion, either a variable rate set annually at the average bond equivalent rate of 91-day Treasury bills for the calendar quarter ending September 30 of the preceding calendar year plus three

percent, or a fixed rate set in this manner in the year in which the loan was made and remaining unchanged thereafter over the life of the loan.

Section 673.42 Promissory note.

The Secretary has added § 673.42(a)(4) and (5) to clarify that an institution may not record on a single promissory note advances under both fixed-rate and variable-rate loan agreements, and that an institution which uses a single promissory note for advances under a fixed-rate loan agreement made during more than one award year must note the applicable interest rate for each advance on the promissory note.

The Secretary has revised § 673.42(b)(4)(ii) to clarify that amounts which a borrower repays during an academic year are used to pay any accrued interest first and then to reduce the original loan amount.

The Secretary has also revised the terms of the model promissory note to delete the optional language which limited the amount of contingent fees charged to the institution by a collection firm that could be collected from the borrower. This provision originated in regulations for the National Direct Student Loan (now Perkins Loan) Program published July 30, 1982, 47 FR 33228, and was based on a comment by the Federal Trade Commission interpreting section 808(1) of the Fair Debt Collection Practices Act to limit the amount of contingent fee charges that could be imposed in collecting NDSL debts. The Secretary has been advised that the FTC now regards such charges as permitted under section 808(1) to the extent that the charge is legal under applicable State law. 51 FR 8019, 8027, March 7, 1986. On April 7, 1986, a new section 484A was added to the Higher Education Act by section 16033 of Pub. L. 99–272, the Consolidated Omnibus Budget Reconciliation Act of 1985. Under section 484A(b)(1), borrowers on loans made under Title IV of the HEA are, notwithstanding any State law to the contrary, liable for reasonable collection costs. 20 U.S.C. 1091a(b)(1). Consistent with this provision, the Secretary has removed from the promissory note the limitation on the amount of contingent fees that the institution may impose on the borrower. The institution may now, therefore, impose through the debt collection firm the full amount of "reasonable collection costs," including contingent fees charged to the institution by the collection firm.

Section 673.43 Repayment plan.

The Secretary has revised the manner in which the annual payment obligation is calculated to include taxable income received by the borrower and his or her spouse if the borrower does not file a Federal income tax return and to allow the institutional loan administrator to use more recent income information in situations when the borrower's base year income does not accurately reflect the ability to repay an ICL. The Secretary believes that this flexibility is important in order for the borrower's annual payment obligation to be realistic and sensitive to individual circumstances.

The Secretary has further revised the manner in which the payment obligation is to be calculated (§ 673.43(b) of the NPRM) to replace the fixed payment obligation during the initial repayment period proposed in the NPRM. The final rule provides that, during the initial repayment period, payment is to be based on a percentage of income, if the borrower provides income information, or a percentage of opening ICL balance, if no income information is provided. The Secretary has revised the repayment matrix by reducing the percentage of income which the borrower is required to use for repayment and by basing the percentage of income used on the opening ICL balance and the year of repayment. The Secretary believes that the revised repayment matrix will reduce the incidence of negative amortization and is more sensitive to other obligations which the borrower will incur during the repayment period.

The Secretary continues, in this final regulation, to include in the base on which the borrower's annual repayment obligation is calculated both the income actually earned by the borrower and the income of his or her spouse, if the borrower is married at any time during the repayment period. This does not require the spouse to contribute to the repayment of the loan, or attempt to make the spouse legally liable for the debt; rather, the Secretary regards income earned by each spouse as effectively available to the borrower and therefore a reasonable measure of the borrower's ability to generate payments on the loan.

This policy for ICL repayment is consistent with Title IV HEA need analysis as traditionally implemented by governmental and private parties. In computing the need for student aid, need analysis customarily deems the income of the spouse of the student applicant to be available to meet the educational expenses of the student. This need analysis policy rests on a recognition that the need of the student includes living expenses for the couple, and that the education of the student is an investment likely to yield economic benefits to the couple over many years. For similar reasons, the Secretary includes the income of the couple in the economic base on which the borrower's repayment obligation is determined. The education of the borrower can reasonably be expected to increase the earning capacity and wealth of the couple throughout the repayment period, regardless of the earnings of the borrower in any particular year of that period. The standard of living of the borrower is based on the income of the couple, and thus that income is in a realistic sense effectively available to the borrower regardless of the amount earned by the borrower in a particular year of repayment.

In these final regulations, a borrower who does not provide in a timely manner the income information required to determine his or her annual payment obligation after the initial repayment period will be charged a late charge of up to 20% of the amount of the borrower's most recently required installment. Continued failure to submit the required income information is a substantial breach of the borrower's duty under the loan agreement and constitutes a default on the loan.

Section 673.44 Deferment of repayment.

The Secretary has added a student deferment provision to specify that a borrower need not repay principal or interest while enrolled on at least a half-time basis at an institution of higher education.

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 regulations established in the order.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not 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 in 34 CFR Part 673

Education, Loan programs—education, Reporting and recordkeeping requirements, Student aid.

(Catalog of Federal Domestic Assistance Number has not been assigned)

Dated: June 17, 1987.

William J. Bennett,

Secretary of Education.

The Secretary amends Part 673 of Title 34 of the Code of Federal Regulations by adding new Subparts A, C, and D to read as follows:

PART 673—INCOME CONTINGENT LOAN PROGRAM

Note.—An asterisk (*) indicates provisions that are identical to provisions in Parts 674, 675 and 676.

Subpart A—Scope, Purpose, and General Definitions

Sec.
673.1 Purpose.
673.2 Definitions.
* * * * *

Subpart C—General Provisions

673.21 Program participation agreement.
673.22 Student eligibility and selection requirements.
673.23 ICL loan maximums.
673.24 Allowable costs of attendance—1987–88.
673.25 Expected family contribution—1987–88.
673.26 Approved need analysis systems—1987–88.
673.27 Overaward.
673.28 Coordination with BIA grants.
673.29 Making and disbursing loans.
673.30 Federal interest in allocated funds—transfer of Fund.
673.31 Use of funds.
673.32 Fiscal procedures and records.
673.33 Compliance with equal credit opportunity requirements.

Subpart D—Loan Terms and Conditions

673.41 Permissible charges to students.
673.42 Promissory note.
673.43 Repayment plan.
673.44 Deferment of repayment—financial hardship.
673.45 Cancellation for death or disability.

Subpart E—Due Diligence [Reserved]

Appendix A—Sample Promissory Note

Authority: 20 U.S.C. 1087a–1087e, unless otherwise noted.

Subpart A—Scope, Purpose, and General Definitions

§ 673.1 Purpose.

(a) The Income Contingent Loan (ICL) Program provides loans through institutions of higher education to financially needy students attending those institutions to help them pay their educational costs.

(b) The Secretary implements the ICL Program through the ICL Demonstration Project (Demonstration Project). Under the Demonstration Project, the Secretary provides funds to selected institutions of higher education, to establish a revolving ICL fund at the institution, in order to evaluate the feasibility of a program of student loans using income-based repayment plans.

(Authority: 20 U.S.C. 1087b)

§ 673.2 Definitions.

(a) Subpart A of the Student Assistance General Provisions, 34 CFR Part 668, sets forth definitions of the following terms used in this part:

Academic year
Act
Award year
Campus-based programs
Clock-hour
College Work-Study (CWS) Program
Consolidation Loan Program
Defense loan
Dependent student
Direct loan
Enrolled
Guaranteed Student Loan (GSL) Program
Independent student
National Defense Student Loan Program
National Direct Student Loan (NDSL) Program (now called the Perkins Loan Program)
National of the United States
One-year training program
Parent
Pell Grant Program
Perkins Loan Program (formerly called the National Direct Student Loan Program)
PLUS Program
Postsecondary vocational institution
Proprietary institution of higher education
Public or private nonprofit institution of higher education
Recognized equivalent of a high school diploma
Regular student
Secretary
Six-month training program
State
State Student Incentive Grant (SSIG) Program
Supplemental Educational Opportunity Grants (SEOG) Program, and
Supplemental Loans for Students (SLS) Program

(b) The Perkins Loan Program (formerly National Direct Student Loan (NDSL) Program) regulations, 34 CFR Part 674, sets forth definitions of the following terms used in this part:

Acceleration
Default
Defaulted principal amount outstanding
Eligible program
Expected family contribution (EFC)
Financial need
Half-time graduate or professional student
Half-time undergraduate
Institution of higher education (institution)
Matured loans
Payment period

(c) The Secretary defines other terms used in this part as follows:

Adjusted gross income: The adjusted gross income (AGI) reported on the Federal income tax return.

Base income year: The most recent Federal tax year ending before November 1 of the calendar year preceding the calendar year for which a payment obligation is calculated.

Federal capital contribution (FCC): Federal funds provided to an institution in order to establish and maintain an ICL Fund.

Fund (ICL Fund): A fund established and maintained according to § 673.21.

Grace period: A period of nine consecutive months, starting from the date the borrower ceases to be at least a half-time student at an institution of higher education, during which a borrower does not have to make payments.

Handicapped student: A student who meets the definition in section 602(1) of the Education of the Handicapped Act, as amended [20 U.S.C. 1401(1)], that is, a student who is mentally retarded, hard of hearing, deaf, speech- and language-impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or is otherwise health-impaired or has specific learning disabilities which require special education and related services.

Initial repayment period: The period of time beginning at the end of the grace period of a borrower and ending December 31 of the first complete calendar year after the end of the grace period.

Institutional capital contribution (ICC): Funds contributed by the institution in order to establish and maintain an ICL Fund.

Opening loan account balance: The principal and accrued interest outstanding on the date on which the grace period of a borrower ends.

(Authority: 20 U.S.C. 1087a–1087e)

Subpart C—General Provisions

§ 673.21 Program participation agreement.

To participate in the ICL Program, an institution shall enter into a participation agreement with the Secretary. The agreement provides that the institution shall use the funds it receives solely for the purposes specified in this part and shall administer the program in accordance with the Act, this part and the Student Assistance General Provisions regulations, 34 CFR Part 668. The agreement provides that the institution shall deposit and maintain these funds

in an interest-bearing account. The agreement further provides that—

(a) The institution shall establish and maintain a Fund and shall deposit into the Fund—

(1) FCC appropriated under section 452(b) of the Act:

(2) ICC equal to at least one-ninth of the FCC described in paragraph (a)(1) of this section;

(3) Repayments of principal and interest;

(4) Penalty charges collected under § 673.41 (b) and (c).

(5) Any other earnings of the Fund including any interest earned on the funds listed in paragraphs (a)(1) through (4) of this section; and

(6) Any short term, no-interest loans the institution makes to the Fund in anticipation of collections or receipt of FCC.

(b) The institution shall use the money in the Fund only for—

(1) Making ICLs to students;

(2) Administrative expenses as provided for in § 673.31;

(3) Capital distributions in accordance with section 466 of the Act;

(4) Litigation costs;

(5) Other collection costs, agreed to by the Secretary in connection with the collection of principal, interest, and penalty charges on a loan made from the Fund; and

(6) Repayment of the short term, no-interest loans made to the Fund by the institution in anticipation of collections or recept of FCC.

(c) At least annually, the institution shall submit a report to the Secretary which contains information on loans in default—

(1) 120 days or more for loans repayable in monthly installments; or

(2) 180 days or more for loans repayable in less frequent installments;

(d) If a loan is in default despite due diligence on the part of the institution in collecting the loan, the institution may assign its rights to the loan to the United States without recompense.

(e) To assist institutions in collecting outstanding loans, the Secretary provides to an institution the names and addresses of borrowers or other information relevant to collection which is available to the Secretary.

(f) The Secretary may require that the institution restore to the Fund the outstanding principal balance, accrued interest, and any administrative cost allowance it received for an ICL if the institution—

(1) Improperly disbursed the loan; or

(2) Failed to exercise due diligence in its collection of the defaulted loan.

(Authority: 20 U.S.C. 1087c)

(Approved by the Office of Management and Budget under control number 1840–0589)

§ 673.22 Student eligibility and selection requirements.

(a) *Eligibility.* A student is eligible to receive funds under the Income Contingent Loan Program at an institution of higher education if the student—

(1) Is a regular student:

(2) Is enrolled or accepted for enrollment as at least a half-time undergraduate student in an eligible program at that institution in accordance with § 673.11(b);

(3)(i) Has a high school diploma or recognized equivalent; or

(ii) Is beyond the age of compulsory school attendance in the State in which the institution he or she is attending is located and has the ability to benefit from the education or training offered by that institution;

(4)(i) Is a U.S. citizen or national;

(ii) Is a permanent resident of the U.S.;

(iii) Provides evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(iv) Is a permanent resident of the Trust Territory of the Pacific Islands, or the Northern Mariana Islands;

(5) Except as provided in paragraph (e)(2) of this section, has financial need. A member of a religious order (an order, community, society, agency, or organization) who is pursuing a course of study at an institution of higher education is considered to have no financial need if that religious order—

(i) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(ii) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(iii) Directs the member to pursue the course of study or provides subsistence support to is members;

(6) Is maintaining satisfactory progress in the course of study he or she is pursuing according to the standards and practices of that institution:

(7) Does not owe a refund on a grant awarded under the Pell Grant, SEOG or SSIG programs to meet the cost of attending any institution:

(8) Is not in default on any loan made or guaranteed under the Title IV HEA programs to meet the cost of attending any institution; and

(9) Receives a preliminary or final determination from the institution of the student's eligibility or ineligibility for a Pell Grant.

(b) *Overpayment.* Overpayment of a grant means that a student's grant payments are greater than the amount he or she is entitled to receive. A student who owes a refund on a Pell Grant, SEOG, or SSIG due to an overpayment is eligible to receive a ICL under the following conditions:

(1)(i) *Overpayment of Pell Grant.* If an institution makes an overpayment of a Pell Grant to a student, that student is eligible to receive an ICL if—

(A) The student is otherwise eligible: and

(B) The institution can eliminate the overpayment in the award year in which it occurred by adjusting subsequent Pell Grant payments for that award year.

(ii) *Overpayment of a Pell Grant due to institutional error.* If the institution makes an overpayment of a Pell Grant as a result of its own error and cannot correct it as specified in paragraph (b)(1)(i)(B) of this section, it may continue to disburse an ICL to that student if the student—

(A) Is otherwise eligible; and

(B) Acknowledges in writing the amount of overpayment and agrees to repay it in a reasonable period of time.

(2) *Overpayment of an SEOG or SSIG.* If an institution makes an overpayment of an SEOG or SSIG to a student, that student is eligible to receive an ICL if—

(i) The student is otherwise eligible; and

(ii) The institution can eliminate the overpayment by adjusting financial aid payments (other than Pell Grants) in the same award period in which the overpayment occurred.

(c) *Default on loans.* If a student is in default on a loan made or guaranteed under any title IV HEA Program for attendance at any institution, the institution may nevertheless make an ICL payment to that student under the following conditions:

(1)(i) *Guaranteed loans.* An institution may make an ICL or continue to advance funds to a student who is in default on a loan guaranteed under any Title IV HEA program if the Secretary (for a Federal insured loan) or a guarantee agency (for a loan insured by that guarantee agency) determines that the student has made satisfactory arrangements to repay the defaulted loan.

(ii) *Reliance on student's statement.* An institution, in determining whether a student is in default on a loan guaranteed under any Title IV HEA program, may rely upon the student's written statement that he or she is not in default, unless the institution has information to the contrary.

(2) *Perkins Loan.* An institution may make an ICL to a student who is in default on a National Defense/Direct Student Loan or Perkins Loan if the institution that made the loan, or the Secretary, if the loan has been assigned to the Department of Education, certifies that the student has made satisfactory arrangements to repay that loan.

(d) *Bankruptcy.* The Secretary does not consider a loan made or guaranteed under a Title IV HEA program that is discharged in bankruptcy to be in default for purposes of paragraph (c) of this section.

(e) *Selection.* (1) An institution shall make ICLs reasonably available within each award year to the extent of available funds first to all eligible students who demonstrate financial need for the loan.

(2) An institution may then use those funds that remain available to make ICLs to eligible students who have not demonstrated financial need for the loan.

(3) The institution shall establish selection procedures and these procedures must be—

(i) Uniformly applied;

(ii) In writing; and

(iii) Maintained in the institution's files.

(4) The institution shall not make an ICL to a student who is unwilling to repay that loan. Default on a previous loan including a defaulted loan discharged in bankruptcy is evidence of that unwillingness.

(Authority: 20 U.S.C. 1087d)

§ 673.23 ICL loan maximums.

(a) *Annual amounts.* The maximum amount a student may borrow under the ICL program in an academic year is—

(1) $2,500 for a student enrolled in the first and second academic year of undergraduate study;

(2) $3,500 for a student enrolled in the third academic year of undergraduate study; and

(3) $4,500 for a student enrolled in the fourth and fifth academic years of undergraduate study.

(b) *Aggregate amounts.* The maximum aggregate amount an eligible student may borrow under the ICL program is $17,500.

(Authority: 20 U.S.C. 1087d(a))

§ 673.24 Allowable costs of attendance—1987–88.

(a) *General.* (1) Except as provided in paragraph (d) of this section a student's cost of attendance means—

(i) The tuition and fees charged to a full-time student for an academic year by the institution he or she is attending as determined under paragraph (b) of this section;

(ii) An allowance for room and board expenses for an academic year, as determined under paragraph (c) of this section;

(iii) A reasonable allowance determined by the institution for books and supplies for an academic year;

(iv) A reasonable allowance determined by the institution for transportation for an academic year. This allowance may include—

(A) The cost of travel between the student's residence and the institution; and

(B) The cost of travel required for completion of a course of study;

(v) A reasonable allowance determined by the institution for miscellaneous personal expenses for an academic year;

(vi) A reasonable allowance determined by the institution for an academic year for expenses related to study abroad for students enrolled in an academic program which normally includes a formal program of study outside the United States;

(vii) A reasonable allowance determined by the institution for expenses for an academic year related to child care for a student's dependent children; and

(viii) A reasonable allowance determined by the institution for a handicapped student's expenses for an academic year related to his or her handicap, if these expenses are not provided for by any other assisting agency or program. This allowance may include expenses related to special services, transportation, equipment and supplies.

(2) The institution shall take into account when determining a student's cost of attendance—

(i) The period for which financial assistance is awarded; and

(ii) Whether the student is enrolled on a full-time or less than full-time basis.

(b) *Tuition and fees.* (1) An institution shall determine the tuition and fees charged a full-time student by calculating—

(i) The actual amount charged the full-time student for tuition and fees for an academic year; or

(ii) The average amount it charges full-time undergraduate students for tuition and fees for an academic year.

(2) If an institution establishes its tuition and fee charges on a residency requirement basis (e.g., In-State and Out-of-State) and elects to calculate an average charge for tuition and fees, it shall establish a separate average charge for each different residency based classification.

(3) An institution may determine a separate average charge for any other distinct classification upon which it bases tuition and fee charges.

(c) *Room and board.* (1) The institution shall calculate a student's room and board allowance as follows—

(i) For a student who has no dependents and lives with his or her parent(s), an allowance of not less than $1,100;

(ii) For a student who has no dependents and lives in institutionally owned or operated housing—

(A) The actual amount charged the student for room and board for an academic year; or

(B) A standard allowance based on the average amount it charges most of its student residents for room and board for an academic year;

(iii) For a student who has no dependents and does not live with his or her parent(s) or in institutionally owned or operated housing, a standard allowance determined by the institution for room and board for an academic year; or

(iv) For a student who has dependents, an allowance determined by the institution for room and board for an academic year based upon expenses incurred by the student and his or her dependent(s).

(2) For purposes of this section, a spouse is considered a dependent.

(d) *Attendance costs for students in correspondence study programs.* The cost of attendance for a student enrolled in a correspondence study program means—

(1) Actual tuition and fees charged to the student for an academic year;

(2) A reasonable allowance determined by the institution for books and supplies for an academic year, if required for the completion of the program; and

(3) If incurred in fulfilling a required period of residential training, expenses for—

(i) Room and board; and

(ii) Travel between the student's residence and the institution.

(e) *Adjustments.* An institution may, in individual cases, adjust a student's cost of attendance if the cost of attendance calculated under paragraphs (a) through (d) of this section is not a reasonable approximation of the student's actual costs.

(f) *Required documentation.* An institution shall prepare and retain a written explanation of the cost of attendance figures established under this section.

(Authority: 20 U.S.C. 1087d)

§ 673.25 Expected family contribution—1987–88.

(a) *Annual determinations.* An institution shall determine a student's financial need at least annually.

(b)(1) To determine a student's financial need, an institution shall determine the student's EFC.

(2) To determine an EFC for the period of the student's award, an institution shall use one of the approved systems of need analysis as provided in § 673.26.

(c) *Native American students.* In determining a Native American's EFC, an institution may not consider the following as income or assets of the student and his or her spouse or parent(s):

(1) Awards made under Pub. L. (98–64, the Distribution of Judgment Funds Act (25 U.S.C. 1401 *et seq.*), the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), and the Maine Indian Claims Settlement Act (25 U.S.C. 1721 *et seq.*) However, if the awards under the first or second Acts individually exceed $2,000 only the awards under each of those Acts in excess of $2,000 shall be considered income or assets of the student or the student's spouse or parents;

(2) Property that may not be sold or encumbered without the consent of the Secretary of the Interior.

(3) Any other property held in trust by the U.S. Government for the student or the student's spouse or parent(s).

(d) *Adjustments.* An institution may, in individual cases, adjust an EFC computed according to one of the approved need analysis systems, as provided in § 673.26, if—

(1) The EFC does not accurately reflect the student's, spouse's, or parent's ability to contribute; or

(2) The relationship between a student and his or her parents makes it unreasonable to expect the parents to contribute to the student's cost of attendance, regardless of their ability to do so.

(Authority: 20 U.S.C. 1087d)

(Approved by the Office of Management and Budget under control number 1840–0589)

§ 673.26 Approved need and analysis systems—1987–88.

(a)(1) An institution shall use a need analysis system which is approved by the Secretary in determining a student's EFC.

(2) Any system of need analysis approved by the Secretary—

(i) Must consider in determining the amount a dependent student and his or her spouse and parent(s) are expected to contribute toward the student's costs of attendance—

(A) The number of the parents' dependent children;

(B) The number of the parents' dependent children attending institutions of higher education;

(C) Tuition costs of dependent children attending elementary and secondary schools; and

(D) Any unusual expenses of the student or the student's family, such as unusual medical or dental expenses;

(ii) Must consider in determining the amount an independent student and his or her spouse are expected to contribute toward the student's costs of attendance, the student's dependent children; and

(iii) Must produce expected parental contributions that—

(A) Increase incrementally and the parents' financial strength, measured in constant dollars, increases; and

(B) Are equal for parents of equal financial strength.

(3) The Secretary preapproves the need analysis systems described in paragraph (b) of this section, and approves other systems that meet the requirements of this section.

(b) *Preapproved systems for dependent and independent students.* The Secretary preapproves the following need analysis systems—

(1) The system that produces the expected family contribution number (FC) printed on the Student Aid Report provided to the student by the Secretary; and

(2) The EFC used in the Pell Grant Program (34 CFR Part 690).

(c) *Application requirements.* (1) An individual or organization wishing to have a need analysis system approved for an award year shall submit to the Secretary before the closing date published in the **Federal Register** the following:

(i) A complete description of its system of need analysis for dependent and independent students.

(ii) Its student application form(s) for undergraduate students.

(iii) The expected parental contributions its system produces for dependent undergraduate students under the sample cases published by the Secretary if the majority of students to be served by its system are undergraduates.

(iv) A complete calculation of how each expected parental contribution is derived, including enough information to allow the Secretary to duplicate these calculations and results.

(2) The Secretary does not accept the information specified in paragraph (c)(1) of this section in the form of computer programs, software, or mechanical devices.

(d) *Expected parental contributions and sample cases.* (1) For each award year, the Secretary publishes in the **Federal Register** sample cases and expected parental contributions for dependent undergraduate students.

(2) The Secretary computes the expected parental contributions for undergraduate dependent students by using sample cases which—

(i) Are based on families of varying sizes with two parents, the older of whom is 45 and is the sole wage earner, and one dependent undergraduate;

(ii) Deduct from the adjusted gross income of the student's working parent—

(A) The amount of Federal income tax (based on a joint return with standard deductions) and social security tax;

(B) An 8 percent allowance on taxable income for State and other taxes; and

(C) A Standard Maintenance Allowance for the family (excluding the applicant during the academic year) using the Department of Labor's estimates for a low budget standard of living;

(iii) Determine the parents' Discretionary Net Worth by deducting a Home and Other Asset Protection Allowance from the net market value of the parents' assets;

(iv) After considering the parents' available income, apply an asset conversion, rate against the parents' Discretionary Net Worth;

(v) Add the amounts determined under paragraph (d)(2)(ii) and (d)(2)(iv) of this section; and (vi) Apply to the amount determined under paragraph (d)(2)(v) of this section, taxation rate schedules for undergraduate students.

(3) The expected parental contributions published by the Secretary do not take into account—

(i) More than one family member attending an institution of higher education as an undergraduate, or graduate or professional student;

(ii) Business or farm assets;

(iii) Nontaxable income;

(iv) Unusual medical or dental expenses;

(v) Other unusual expenses; and

(vi) Elementary and secondary tuition expenses.

(4) In comparing figures from systems submitted for approval with figures from sample cases, the Secretary treats an expected parental contribution of less than zero as zero.

(5) To insure measurement in constant dollars, the Secretary revises sample case figures for inflation annually by adjusting—

(i) Deductions for family maintenance;

(ii) The standard deduction from assets; and

(iii) The rate of contribution from income and assets.

(e) *Approval of systems.* (1) The Secretary approves systems of need analysis for an award year if those systems—

(i) Satisfy the criteria set forth in paragraph (a)(2) of this section; and

(ii) Produce expected parental contributions that are within $50 in 75 percent of the sample cases published by the Secretary.

(2) If the Secretary approves an individual's or organization's system for dependent undergraduate students, the Secretary also approves that individual's or organization's system for independent undergraduate students.

(3) For each award year, the Secretary publishes in the **Federal Register** a list of approved need analysis systems that institutions shall use in calculating awards for that year.

(Authority: 20 U.S.C. 1087d)

(Approved by the Office of Management and Budget under control number 1840–0589)

§ 673.27 Overaward.

(a) *Overaward prohibited.* *(1) An institution may only award or disburse an ICL to a student selected pursuant to § 673.22(e)(1) if the ICL, when combined with the other resources the student receives, does not exceed the student's financial need.

(2) When awarding and disbursing an ICL to a student, the institution must take into account those resources it—

(i) Can reasonably anticipate at the time it awards ICL funds to the student;

(ii) Makes available to it students; or

(iii) Knows about.

(3)(i) If a student receives additional resources before the institution advances the ICL, and the total resources including the ICL exceed the student's need, and the excess is not from employment, the overaward is the amount that exceeds need.

*(ii) If a student receives additional resources after the institution advances the ICL, and the total resources including the ICL exceeds the student's need by $200 or more and the excess is not from employment, the overaward is the amount that exceeds $199.

*(4) If a student earns more money from employment than the institution anticipated or could have reasonably anticipated when it awarded or disbursed the ICL, the institution shall treat the earnings in accordance with paragraph (d) of this section.

*(b) *Resources.* (1) The Secretary considers that "resources" include, but are not limited to, any—

(i) Funds the students is entitled to receive from a Pell Grant, regardless of whether the student applies for the Pell Grant;

(ii) Waiver of tuition and fees;

(iii) Scholarship or grant, including ROTC or an athletic scholarship;

(iv) Fellowship or assistantship;

(v) Insurance programs for the student's education;

(vi) Veterans benefits;

(vii) Net earnings from employment, other than CWS employment for the period of the award except as provided in 34 CFR 675.23; and

(viii) Except as provided in paragraph (b)(3) of this section, long-term loans, including ICLs, made by the institution pursuant to § 673.22(e)(2); and

(ix) Loans made under the GSL Program.

(2) The Secretary does not consider as a resource any portion of the resources described in paragraph (b)(1) of this section that are included in the student's EFC.

(3) The student may use an ICL made pursuant to §673.22(e)(2), Supplemental Loans for Students (SLS), State-sponsored or private loan programs, or PLUS loans to substitute for his or her expected family contribution. However, if the loan amounts received under § 673.22(e)(2) and under the PLUS or SLS program individually or collectively exceed the student's expected family contribution, the excess is a resource.

(c) *Liability for and recovery of overpayments.* (1) The student is liable for any overpayment of ICL advances made to him or her.

(2) The insitution is also liable for an overpayment if the overpayment occurred because it failed to follow the procedures set forth in this Part. The institution shall restore an amount equal to the overpayment and any administrative cost allowance claimed on that amount to its ICL fund even if it cannot collect the overpayment from the student.

(3) If an institution makes an overpayment for which it is not liable, it must help the Secretary recover the overpayment by making a reasonble effort to contact the student and recover the overpayment.

(d) *Treatment of earnings in excess of need.* An institution shall take the following steps when it learns that a borrower has earned, or will earn, $200 or more over his or her financial need:

(1) The institution shall decide whether the student has increased financial need unanticipated when it awarded financial aid to the student. If the student does, no further action is necessary.

(2) If the student's earnings still exceed need by $200 or more after the institution subtracts any additional costs, it shall cancel any unpaid loan or grant (other than Pell Grants) to avoid exceeding need by more than $199.

(3) If the student's earnings still exceed his or her need by $200 or more after the institution takes the steps required in paragraphs (d) (1) and (2) of this section, and the student is enrolled for the next academic year, the institution shall consider the amount that exceeds $199 as a resource to help pay the student's cost of attendance in the following year.

(4) If the student's earnings still exceed his or her need by $200 or more after the institution takes the steps required in paragraph (d) (1) and (2) of this section, and the student is not enrolled for the next academic year, no further action is necessary.

(Authority: 20 U.S.C. 1087d)

§ 673.28 Coordination with BIA grants.

(a) To determine the amounts of an ICL for a student selected under § 673.22(e)(1) who is also eligible for a Bureau of Indian Affairs (BIA) education grant, an institution shall prepare a package of student aid—

(1) From resources other than the BIA education grant the student has received or is expected to receive; and

(2) That is consistent in type and amount with packages prepared for students in similar circumstances who are not eligible for a BIA education grant.

(b)(1) The BIA education grant, whether received by the student before or after the preparation of the student aid package, supplements that package.

(2) No adjustment may be made to the student aid package as long as the total of the package and the BIA education grant is less than the institution's determination of that student's financial need.

(c)(1) If the BIA education grant, when combined with other aid in the package, exceeds the student's need, the excess shall be deducted and may be deducted only from the other assistance, not the BIA education grant.

(2) The institution shall deduct the excess in the following sequence: loans, work-study awards, and grants other than Pell-Grants. However, the institution may change the sequence if requested by a student and the institution believes the change benefits the student.

(d) To determine the financial need of a BIA/eligible student, a financial aid administrator is encouraged to consult

with area officials in charge of BIA postsecondary financial aid.

(Authority: 20 U.S.C. 1087d)

§673.29 Making and disbursing loans.

(a)(1) Before an institution makes its first disbursement to a student, the student shall sign the promissory note and the institution shall provide the student with the following information—

(i) The name of the institution and the address to which communications and payments should be sent;

(ii) The principal amount of the loan;

(iii) The applicable interest rate on the loan and, if a variable rate, the manner in which it will be determined over the life of the loan;

(iv) The yearly and cumulative maximum amounts that may be borrowed;

(v) An explanation of when repayment of the loan will begin and when the borrower will be obligated to pay interest that accrues on the loan;

(vi) The repayment terms which the institution may impose;

(vii) Special options the borrower may have for loan consolidation or other refinancing of the loan;

(viii) The borrower's right to prepay all or part of the loan, at any time, without penalty and a summary of the circumstances in which repayment of the loan or interest that accrues on the loan may be deferred or cancelled;

(ix) A definition of default and the consequences to the borrower including a statement that the default may be reported to a credit bureau or credit reporting agency;

(x) The effect of accepting the loan on the eligibility of the borrower for other forms of student assistance; and

(xi) Any cost that may be assessed on the borrower in the collection of the loan including penalties and collection and litigation costs.

(2) The institution shall provide the information in paragraph (a)(1) of this section to the borrower in writing—

(i) As part of the written application material;

(ii) As part of the promissory note; or

(iii) On a separate written form.

(b)(1) Except as provided in paragraphs (c) and (g) of this section, an institution shall advance in each payment period a portion of a loan awarded for a full academic year.

(2) The institution determines the amount advanced each payment period by the following fraction:

$$\frac{ICL}{N}$$

Where ICL = the total Income Contingent Loan awarded for an academic year and N = the number of payment periods that the institution expects the student will attend in that year.

(3) An institution may advance funds, within each payment period, at such time and in such amounts as it determines best meets the student's needs.

(c) If a student incurs uneven costs or resources during an academic year and needs additional funds in a particular payment period, the institution may advance ICL funds to the student for those uneven costs.

(d) The institution may advance the loan proceeds to the borrower directly by check or by crediting his or her account with the institution. The institution shall notify the student of the amount he or she can expect to receive, and how and when that amount will be paid. In either case, the borrower must sign for each advance of funds on the promissory note.

(e) Subject to the requirements of paragraph (f) of this section—(1) An institution may advance loan proceeds directly to a registered student no more than 10 days before the first day of classes of a payment period, and

(2) An institution may advance loan proceeds by crediting a registered student's account no more than 3 weeks before the first day of classes of a payment period.

(f)(1) The institution shall return to the ICL fund any funds advanced to a student who, before the first day of classes—

(i) Officially or unofficially withdraws; or

(ii) Is expelled.

(2) A student who does not begin class attendance is deemed to have withdrawn.

(g) Only one advance is necessary if the total amount the institution awards a student for an academic year under the ICL, Perkins Loan programs is less than $501.

(h) A correspondence student shall submit his or her first completed lesson before receiving an advance.

(i) If an institution computes a student's need using estimated data submitted before January 1 of the previous calendar year, the institution shall not pay the student unless it verifies that information.

(j) An institutional official shall not obtain a student's power of attorney to authorize any disbursement or to authorize any crediting of a student's account.

(Authority: 20 U.S.C. 1087c; 1087d)

(Approved by the Office of Management and Budget under control number 1840-0589)

§673.30 Federal interest in allocated funds—transfer of Fund.

(a) Funds received by an institution under the ICL program, including repayments on loans, are held in trust for the intended student beneficiaries. Funds may not be used or hypothecated (i.e., serve as collateral) for any other purpose.

(b)(1) If an institution responsible for an ICL fund closes or no longer wants to participate in the program, the Secretary directs the institution to take the following steps to protect the outstanding loans and the Federal interest in that Fund:

(i) A capital distribution of the liquid assets of the Fund according to section 466(c) of the Act;

(ii)(A) The transfer of the outstanding loans to another institution; or

(B) The transfer of the outstanding loans to the Department of Education.

(2) The Secretary considers cost of collecting the transferred outstanding loans to be equal to the institutional share of those loans.

(3) If the Secretary directs that the outstanding loans be transferred to a second institution, the second institution may deposit the collections on those loans in its own Fund. The Secretary considers the first institution's share of those collections to be the second institution's ICC.

(4) If the Secretary directs that the outstanding loans be transferred to the Department of Education, the Secretary may use the institutional share of those collections to pay collection costs.

(5) If more than one institution offers to collect the outstanding loans, the Secretary directs that the loans be transferred to one or more of the competing institutions on the basis of—

(i) The institution's demonstrated loan collection capability; and

(ii) The number of students of the first institution expected to enroll in the second institution.

(6) The Secretary does not take an audit exception against a transferee institution on account of actions or omissions of the transferor institution in the administration of its Fund. The transferee institution shall segregate the transferred Fund account until an audit satisfactory to the Secretary is performed on the operation of the transferor institution's program.

(Authority: 20 U.S.C. 1087c)

§673.31 Use of funds.

(a) *General.* An institution shall deposit the funds it receives under the

ICL program into its Fund. It may use these funds only for making loans and the other activities specified in § 673.21(b).

(b) *Administrative cost allowance.* (1) An institution participating in the ICL program for an award year is entitled to an administrative cost allowance if it advances funds to students in that year.

(2) For any award year, the maximum amount of the allowance equals five (5) percent of the institution's expenditures in that award year under the ICL Program.

(3) An institution shall use its administrative cost allowance to offset its costs of administering the ICL Program. Administrative costs also include the expenses incurred for carrying out the student consumer information services requirements of Subpart D of the Student Assistant General Provisions regulations, 34 CFR Part 668.

(4) An institution shall charge any administrative costs against its Fund during the same award year in which the expenditures for these costs were made.

(Authority: 20 U.S.C. 1087c)

§ 673.32 Fiscal procedures and records.

(a) *Fiscal procedures.* (1) In administering its ICL program, an institution shall establish and maintain an internal control system of checks and balances that ensures that no office can both authorize payments and disburse funds to students.

(2) A separate bank account for Federal funds is not required, except as provided in paragraph (b) of this section. However, an institution must notify any bank in which it deposits Federal funds of all accounts in that bank in which it deposits Federal funds. The institution may give this notice by either—

(i) Including in the name of the account the fact that Federal funds are deposited; or

(ii) Notifying the bank in writing of the accounts in which it deposits Federal funds. The institution must retain a copy of this notice in its files.

(b) *Account for ICL Fund.* (1) An institution must maintain all the cash of its ICL Fund in a separate, federally insured interest-bearing bank account that contains no other funds if the Secretary determines that the institution's accounting system and internal controls do not—

(i) Meet the requirements of paragraph (c) of this section, paragraph (d) of this section, or both;

(ii) Identify the cash balance of the ICL Fund as readily as if the Fund were maintained in a separate bank account; or

(iii) Adequately identify the earnings of the Fund.

(2) The Secretary makes that determination on the basis of an audit examination or as a result of a program review.

(3) That separate bank account must be identified as the institution's Federal ICL Fund account and must contain all the cash of the institution's ICL Fund. That cash includes Federal capital contributions, institutional capital contributions, repayments made by borrowers, and any earnings of the Fund including interest.

(c) *Deposit of ICC into Fund.* An institution shall deposit its ICC into its Fund prior to or at the same time it deposits any FCC.

(d) *Records and reporting.* (1) An institution shall establish and maintain on a current basis financial records that reflect all program transactions. The institution shall establish and maintain general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all other institutional financial activity.

(2) The institution shall also establish and maintain program and fiscal records that—

(i) Are reconciled at least monthly;

(ii) Identify each student's account and status;

(iii) Show the eligibility of each student aided under the program; and

(iv) Show how the need was met for each student.

(3) Each year an institution shall submit a program and fiscal report. The institution shall insure that the information reported is accurate and shall submit it on the form and at the time specified by the Secretary.

(4) The institution shall maintain on file all ICL applications for those students it reports on the program and fiscal report.

(5) The institution shall maintain all records relating to its applications for funds under this part.

(e) *Retention of records*—(1) *Records.* Each institution shall keep intact and accessible records pertaining to the application for and receipt and expenditure of Federal funds, including all accounting records and original and supporting documents necessary to document how the funds are spent.

*(2) *Period of retention.* Except for loan records and audit questions, an institution shall keep records for an award year for five years after it submits its program and fiscal report.

(3) *Loan records.* (i) An institution must maintain a repayment history for each borrower. This repayment history must show the date and amount of each repayment over the life of the loan. It must also indicate that amount of each repayment credited to principal and interest respectively.

(ii) This history shall also show the date, nature, and result of each contact with the borrower or proper endorser in the collection of an overdue loan. The institution shall include in the repayment history copies of all correspondence to or from the borrower and endorser, except routine bills, routine overdue notices, and routine form letters.

(iii) An institution shall retain repayment records, including cancellation and deferment requests, for at least 5 years from the date of the loan's final repayment or cancellation.

(iv) An institution shall keep the original promissory notes and repayment schedules in a locked, fireproof container until the loan obligations are satisfied. The institution shall then return the original notes to the borrower marked paid in full. Only authorized personnel may have access to these documents.

(4) *Separate ICL records.* An institution shall keep ICL cancellation records separate from cancellation records on Perkins Loan, National Defense Student Loans, and National Direct Student Loans.

(5)(i) *Microfilm or computer records.* (i) An institution may keep the records required in this section (except those listed in paragraph (e)(3)(iv) of this section) on microfilm or in computer format.

(ii) If the institution keeps its records in computer format it shall maintain, in either hard copy or microfilm, the source documents supporting the computer input.

(6) *Audit question.* An institution shall keep records on any claim or expenditure questioned by Federal or non-Federal audit until resolution of any audit questions.

(Authority: 20 U.S.C. 1087c)

(Approved by the Office of Management and Budget under control number 1840–0589)

§ 673.33 Compliance with equal credit opportunity requirements.

(a) In making an ICL an institution shall comply with the equal credit opportunity requirements of Regulation B (12 CFR Part 202).

(b) The Secretary considers the ICL program to be a credit assistance program authorized by Federal law for the benefit of an economically disadvantaged class of persons within the meaning of 12 CFR 202.8(a)(1). There fore, the institution may request a loan applicant or recipient to disclose

his or her marital status, income from alimony, child support, and spouse's income and provide the spouse's signature.

(Authority: 20 U.S.C. 1087c)

(Approved by the Office of Management and Budget under control number 1840–0589)

Subpart D—Loan Terms and Conditions

§ 673.41 Permissible charges to students.

(a) *Interest*—(1) *Rate.* (i) The rate of interest that may be charged on an ICL must be, at the discretion of the instruction,—

(A) A fixed rate set at the rate determined in accordance with paragraph (a)(1)(ii) of this section for the calendar year in which the first disbursement is made; or

(B) A variable rate determined in accordance with paragraph (a)(1)(ii) of this section for each calendar year.

(ii) The applicable interest rate is the average bond equivalent rate of the 91-day Treasury bills for the quarter ending September 30 of the preceding calendar year plus three percent.

(2) *Accrual.* Interest accrues on the outstanding principal balance of an ICL from the date of disbursement of funds to the borrower.

(3) *Capitalizing interest.* The institution must add accrued unpaid interest to the principal balance of an ICL annually.

(b) *Late charges.* (1) The institution shall require that the borrower pay a late charge if the borrower fails—

(i) To repay all or part of a scheduled repayment when due; or

(ii) To submit the income information required to determine the annual repayment obligation by November 1.

(2) The institution shall determine the amount of the late charge based on either—

(i) Actual costs incurred in attempting to secure the required payment or information from the borrower; or

(ii) The average cost incurred for similar attempts to secure required payments or information from other borrowers.

(3) The institution may not require a borrower to pay charges imposed under this paragraph in an amount exceeding 20 percent of the most recent installment payment.

(c) *Collection charges.* The institution shall require that the borrower pay the institution for certain reasonable costs incurred by the institution or its agent in collecting any installment not paid when due in accordance with provisions of Subpart E.

(d) *Non-authorized charges.* No charges other than those authorized by this section may be passed on to the borrower, either directly or indirectly. Examples of charges that are not permitted are as follows:

(1) Costs other than those described in paragraphs (b) and (c) of this section associated with preparing letters or notices or making personal contacts or local telephone calls.

(2) Fees charged by a servicing or collection agency, to the extent they exceed permissible charges.

(3) Loan orgination fees.

(Authority: 20 U.S.C. 1087d; 20 U.S.C. 1091a(b))

§ 673.42 Promissory note.

(a) *Promissory note.* (1) An institution may use only an ICL promissory note which the Secretary has approved.

(2) The Secretary has approved the promissory note set forth in Appendix A. The institution shall not change the substance of the note set forth in the Appendix without the Secretary's approval.

(3) The institution—

(i) Shall print the note on one page, front and back; or

(ii) May print the note on more than one page if

(A) The note requires the signature on each page by the borrower and any endorser; or

(B) Each page of the note states both the total number of pages in the complete note as well as the number of each page, *e.g.*, page 1 of 4, page 2 of 4.

(4) An institution shall not record on a single promissory note advances made under a fixed interest rate loan agreement with advances made under a variable interest rate loan agreement.

(5) If the institution records on a single promissory note advances made for an award year under a fixed interest rate loan agreement with advances made during any other award year, the institution shall identify on the note the applicable interest rate for each advance.

(b) *Provisions of the promissory note.*–(1) *Interest* The promissory note must state that—

(i) The applicable interest rate on the loan as determined in § 673.41(a)(1);

(ii) The manner in which that interest rate is determined and, if that rate is a variable rate, the way in which that rate will be calculated throughout the life of the loan; and

(iii) That interest shall accrue beginning on the day of disbursement and ending on the day that all principal, interest, and charges on the loan are satisfied.

(2) *Repayment.* (i) The promissory note must state that the repayment period—

(A) Begins 9 months after the month in which the borrower ceases to be at least a half-time regular student at an institution of higher education or a comparable institution outside the U.S. approved for this purpose by the Secretary;

(B) May begin earlier at the borrower's request; and

(C) Varies based on the frequency and amount of payments made under the income contingent repayment plan; and

(ii) The promissory note must state that the borrower shall repay the loan in equal quarterly, bimonthly, or monthly installments established and periodically modified by the institution.

(3) *Cancellation.* The promissory note must state that the unpaid balance of the loan shall be cancelled upon the death or total and permanent disability of the borrower.

(4) *Prepayment.* The promissory note must state that—

(i)The borrower may prepay all or part of the loan at any time without penalty;

(ii) The institution shall use amounts repaid during the academic year in which the loan was made to satisfy any accrued interest first and then to reduce the original loan amount, and shall not consider these amounts to be prepayments; and

(iii) If a borrower repays more than the amount then due under the repayment plan, the institution shall use the excess to prepay the principal unless the borrower designates it as an advance payment of the next regular installment.

(5) *Late charge.* (i) An institution may state in the promissory note that the institution will charge a late charge of up to 20 percent of the amount of the borrower's installment payment most recently required if the borrower does not—

(A) Repay all or part of a schedule repayment when due;

(B) File a timely request for cancellation or deferment with the institution. This request must include sufficient evidence to enable the institution to determine whether the borrower is entitled to a cancellation or deferment; or

(C) Submit the required income information to the institution by November 1 of each calendar year in accordance with § 673.43(b)(4).

(ii) The institution may—

(A) Add the late charge to the principal the day after the scheduled repayment was due; or

(B) Demand payment of the late charge from the borrower with the next

scheduled repayment after the borrower receives notice of the late charge.

(6) *Security and endorsement.* The promissory note must state that the loan shall be made without security and endorsement unless—

(i) The borrower is a minor; and

(ii) Under applicable State law, a note signed by a minor would not create a binding obligation.

(7) *Acceleration.* The promissory note must state that an institution may demand immediate payment of the entire loan, including any penalty charges and accrued interest if the borrower does not—

(i) Make a scheduled repayment on time;

(ii) File cancellation or deferment form(s) with the institution on time; or

(iii) Submit the income information required under § 673.43(b)(3) for a calendar year despite repeated requests by the institution.

(8) *Cost of collection.* The promissory note must state that the borrower must pay all attorney's fees and other loan collection costs and charges.

(Authority: 20 U.S.C. 1087; 20 U.S.C. 1091a)

(Approved by the Office of Management and Budget under control number 1840–0589)

§ 673.43 Repayment plan.

(a) *General.* The institution shall use—

(1) The repayment plan set forth in this section; or

(2) An alternative income contingent repayment plan which has been approved by the Secretary.

(b) *Payment obligation.*

(1) The institution shall determine the payment obligation of the borrower for each calendar year of the repayment period as a percentage of the adjusted gross income of the borrower, and, if married at any time during the repayment period, of his or her spouse, determined according to the provisions of this paragraph.

(2) The institution may require the borrower to make monthly, bimonthly, or quarterly installment payments.

(3) In order to permit the institution to determine the annual repayment obligation of the borrower, the borrower shall submit the following to the institution by November 1 of each year of the repayment period:

(i) If the borrower or the spouse of the borrower filed a Federal income tax return for the base income year, a copy of those pages of this return which—

(A) Bear the signatures of the person or persons who filed the return; and

(B) Contain the statement of the adjusted gross income for the base income year of the person or persons who filed a return.

(ii) If the borrower or the spouse of the borrower did not file a Federal income tax return for the base income year, documentation of the amount and sources of all taxable income of the non-filer for the base income year.

(iii) If the institution determines that the income data from the base income year, as adjusted in accordance with this paragraph, may not accurately reflect the borrower's ability to repay during the year for which the institution is calculating the repayment obligation, documentation of the amount and sources of taxable income to the borrower and his or her spouse for the current year.

(4) The institution shall determine the adjusted gross income of the borrower and his or her spouse for purposes of this section by multiplying the adjusted gross income or taxable income, as appropriate, derived from information submitted in accordance with paragraph (b)(3) of this section, by an inflation factor announced annually by the Secretary.

(5) Subject to paragraph (b)(6) of this section, the institution shall calculate the borrower's annual repayment obligation as a percentage of the adjusted gross income as determined under paragraph (b)(4) of this section. The institution shall use the following matrix:

INCOME-CONTINGENT LOAN REPAYMENT RATES: PERCENT OF INCOME DUE AS LOAN REPAYMENT

Year of repayment	Opening ICL balance		
	Up to $10,000	$10,000–$19,999	$20,000 and above
Initial repayment period	5	5	5
Year 3	7	9	10
Years 4 and 5	8	10	11
Years 6, 7 and 8	9	11	12
Years 9 and beyond	10	12	12

(6)(i) The institution shall determine the repayment obligation for any year or portion of a year in the initial repayment period in accordance with the matrix set forth in paragraph (b)(5) of this section, unless information needed to determine the ability of the borrower to repay is not submitted in accordance with the requirements of paragraph (b)(3) of this section. If this information is not submitted as required, the institution shall establish the annual repayment obligation as—

(A) Seven percent of the opening ICL balance, for a borrower with an opening ICL balance of less than $10,000;

(B) Six percent of the opening ICL balance, for a borrower with an opening ICL balance between $10,000 and $19,999; or

(C) Five percent of the opening ICL balance, for a borrower with an opening ICL balance of $20,000 or more.

(ii) The institution shall determine the repayment obligation for that part of the initial repayment period preceding the first full calendar year of repayment by—

(A) Determining the repayment obligation of the borrower in accordance with paragraph (b)(6) of this section;

(B) Dividing that amount by 12; and

(C) Multiplying the amount determined in paragraph (b)(6)(ii)(B) of this section by the number of complete months in the period for which the obligation is to be established.

(iii) The institution may, with the consent of the borrower, adjust the annual repayment obligation up to a level of 15% of the borrower's adjusted gross income to cover the annual accruing interest.

(iv) If the borrower demonstrates to the institution that both the borrower and his or her spouse will be in a repayment status on ICLs—

(A) The opening ICL account balance of the borrower and his or her spouse must be summed;

(B) The annual repayment obligation of the couple is determined using the matrix in paragraph (b)(5) of this section; and

(C) The annual repayment obligation of the borrower is determined by multiplying the total annual repayment obligation of the couple by the fraction of the summed opening ICL account balances of the couple owed by the borrower.

(Authority 20 U.S.C. 1.087c; 20 U.S.C. 1087d)

(Approved by the Office of Management and Budget under control number 1840–0589)

§ 673.44 Deferment of repayment—financial hardship.

(a) *In-school deferment.* A borrower need not repay principal or interest during a period when a borrower is at least a half-time student at an institution of higher education or a comparable institution outside the U.S. approved by the Secretary for this puprose.

(b) *Financial hardship deferment.* A borrower need not repay principal or interest during a period in which an institution determines that the borrower is unable to make the scheduled repayments due to extraordinary circumstances. Periods of financial hardship deferment may not exceed three years in the aggregate over the entire repayment period.

(c) *Interest accrual.* Interest continues to accrue and is capitalized during a deferment period.

(d) *Requests for deferment.* In order to receive a deferment, a borrower must request the deferment in writing and provide the institution with documentation needed to establish eligibility for the deferment.

(e) *Loss of eligibility.* A borrower whose loan has been accelerated is not eligible for deferment on that loan.

(Authority: 20 U.S.C. 1087d(a))

§ 673.45 Cancellation for death or disability.

(a) *General.* An institution shall cancel the unpaid balance of an ICL without regard to the repayment status of the loan, if the borrower dies or becomes totally and permanently disabled, in accordance with this section.

(b) *Death.* An institution shall cancel the unpaid balance of an ICL on the basis of a death certificate or other evidence of death that is conclusive under State law.

(c) *Permanent and total disability.* (1) An institution shall cancel the unpaid balance of an ICL loan if the institution determines, based on medical evidence certified by a physician which the borrower or his or her representative supplies, that the borrower became permanently and totally disabled after receiving the loan.

(2) Permanent and total disability is the inability to work and earn money because of an impairment that is expected to continue indefinitely or result in death.

(Authority: 20 U.S.C. 1087d(a))

Subpart E—Due Diligence [Reserved]

Appendix A—Sample Promissory Note

Income Contingent Loan Program

I, ——— promise to pay to ——— (hereinafter called the Lending Institution) located at ——— the sum of the amounts that are advanced to me and endorsed in the Schedule of Advances set forth below. I promise to pay all attorney's fees and other reasonable costs and charges necessary for the collection of any amount not paid when due. I promise to pay interest on the outstanding balance owing on this loan, including late charges and collection costs, at the rate set forth in paragraph II of this note.

I further understand and agree that:

I. General

All sums advanced under this note are drawn from a fund created under Part D of Title IV of the Higher Education Act of 1965, as amended, hereinafter called the Act, and are subject to the Act and the Federal Regulations issued under the Act. The terms of this note shall be interpreted in accordance with the Act and Federal Regulations, copies of which are available from the Lending Institution.

II. Interest

Interest is charged on this loan from the date of disbursement of any funds under this loan agreement. The interest rate on funds advanced under this agreement is [check applicable paragraph]—

( ) a fixed rate that is set at the time of the first advance of funds to me for an award year (July 1 through June 30). This fixed rate applies to all funds advanced to me for that award year until I repay those funds and any unpaid interest on those funds. This fixed rate is set at three percent over the average bond equivalent rate of 91-day U.S. Treasury bills for the calendar quarter ending on September 30 of the calendar year preceding the award year in which the first disbursement is made. The rate that applies to funds advanced to me under this agreement is set forth in the schedule of advances included in this note.

( ) a variable rate that applies to all funds advanced to me under this loan agreement. This variable rate may change for each calendar year until I repay these funds and any unpaid interest on these funds. This variable rate is set at three percent over the average bond equivalent rate of 91-day U.S. Treasury bills for the quarter ending on September 30 of the calendar year before the calendar year for which the rate applies.

III. Repayment

(1) I promise to begin to repay the principal and the interest which accrues on it to the Lending Institution not later than nine (9) months after the date I cease to be at least a half-time regular student at an eligible institution of higher education or at a comparable institution outside the United States approved for this purpose by the United States Secretary of Education (hereinafter called the Secretary).

(2) I may, if I choose, begin the repayment period earlier than the date on which I would be required to begin in paragraph III(1).

(3) I promise to repay the principal, interest, and any other charges over the course of the repayment period in monthly, bimonthly, or quarterly installments, as determined by the Lending Institution. A copy of the current payment formula which the Lending Institution will use to calculate my annual repayment obligation is attached to this note, and is part of this repayment agreement. The payment formula is subject to change by Federal regulation, and such changes, if any, will become part of this repayment agreement. I understand, however, that in no case will my annual repayment obligation be greater than 15% of my adjusted gross income and that of my spouse.

(4) I promise to submit to the Lending Institution the information on my income and, if I am married at any time during the repayment period on this loan, the information on the income of my spouse necessary to calculate my annual payment obligation. I promise to submit this information by November 1 of each year. I understand that continued failure to submit this information will constitute a default on this loan.

IV. Prepayment

(1) I may, at my option and without penalty, repay all or any part of the outstanding balance of this loan at any time.

(2) The Lending Institution will use any amounts I prepay in the same academic year in which the loan was made to reduce the amount of the loan.

(3) If I repay more than the amount due for any installment, and I do not designate it as an advance payment of the next regular installment, the Lending Institution will use the excess amount to prepay principal.

V. Default

(1) I understand that the Lending Institution may declare my loan to be in default and require immediate payment of the entire unpaid balance of my loan, including accrued interest, late charges, and collection costs, if—

(A) I fail to make a scheduled repayment of any installment when due under the repayment schedule established by the Lending Institution, or

(B) Despite demand by the institution, I fail to submit information regarding my income, and the income of my spouse, needed to calculate my repayment obligation.

(2) I understand that if I default on my loan, the Lending Institution may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(3) I understand that after the Lending Institution accelerates the loan under paragraph V(1), I will then lose my right to defer repayments due after the date the Lending Institution accelerates the loan.

(4) I understand that failure to pay this obligation under the terms agreed upon will prevent my obtaining additional Federal financial aid.

VI. Deferment

The Lending Institution may permit me to defer making my scheduled repayments if it determines that extraordinary circumstances, such as illness or unemployment, prevent me from making those scheduled repayments or when I am enrolled as at least a half-time student at an institution of higher education. I understand that I must request this deferment in writing on a timely basis. Interest will continue to accrue on the unpaid balance of my loan during periods of deferment. The Lending Institution will add the amount of interest that accrues during a period of deferment to the balance of my loan.

VII. Death and Disability Cancellation

If I should die or become permanently and totally disabled, the total principal, interest, and other charges on this loan shall be cancelled.

VIII. Change in Name, Address, and Social Security Number

I understand that I, and any party signing this note as a comaker or endorser, must inform the Lending Institution of any change in my name, address, or social security number.

IX. Late Charges

(1) The Lending Institution may impose a late charge if I fail to make all or any part of a scheduled installment payment when it is due.

(2) The Lending Institution may impose a late charge if I fail to provide by November 1 of each year, the required income information necessary to calculate my annual payment obligation.

(3) This charge may be up to 20 percent of the amount of the installment payment then due.

(4)(A) The Lending Institution may either—

(i) Add the amount of the late charge to the principal on the day after the missed scheduled repayment was due; or

(ii) Require that I repay it with a future scheduled repayment.

(B) If the Lending Institution elects to add the assessed charge to the outstanding principal of the loan, it must so inform me before the due date of the next installment.

X. Prior Loans

I have listed below all of the ICL, Perkins Loans, and National Direct Student Loans (or National Defense Student Loans) I have obtained at other institutions. (If no prior loans have been received state "None.")

SCHEDULE OF ICL, PERKINS LOANS, NATIONAL DIRECT STUDENT LOANS AND NATIONAL DEFENSE STUDENT LOANS AT OTHER INSTITUTIONS

	Amount	Date	Institution
1			
2			
3			
4			

XI. Schedule of Advances

The following amounts were advanced to me on the dates indicated:

	Amount	Date	Interest rate	Signature of borrower
1				
2				
3				
4				

NOTICE TO BORROWER: DO NOT SIGN THIS NOTE BEFORE YOU READ IT. THE LENDING INSTITUTION MUST SUPPLY TO YOU AND ANY ENDORSER A COPY OF THIS NOTE.

[This notice is signed as a sealed instrument.]

Signature ———————— [(seal)].

Date ———————— 19——.

Permanent Address (Street or Box Number, City, State, and Zip Code) Social Security Number (endorser must provide)————————.

The borrower and Lending Institution shall execute this note without security and without endorsement unless the borrower is a minor and this note would not, under the law of the State in which the Lending Institution is located, create a binding obligation. If the borrower is a minor and this note would not, therefore, be legally binding, the Lending Institution shall require the following endorsement:

Signature ———————— [(Seal)].

Date———————— 19——.

Permanent Address (Street or Box Number, City, State, and Zip Code) Social Security Number (borrower must provide)————————.

Appendix B—Summary of Comments and Responses

[Editorial Note.—This appendix will not appear in the Code of Federal Regulations.]

Comments and Responses

General

Comment: One commenter commended the Secretary's attempt to develop a loan program that aims to respond to the varying circumstances faced by students upon graduation. Another commenter noted that it is important to keep an open mind in the development of a new program and that the higher education community looks forward to the results. Several commenters recognized that in times of budgetary constraints, the elimination of interest subsidies is a necessary step to ensure continued funding for student aid programs.

Response: The Secretary agrees with the commenters. The ICL Program is designed to be both cost-effective to the taxpayer by reducing interest subsidy and default costs and beneficial to borrowers by extending the repayment period and providing flexibility through repayment which is tied to the borrower's income.

Comment: Many commenters opposed the proposed ICL Program because they felt that this program places the entire burden of the student loan on the student without any benefit to the student other than a longer repayment period which would be offset by large amounts of accrued interest. These commenters stated that the proposed ICL concept will be hard for students to understand fully and that when the students discover the magnitude of their ICL debt they will be forced into bypassing low-paying, service-oriented careers, such as teaching, in favor of more lucrative careers. A number of commenters felt that this program would lead to increased student loan indebtedness and, as a result, to increases in defaults. Several commenters believe that this program would be particularly intimidating to low-income and minority students for whom the extended repayment period could cause the greatest difficulties. A number of commenters felt that the elimination of any interest subsidy by the Government is inappropriate and that the Government should be willing to continue to invest in higher education for students.

Response: The Secretary emphasizes that the Federal Government is willing to continue to invest in higher education for students. However, because students are the principal beneficiaries of college education, it is appropriate that they assume more of the burden for making use of this support. Moreover, in the ICL Program, the Secretary believes that the benefits to the students far outweigh any additional burden.

The Secretary strongly believes that income-sensitive repayment as implemented in these ICL regulations is an equitable and reasonable approach to student debt manageability. The ICL Program provides a great deal of flexibility for institutions and borrowers who can therefore tailor repayment terms to fit their financial circumstances. Furthermore, under the ICL Program, there is a limit on the percentage of income a borrower is required to devote to repayment, unlike other fixed-rate, fixed-term loans which require equal payment installments and repayment within a specific time frame. Rather than pressuring borrowers to avoid careers in low-paying, service-oriented occupations, the ICL repayment method clearly facilitates such career choices.

Comment: One commenter applauded the Secretary for the flexibility provided to institutions in the proposed rule. Other commenters felt that the proposed regulations were too long and detailed.

Response: No change has been made. In the proposed rule, the Secretary repeated applicable sections of the Perkins Loan Program regulations to provide institutions in one package with all regulations governing the operational aspects of the program. Therefore, although the proposed regulations were long, many provisions were merely duplications of the Perkins Loan Program. The Secretary believes that having all the regulations in one package will make the program easier for an institution to administer.

Certain aspects of the ICL Program are set by statute, while others, such as determination of need, are traditional aspects of Title IV student aid programs. However, in other matters the rule allows the institution considerable discretion in the manner in which it can operate an ICL project. For example, the rule would allow an institution discretion to design and use its own method of determining the amount of the annual loan repayments obligations of

its borrowers each year, subject to the approval of the Secretary. For these reasons the Secretary believes that these rules, insofar as they track customary Title IV practice, are not complex. Although some aspects of the program are new, he does not regard those as calling for more complex calculations than institutions already routinely perform, or have performed for them, in administering traditional Title IV programs.

Comment: A number of commenters opposed the proposed Income Contingent Loan Program, and preferred the current Perkins Loan Program. These commenters indicated that the income contingent repayment methodology could be tested by allowing an income contingent repayment plan as an alternative under the Perkins Loan Program.

Response: No change has been made. In the Higher Education Amendments of 1986, Congress authorized the Secretary to conduct an Income Contingent Direct Loan Demonstration Project beginning with the 1987–88 award year and charged the Secretary with providing an evaluation of the Demonstration Project to Congress. In any case, the Secretary prefers to establish a separate unsubsidized loan program rather than allowing an income contingent repayment feature in the heavily subsidized Perkins Loan Program.

Comment: Several commenters felt that five years is too short a period of time for the Demonstration Project to assess the feasibility of an income contingent repayment plan since few borrowers will be in the income contingent portion of their repayment.

Response: The five year duration of the Demonstration Project is set by statute. The Secretary would like to emphasize that borrowers under the ICL Program will be in repayment after the Demonstration Project period ends, and therefore, data will be available on those borrowers for longer than five years.

Comment: A number of commenters criticized the short comment period and suggested that the implementation of the Demonstration Project be delayed until further analysis has been completed and additional input has been provided from professional organizations and institutions.

Response: The law authorizing the Demonstration Project was enacted October 17, 1986, with the program to begin in the 1987–88 academic year. The shortness of the comment period is an unfortunate but necessary consequence of the need to establish rules to implement the program early enough to permit participating institutions to include Income Contingent Loans (ICL) in the student aid provided to students for courses beginning in September 1987. Obviously, the design of an Income Contingent Loan Program entails resolution of complex issues, and that is indeed one purpose of the Demonstration Project. Use of a more extended comment period might have marginally aided in resolving these issues, but delay in establishing operational rules for the Demonstration Project would ensure that ICLs would probably not be available to many borrowers at participating institutions until late in the academic year. On balance, therefore, the Secretary considered the use of a short comment period to be preferable to delay in providing operational rules. The Secretary believes that such a delay would be neither responsible nor responsive to the needs of students and institutions for whom the program was intended.

Section 673.2 Definitions.

Initial Repayment Period

Comment: Many commenters requested clarification of the proposed Initial Repayment Period because the initial repayment period set forth in the proposed rule would vary in length depending on the month in which the borrower left school and, thereby, arbitrarily benefit certain students.

Response: The Secretary has revised the definition of initial repayment period to be that part of the repayment period from the end of the grace period to the close of the first complete calendar year of the repayment period. The purpose of the initial repayment period is to allow borrowers to make lower payments during the period in which they are establishing a financial foundation. The Secretary believes that the revised definition allows sufficient time for borrowers to establish a financial foundation before they begin the portion of the repayment period in which payments are computed as a percentage of income. Although the length of the initial repayment period will still vary among students, the Secretary has defined the period to always end on December 31 for the administrative convenience of the institution which must calculate all subsequent repayments on that basis. In any case, even if the period does vary, holding the loan balance constant, a lower repayment in the initial repayment period simply leads to a higher repayment later—however the payments flow, the entire loan must be repaid.

Section 673.22 Student eligibility.

Comment: Many commenters asked for clarification of whether a borrower who has had a Title IV loan discharged in bankruptcy is eligible for an ICL.

Response: The Secretary wishes to clarify that an institution may consider a previous default on any loan, including a defaulted loan discharged in bankruptcy, as evidence of potential future unwillingness to repay an ICL. However, a defaulted loan discharged in bankruptcy in and of itself is not an automatic bar to student eligibility for an ICL.

Section 673.23 ICL maximums.

Comment: Many commenters felt that the aggregate loan amounts are too high and that the Secretary should modify them to match the Perkins Loan Program.

Response: The annual and aggregate loan amounts are set by statute and not by the Secretary. Therefore, no change has been made. The Secretary has proposed legislation for higher maximums in the expanded income-contingent loan program for FY 1988.

Section 673.27 Overaward.

Comment: One commenter felt that an institution should not be liable for an overpayment if it has made an attempt to collect the overpayment from the student but has not been successful in this attempt.

Response: No change has been made. The student is always liable for any overpayment of ICL advances made to him or her. In addition, the institution is liable for an overpayment which was made as a result of institutional error. Whether an institution is liable for the overpayment or not, it must make a reasonable attempt to recover the overpayment from the student. Traditionally, in the Title IV student aid programs, the institution is held liable for any incorrect actions which it takes. The Secretary does not believe that this policy should be changed.

Comment: One commenter suggested that net earnings from employment other than College Work Study (CWS) employment be allowed to replace the family contribution rather than be classified as a resource.

Response: No change has been made. In analyzing financial need and student resources for the Title IV programs, the Department has traditionally considered as a resource earnings from employment other than College Work Study for the award year unless those earnings are included in calculation of the student's expected family contribution. For consistency and ease in administration,

the Secretary believes that the same method should be used in the ICL need analysis.

Section 673.29 Making and disbursing loans.

Comment: Because there are no loan application fees or loan origination fees in the ICL program, many commenters encouraged the Secretary to delete proposed § 673.29(a)(1)(xi) which would have required the institution to provide the borrower with information concerning the amount of any charges collected by the institution at or prior to the disbursement of the loan and any deduction of those charges from the proceeds of the loan.

Response: The Secretary agrees with the commenters and has deleted the subparagraph.

Section 673.30 Federal interest in allocated funds—transfer of funds.

Comment: One commenter was concerned that an institution which closes or no longer wants to participate in the ICL program would lose its institutional capital contribution when the fund was liquidated.

Response: No change has been made. The proposed procedures for liquidating an ICL fund are the same as those now governing liquidation of a Perkins Loan fund. Under those procedures, an institution may retain the institutional portion of the cash on hand in the fund, but must relinquish its interest in any outstanding loans. 34 CFR 674.17. The Secretary usually transfers these loans to a second institution which deposits in its loan fund all monies collected on the transferred outstanding loans.

Comment: One commenter felt that an institution which accepts the ICL portfolio of another institution should be entitled to an administrative cost allowance for collection of the transferred loans.

Response: No change has been made. Currently, for both the Perkins Loan and the proposed ICL Programs, the administrative cost allowance for an award year is based upon the expenditures during that year, and is not tied to collection costs. During the ICL Demonstration Project, the Secretary will explore the need for alternative methods of calculating administrative cost allowances.

Section 673.31 Use of funds.

Comment: Many commenters felt that the administrative cost allowance of 5% of Federal capital contribution expended in an award year is too low and that the administrative cost to an institution will far exceed this amount. The commenters suggested that the Secretary modify the regulation to mirror the practice in the Perkins Loan Program by allowing an administrative cost allowance of 5% of the funds advanced to students each year under the ICL Program. Some commenters suggested that during the Demonstration Project the Secretary evaluate the administrative cost allowance to determine if a calculation based on number of borrowers in repayment would be more appropriate for the ICL Program.

Response: The Secretary agrees with the commenters and has modified the regulations to increase the administrative cost allowance permitted to 5% of the total amount expended each award year under the ICL Program, rather than merely 5% of the FCC used. The Secretary plans to evaluate the method of calculating the administrative cost allowance during the Demonstration Project and is particularly interested in this regard in the cost to institutions of administering loans that are in repayment.

Section 673.32 Fiscal procedures and records.

Comment: One commenter felt that the recordkeeping requirements would prompt an institution to have a separate bank account for ICL, which would eliminate the positive financial rewards for the program fund which could result from institutional "pooling" of Title IV funds.

Response: No change has been made. The institution is expected to establish and maintain financial records that reflect all program transactions and create a clear audit trail. Unless the Secretary determines as a result of an audit or program review that an institution does not have an adequate accounting system, an institution is not required to have a separate bank account for ICL. These requirements are the same as those used for many years for the Perkins Loan Program. The Secretary does not believe any change is necessary or appropriate.

Section 673.41 Permissible charges to students.

Comment: The Secretary requested public comment on alternative methods of calculating interest rates for the ICL Program as well as the variable rate set forth in the NPRM.

Variable rate: Several commenters supported the variable rate set forth in the NPRM. One commenter noted that since there are other fixed interest rate loans in existence, one purpose of the ICL Demonstration Project would be to evaluate the use of a variable interest rate.

Several commenters opposed the use of a variable interest rate citing the administrative difficulties to institutions in recalculating the rate annually as well as the unpredictability of the consequences of borrowing under the ICL Program for the students. One commenter noted that the variable rate as set forth has no cap and therefore, significant increases in market rates in the future could, as a result, present borrowers with unmanageable student loan debts. One commenter noted that the use of a variable interest rate combined with no interest subsidy will increase money available to institutions for making ICLs but will also greatly increase student indebtedness. Other commenters noted that the use of a variable interest rate will create difficulties for borrowers in understanding fully the extent of their ICL obligations and for institutions in counseling students regarding their total student loan indebtedness.

Fixed rate: Many commenters felt that a flat rate would be easier for institutions to administer and for borrowers to understand fully.

Weighted average rate: One commenter felt that the calculation of a weighted average interest rate was too complex and burdensome for institutions.

Variable fixed rate: Several commenters stated that a combination of the variable and fixed rate would be most equitable and easier to understand and to administer. They supported a variable rate while the borrower is in school and fixing the rate when the loan enters repayment. Two commenters suggested a fixed rate be used with a provision that the rate could be reduced based upon the variable annual rate but could never be increased.

Many commenters opposed the idea of providing students with the option of various methods of calculating the interest rate on their ICLs because this would force institutions to calculate and to administer the repayment on all the options, which would result in increased administrative burden. Several commenters suggested allowing institutions the option of choosing the method of interest rate calculation to be used.

Response: A change has been made. The final regulations reflect the recent legislative changes resulting from the Higher Education Technical Amendments Act of 1987, Pub. L. 100–50, June 3, 1987. Section 454 of the Higher Education Act of 1965, as amended, provides that the interest rate to be charged on an ICL is, at the discretion of the institution, a fixed or a variable rate.

The applicable interest rate is equal to the average bond equivalent rate of the 91-day Treasury bills for the quarter ending September 30 preceding that calendar year plus three percent. For fixed-rate loans, this rate is determined for the year in which the first disbursement of loan proceeds is made and remains in effect until the loan is repaid. For variable-rate loans, this rate will be reset annually. The Secretary will announce annually the variable interest rate applicable for the coming year. The Secretary intends to work with institutions selected for the demonstration project to attempt to ensure that enough borrowers utilize each type of rate to provide better information about the feasibility and desirability of both types.

In the preamble to the NPRM, the Secretary requested public comment on other alternative interest rate calculations. The Secretary is appreciative of the thorough and well-developed comments which were received.

Comment: Several commenters were opposed to basing the interest rate for ICLs on the 91-day Treasury bills and suggested that the 10 or 20 year Treasury notes more accurately reflect the Government's long-term cost of borrowing and would enable the rate to be a fixed rather than a variable rate.

Response: No change has been made since the statute directs the use of 91-day Treasury bill rates. However, the Secretary will carefully consider the commenters' suggestion in determining whether to seek an amendment to the statute concerning the interest rate calculation.

Comment: Many commenters objected to the provisions which require that interest accrue from the date of disbursement and that unpaid accrued interest be capitalized annually since these provisions greatly increase the borrower's debt while in-school and, after graduation, could cause borrowers in a low-income/high-debt situation to pay interest on interest, and, in some cases, never to reduce their debt. One commenter suggested that the institution bill the borrower for interest on ICLs while the borrower is in-school and capitalize interest only for those borrowers who are unable to pay the interest accruing during in-school periods. Another commenter suggested that unpaid interest be cancelled rather than capitalized to prevent the continued growth of the borrower's ICL debt.

Response: No change has been made. The Secretary has developed and the Congress has authorized the ICL Program as an unsubsidized student loan program to assist students further in financing their education but to reduce the cost of this assistance to the Government by eliminating any interest subsidy. Therefore, in order to increase the earnings of the Fund and make more money available to future student borrowers, decrease the need for future Federal capital supplements, and broaden the effectiveness of the pilot by increasing the number of loans that can be generated from the original Federal capital contribution, the Secretary will implement in these rules the requirement that interest on ICLs accrue from the date of disbursement of funds to the borrower as with other unsubsidized loan programs. In order to allow a borrower to postpone payment of accrued interest until the repayment period, the final rules, like the NPRM, provide that interest may be capitalized while the borrower is in school, during the grace period, during a period of authorized deferment and when payments made by a borrower for a given year are insufficient to meet accrued interest costs. Institutions may advise borrowers to pay the annual accrued interest while in school in order to prevent the growth of the borrower's ICL debt and, if the borrower requests, may bill the borrower for this interest.

Comment: One commenter felt that the institution should not be required to charge borrowers late charges because borrowers who are late with payments generally have financial difficulties and the addition of a late charge will create more financial hardship for these borrowers. Two commenters objected that a late charge of up to 20% is too high, and that a stated flat rate would be easier to administer.

Response: Although the Secretary agrees that late payments may reflect financial difficulties, the Secretary believes that a late charge which is reasonable and reflects the circumstances under which it is assessed is an appropriate means of emphasizing the importance of meeting one's student loan obligations. The rule has been clarified to make clear that the late charge must bear a reasonable relation to the cost to the institution of handling the failure to make the required submission. As discussed here and as clarified in the due diligence regulations to be published shortly, the late charge may include actual or average costs incurred in securing information needed to calculate a repayment obligation or in taking those steps included within the actions customarily considered to be within the billing cycle on a loan as opposed to those more costly efforts included in the collection cycle; the latter are separately addressed in § 673.41(c). This procedure is consistent with that used in the Perkins Loan Program.

Section 673.42 Promissory note.

Comment: Two commenters suggested that the provision which requires institutions to use amounts repaid during an academic year to reduce the original loan amount be deleted since this would be extremely complicated to implement because using prepayments to reduce the original balance would require recalculation of all subsequent accrued interest charges.

Response: The Secretary agrees with the commenters and has modified the regulation to require institutions to use amounts repaid during the academic year in which the loan was made to pay any accrued interest first and then to reduce the original loan amount.

Section 673.43 Repayment plan.

Comment: Many commenters applauded the Secretary for allowing institutions to utilize either the repayment plan set forth in the proposed rule or an alternative plan approved by the Secretary as being responsive to the goals of the ICL Demonstration Project in exploring the feasibility of an income contingent repayment method.

Response: No change has been made. The Secretary agrees with the commenters that this provision allows the institution a considerable amount of discretion to design and to use its own method of determining the amount of loan repayments due from the borrowers each year subject to the approval of the Secretary.

Comment: Several commenters noted that the proposed fixed payment obligation mandated for the initial repayment period would, in many cases, be insufficient to cover the annual accrued interest, and would result in negative amortization. Other commenters suggested that the repayment obligation be modified to cover the annual accrued interest in order to prevent negative amortization.

Response: A change has been made. The Secretary has revised the annual payment obligation calculation for the initial repayment period to address this issue. Under the final rules the borrower has the option of using an annual payment calculation for the initial repayment period determined as a percentage of his or her income—that is, moving immediately into income contingent repayment—or having the annual payment calculated as a percentage of the opening ICL balance. If the borrower wishes to receive an income-based annual repayment

obligation, he or she must submit information needed to make that determination in a timely manner; if that information is not submitted, the obligation must be based on the loan balance. In the latter case, a borrower with median total debt of $6,000 would pay $35 a month instead of the $30 proposed in the NPRM. This approach reduces the amount of negative amortization, particularly when the borrower has a large opening ICL balance. It also may allow a reduction in the maximum assessment rate during the regular repayment period, as further discussed below.

Comment: Many commenters supported the use of Adjusted Gross Income (AGI) reported on the federal income tax return as the basis for determination of the annual loan repayment obligation. They felt that expanding the base to include a Modified Adjusted Gross Income (MAGI) would unduly complicate the administration of the program because other sources of income and expenses are not easily documented and because it would be burdensome for institutions to collect this information and calculate a MAGI. Several commenters believed that AGI ignores untaxed or specially-taxed income, and therefore they favored use of a MAGI in order to provide a more realistic picture of a borrower's ability to pay.

Several commenters felt that the income for the base income year, even when adjusted for inflation, does not reflect the borrower's financial situation at the time of repayment, particularly if there has been a large increase or decrease in income. Those commenters noted that there is no mechanism in the proposed rule for an individual adjustment under these circumstances.

A number of commenters pointed out that borrowers who do not file tax returns would not have an AGI to be assessed in determining an annual repayment obligation. The commenters suggested that several forms of records, including W–2 forms, IRS form 1099, payroll stubs, a notarized statement of earnings, and a notarized income worksheet provide acceptable documentation of income for non-tax filers. One commenter suggested that the institution use an AGI equal to the maximum income an individual may earn without filing a tax return. Several commenters suggested that non-tax filers pay the minimum repayment amount allowed during the initial repayment period.

Response: For borrowers who file a Federal income tax return, the Secretary has retained the definition of AGI published in the proposed rule. However, the Secretary has added a provision to allow the institutional loan administrator to utilize the current income of the borrower and his or her spouse in cases where the AGI for the base income year does not accurately reflect the borrower's ability to repay an ICL. The Secretary believes that the flexibility provided in these cases will allow an institution to determine a repayment obligation tailored to the borrower's income. For borrowers who do not file a Federal income tax return, the Secretary bases the annual repayment obligation on the sum of the amounts of taxable income from all sources received by the borrower and his or her spouse.

Comment: Many commenters opposed as extremely burdensome and costly for institutions to administer the requirements that borrowers provide by November 1 of each calendar year a copy of the Federal income tax return(s) filed by the borrower and his or her spouse for the preceding tax year and that the institution determine a borrower's payment obligation annually. One commenter questioned the institution's legal right to request the tax return. Many commenters felt that in order to obtain valid data on a timely basis, it would be necessary to secure cooperation from the Internal Revenue Service to provide, or to permit access to, this data.

Response: No change has been made. The ICL Program is defined by statute as utilizing an income contingent repayments method. In order to implement a repayment methodology which is contingent on the borrower's income, the Secretary believes that it is necessary to utilize the most readily available and easily verified indicator of a borrower's income, his or her Federal tax return. Furthermore, for the repayment obligation to be in fact contingent on the borrower's income, the Secretary believes it is necessary to evaluate the borrower's financial situation annually. The Secretary has explored the possibilities of a tape match with the Internal Revenue Service (IRS) and has determined that technical difficulties make this option unavailable at this time. The Secretary considers the signed copy of the tax return itself to be sufficiently trustworthy for the purposes of this program, and does not believe it is necessary to require borrowers to request a copy from the IRS to submit to the institution since this would increase the burden on institutions and borrowers and would create unnecessary delays in determining annual payment obligations.

The Secretary wishes to emphasize that the borrower's requirement to submit the required income information is set forth in the promissory note, and agreement to comply with that requirement is the condition on which the loan is made. Any borrower who considers this disclosure to constitute an untoward intrusion into the privacy of the borrower and his or her spouse should not borrow under this program.

Comment: One commenter suggested that the institution be allowed to accelerate the entire ICL if the borrower fails to submit his or her tax return by November 1. Another commenter suggested that an institution impose a six-year fixed repayment plan on borrowers who fail to submit the income information on time. One commenter supported the Secretary's proposal discussed in the preamble to the NPRM to develop and publish an alternative repayment plan which utilizes national statistics showing the average annual earnings for college graduates for borrowers who fail to submit income information in a timely manner. Several commenters opposed this proposed alternative repayment plan as not reflective of the individual borrower's circumstances.

Response: The Secretary is still considering optional means of implementing the income contingent repayment method without requiring the collection of income tax forms from all borrowers, as well as an appropriate incentive for borrowers to provide the necessary income information on a timely basis and welcomes additional public comment. The Secretary believes that to impose a six-year fixed repayment plan on a borrower who is tardy in supplying income data would eliminate entirely the income contingent concept and the flexibility which it provides and is therefore not a desirable sanction at this time. The Secretary also believes that acceleration of the entire ICL for a borrower who merely fails to submit in a timely manner the required income information is too severe a penalty and would lead to an unnecessary increase in defaults. However, continued failure to submit required income information is a serious breach of the borrower's duty under the loan agreement, and constitutes a default. Acceleration is the normal consequence of any default, and therefore acceleration is, in such a case, an appropriate sanction for continued failure to supply required income information. This sanction, of course, would not apply during the initial repayment period. The institution at that time may simply determine the annual obligation as in § 673.43(b)(6).

In these final regulations, borrowers who do not provide on a timely basis the income information required to determine their annual payment obligation will be charged a late charge of up to 20% of the amount of the borrower's most recently required payment; borrowers who persist in failing or refusing to supply the income information required are to be considered as being defaulted on their loans. Although the Secretary does not believe imposition of a fixed term, fixed payment schedule is an appropriate sanction for mere tardiness in submitting required income data, the Secretary does not intend to limit the customary discretion of the institution to set the terms of any repayment agreement reached with a borrower who has already defaulted on the loan, but wishes to resume payment. As with Perkins Loans, the institution may structure these curative agreements in the manner it considers necessary to recoup lost payments most effectively and prevent future lapses. The institution therefore does not need to agree to resumption of income contingent terms or other terms requiring submission of income tax forms in these curative agreements.

Comment: Many commenters felt that the income assessment rates set forth in the repayment matrix in the proposed rule are too high and that studies have shown that borrowers can only afford to use a maximum of 12% of their disposable income for all loan obligations.

Response: The Secretary concurs with the commenters that the maximum rate should be reduced to a lower level and has modified the repayment matrix accordingly. Furthermore, the repayment matrix has been modified to increase gradually the percentage of the borrower's income used to determine the annual payment obligation as the repayment period progresses to enable borrowers to have a larger percentage of their income available for other obligations which are incurred early in their careers. This also reflects the fact that, in general, the borrower's assets will increase over time, allowing a higher assessment against annual income over time without reducing the borrower's command over goods and services. Thus repayment rates are progressive over time.

Comment: Several commenters objected to the use of the borrower's spouse's income in determining the amount of the borrower's annual payment obligation and stated that the spouse has no legal responsibility to provide this information.

Response: No change has been made. In determining the amount of financial need for which a married independent student qualified to receive Federal aid under the Title IV programs, the Department has always considered the income and assets of both the student and his or her spouse. As stated in the preamble to the final rule regarding expected family contributions for the Guaranteed Student Loan Program for 1983–84, this practice rests on the economic reality that the marital unit benefits directly from the enhanced earning capacity gained from education financed with the student loan, and therefore Title IV need analysis customarily assesses the income and assets of both spouses in calculating the need for either one for a loan. 48 FR 14317, April 1, 1983. The Secretary believes that the same principle applies to the determination of the ability to repay a federally financed loan, and that the spouse's income should be considered in determining whether the borrower can repay at a faster rate, and thereby reducing the need for additional Federal support by more quickly replenishing the ICL fund at the lending institution.

The Secretary emphasizes that a prospective borrower who is currently married cannot honor the terms of the ICL loan if his or her spouse is unwilling to provide the required income information, and should not borrow under the ICL Program. A prospective borrower who is currently unmarried should be aware of the requirements that the borrower must provide spousal income information if the borrower later marries and that failure to provide income information of both the borrower and his or her spouse may result in the institution declaring the loan to be in default.

Comment: Several commenters opposed the suggestion in the preamble of the proposed rule indicating that the borrower and the institution could agree to biweekly payments because the benefit to the student in the reduction of interest costs is greatly outweighed by the administrative costs to the institution, and the student would receive a much greater benefit by merely making larger payments on a monthly basis.

Response: No change has been made. The institution has the right to require the borrower to repay the ICL in quarterly, bimonthly or monthly payments; a biweekly payment plan could nevertheless be agreed to by the institution and the borrower.

Section 673.44 Deferment of repayment.

Comment: Since many students transfer from one institution to another institution as undergraduates and also continue their education at the graduate level, many commenters were concerned that this section did not allow deferment of the loan during periods of half-time enrollment at an accredited institution of higher education. One commenter suggested an internship deferment for students who are serving an internship which is required to begin professional practice or service. One commenter questioned whether the grace period and subsequent initial repayment period could be repeated if the student borrower re-enrolls at another institution during the repayment period.

Response: The Secretary has added a provision to allow deferment of the principal and interest while the borrower is at least a half-time student at an institution of higher education. The Secretary wishes to clarify that, as under the Perkins Loan Program, students who re-enroll at an institution after the loan has entered repayment do not receive a second grace period. The Secretary believes that students who have entered repayment and then re-enroll in school are more likely to gain employment quickly and resume repayment ability, and that, as a result, have less need for a second grace period and attendant initial repayment period. However, for ease of administration for the institution, students who have an ICL in repayment but re-enroll at an institution and then borrow under the ICL Program for that period of re-enrollment are entitled to a grace period and initial repayment period for any new ICLs.

Comment: Many commenters favored the deferment on the basis of financial hardship. One commenter requested clarification of what constitutes extraordinary circumstances. Another commenter felt that having interest continue to accrue and be capitalized during this period would defeat the purpose of the deferment since the borrower's outstanding debt would continue to grow. One commenter suggested that the regulations be amended to extend the financial hardship deferment beyond three years since certain circumstances which may result in financial hardship such as long-term, non-disabling illness may last more than three years.

Response: No change has been made. The Secretary believes that the loan officer should exercise professional judgment and require appropriate

justification to determine what constitutes extraordinary circumstances and that this institutional flexibility is necessary to the ICL concept. Although the borrower's debt will increase during the deferment, the Secretary points out that this situation is inherent in any unsubsidized loan program and that the financial hardship deferment is to be used in situations in which a borrower is unable to make any substantial regular payments. The Secretary is continuing to limit the financial hardship deferment to three years because the loan officer has the flexibility to adjust the borrower's annual repayment obligation in situations when the financial hardship is long-term, but the borrower does not qualify for cancellation.

Section 673.45 Cancellation.

Comment: Many commenters felt that the repayment period for ICLs is too long and that a maximum repayment period should be set. Several commenters suggested that ICLs which have been in repayment for 25 to 30 years should be cancelled.

Response: No change has been made. The ICL concept is designed to permit borrowers, by repaying their debts based on their incomes, to spread the cost of their investment in postsecondary education over the period of enhanced earning made possible by that education.

To estimate the likely repayment terms needed to satisfy varying amounts of ICL debt at differing income levels, repayment models were devised based on the median salary for recent college graduates as determined by the Department in an annual survey ($17,567 in 1985), as well as salaries at the first ($13,395) and third ($22,677) quartiles with three levels of ICL debt. Salaries in each level were assumed to grow during the repayment period in accordance with the growth patterns as indicated by the Current Population Survey data from the Bureau of the Census and inflation rates of five and six percent. Next, three levels of ICL debt were matched to the income levels described here: First, the median student loan debt for that same population, $6,000, second, $15,000, and third, the maximum amount permitted under current ICL authority, $17,500. Each of the three levels of ICL debt were then amortized on the basis of these salaries and average interest rates of nine and ten percent. The repayment studies further assumed that the borrowers had uninterrupted employment, that they received no deferments, and that borrower income grew from the listed starting salaries in each case at a rate of five and six percent per year, respectively.

Based on these assumptions, borrowers in all of these three income levels can be expected to repay the full amounts borrowed, plus accrued interest, in periods ranging from nine to 23 years. Borrowers starting with salaries in the fifth percentile ($8,235 in 1985) were also matched with debt in the amount of $17,500; these borrowers were unable to repay their loans within a 30-year period under these assumptions. In order to have received ICL loans totalling $17,500, however, borrowers in this last hypothetical category must have successfully completed five years of undergraduate study; it is extremely doubtful that a significant number of ICL borrowers with that amount of ICL debt would actually be employed at this lowest of the earnings levels (fifth percentile) posited for purposes of this study. The Secretary expects that the great majority of ICL borrowers are thus reasonably likely to complete their repayments within 30 years and therefore that no cancellation provision is needed.

Furthermore, because the repayment remains contingent on the amount of the adjusted gross income of the borrower, the repayment burden even of those borrowers who never repay fully will never be unreasonable in any given year, particularly given the reduction in the maximum repayment rate from 15 percent to 12 percent.

The Secretary, of course, is concerned about the difficulty that certain low income borrowers may have in repaying their loans and will continue to review this issue in the future.

Subpart E—Due Diligence

Comment: Many commenters criticized the Secretary for publishing an NPRM and soliciting applications for the Demonstration Project without proposing due diligence requirements since institutions should be aware of all obligations under the program before deciding to participate.

Response: Although the NPRM and these regulations were published without due diligence requirements, the Secretary does not regard this fact as leaving applicant institutions with an unclear picture of their loan collection responsibilities. As the Secretary explained in the preamble to the NPRM, the ICL Program is modeled after the Perkins Loan Program. All applicants are required to demonstrate a thorough and effective familiarity with the loan collection rules in effect in the Perkins Loan Program. Based on that familiarity and the explanation that the ICL operational requirements would be modeled, where possible, on the Perkins Loan Program rules, and because proposed due diligence regulations for the Perkins Loan Program were published some time ago, and final regulations are nearing publication, the Secretary felt that it would be less confusing to institutions to defer promulgation of ICL due diligence requirements until the final Perkins Loan regulations are published. In any case, several months will elapse before any borrowers under the ICL program will cease to be enrolled at least half-time and institutions will have to follow due diligence procedures. The Secretary plans to issue an NPRM on the due diligence requirements for the ICL Program shortly after the final due diligence regulations for the Perkins Loan Program are published.

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Wednesday
August 5, 1987

Part III

Department of Education

34 CFR Parts 631, 632, 633, 634, 635, and 636

Cooperative Education Program; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Parts 631, 632, 633, 634, 635, and 636

Cooperative Education Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends 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 changes affect the types of projects funded, the application contents, the duration and level of Federal support, and the selection criteria.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: 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. Telephone (202) 732-4861.

SUPPLEMENTARY INFORMATION: As a result of the Amendments and the need to change the application review process, the Secretary is amending the existing program regulations.

On June 16, 1987 the Secretary published a Notice of Proposed Rulemaking for this program in the **Federal Register** (52 FR 22948). Proposed major changes in the program were discussed in that issue of the **Federal Register** on page 22948. Except for minor editorial and technical revisions, there are no differences between the NPRM and these final regulations.

Summary of Public Comments

No significant comments on the Notice of Proposed Rulemaking were received by the Department.

Technical Amendments

To make the regulations for the Supplemental Funds Program for Cooperative Education in Part 636 consistent with the regulations in Parts 631-635, the Secretary makes technical amendments to Part 636. In Part 636, the references to certain provisions of Part 631 are amended. The Secretary also amends the authority citation for the Supplemental Funds Program for Cooperative Education. The Supplemental Funds Program for Cooperative Education was not reauthorized by the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1986. However, under the appropriation statutes for fiscal years 1986 and 1987 funds are available for obligation under this program until September 30, 1988 (Pub. L. 99-178; H.R. 5233 as referenced in Pub. L. 99-591).

Waiver of Proposed Rulemaking for Technical Amendments to 34 CFR Part 636

Under section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A), and the Administrative Procedure Act (5 U.S.C. 553) it is the practice of the Department of Education to publish regulations in proposed form and to offer interested parties the opportunity to comment on the proposed regulations. Because these regulations merely incorporate changes made by statute, however, public comment could have no effect. Therefore, publication of this document as a proposed rule for public comment has been determined to be unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

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 regulations established in the order.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not 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.

(Catalog of Federal Domestic Assistance Number 84.055—Cooperative Education Program)

Dated: July 27, 1987.

William J. Bennett,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by revising Parts 631, 632, 633, 634, and 635, and by amending 636 as follows:

1. Parts 631, 632, 633, 634, and 635 are revised to read as follows:

PART 631—COOPERATIVE EDUCATION PROGRAM—GENERAL

Subpart A—General

Sec.

631.1 What is the Cooperative Education Program?
631.2 Who is eligible for an award?
631.3 What kinds of projects may the Secretary fund?
631.4 What regulations apply?
631.5 What definitions apply?

Subpart B—How Does One Apply for an Award?

631.10 What limitations apply to the number of applications that may be submitted?

Subpart C—How Does the Secretary Make an Award?

631.20 How does the Secretary evaluate applications?

Subpart D—What Conditions Must Be Met after an Award?

631.30 What costs are allowable?
631.31 What costs are unallowable?

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 and the Education Department Acquisition Regulation in Title 48 of the Code of Federal 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 cooperative 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 address 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)

(Approved by the Office of Management and Budget under control number 1840–0126)

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

632.1 What is a Cooperative Education Administration project?
632.2 What is eligible for a grant?
632.3 What students are eligible to participate?
632.4 What types of administration projects are eligible for funding?
632.5 What regulations apply?

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?
632.21 What special consideration factors does the Secretary use?
632.22 What limitations apply to the number of years an institution may be funded?
632.23 What requirements must an applicant meet to be eligible for funding beyond the basic five-year limitation?
632.24 What limitations apply to a grant amount?

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?
632.31 How are student work experiences evaluated?
632.32 What are the fiscal requirements?

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 cooperative education in the institution's mission statement, long-range planning documents, budget, and catalog; and

(2) The chief executive officer's, other key administrators', faculty's, and governing board's support for the project, including their involvement in the planning and development 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 schedules 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 institution; and

(v) Adequacy of resources, including adequacy of space and equipment.

(4) Provision of work experiences (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 in cooperative education jobs; 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)

(Approved by the Office of Management and Budget under control number 1840-0126)

§ 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 (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)

(Approved by the Office of Management and Budget under control number 1840-0126)

§ 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)

(Approved by the Office of Management and Budget under control number 1840–0126)

§ 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.

(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.

633.1 What is a Cooperative Education Demonstration project?
633.2 Who is eligible for an award?
633.3 Who is eligible to participate in a demonstration project?
633.4 What types of demonstration projects does the Secretary fund?
633.5 What regulations apply?

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?

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 have not yet been fully evaluated;

(ii) Determine the feasibility of proposed, innovative methods of cooperative education; or

(iii) Disseminate information on 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)

(Approved by the Office of Management and Budget under control number 1840-0126)

PART 634—COOPERATIVE EDUCATION PROGRAM—RESEARCH PROJECTS

Subpart A—General

Sec.

634.1 What is a Cooperative Education Research project?
634.2 Who is eligible for an award?
634.3 What types of research projects does the Secretary fund?
634.4 What regulations apply?

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?
634.21 What priorities may the Secretary use?

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)

(Approved by the Office of Management and Budget under control number 1840–0126)

§ 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.

635.1 What is a Cooperative Education Training and Resource Center project?
635.2 Who is eligible for an award?
635.3 Who is eligible to participate?
635.4 What activities may the Secretary fund?
635.5 What priorities may the Secretary establish?
635.6 What regulations apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

635.20 What selection criteria does the Secretary use to evaluate applications?

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 their 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 and 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)

(Approved by the Office of Management and Budget under control number 1840-0126)

PART 636—THE SUPPLEMENTAL FUNDS PROGRAM FOR COOPERATIVE EDUCATION

2. The authority citation for Part 636 is revised to read as follows:

Authority: 42 U.S.C. 2752(d) (as in effect prior to enactment of the Higher Education Amendments of 1986 (Pub. L. 99-498)); Pub. L. 99-178; H.R. 5233, as referenced in Pub. L. 99-951.

3. In Part 636, the references to "34 CFR 631.3(b)" are revised to read "34 CFR 631.5(b)" in the following places:

(a) Section 636.2 (a) and (b).

(b) Section 636.4(c), in the definitions of "Expand Cooperative Education", "Improve Cooperative Education", and "Initiate Cooperative Education".

(c) Section 636.10.

§ 636.30 [Amended]

4. In § 636.30, the following words are added in the first sentence between the word "amended" and the period: "prior to enactment of the Higher Education Amendments of 1986".

§ 636.40 [Amended]

5. In § 636.40, the reference to "34 CFR 631.40" is revised to read "34 CFR 631.30".

§ 636.41 [Amended]

6. In § 636.41, the reference to "34 CFR 631.41" is revised to read "34 CFR 631.31".

[FR Doc. 87-17764 Filed 8-4-87; 8:45 am]

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Federal Register

Wednesday
August 5, 1987

Part IV

Department of Health and Human Services

Office of Human Development Services

National Resource Center on Child Sexual Abuse; Announcement of Availability of Funds and Request for Applications

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

[Program Announcement No. 13670-871]

National Resource Center on Child Sexual Abuse

AGENCY: Administration for Children, Youth and Families (ACYF), Office of Human Development Services (OHDS), Department of Health and Human Services (DHHS).

ACTION: Announcement of availability of funds and request for applications.

SUMMARY: The Office of Human Development Services (OHDS) announces that applications are being accepted for a grant to establish a National Resource Center on Child Sexual Abuse authorized by Pub. L. 93-247, as amended, 42 U.S.C. 5101, *et seq.* This announcement is a follow up to the OHDS FY 1985 and FY 1986 Program Announcements for Resource Centers for Child Welfare Services published in the **Federal Register** on April 1, 1985 (50 FR 12918), and November 5, 1985 (50 FR 45962). Under those announcements, nine grant awards were made to fund National Resource Centers in the areas of Foster Care, Adoption, Family-Based Preventive Services, Developmental Disabilities, Youth Services, Program Management and Administration, Legal Resources on Child Welfare, Child Abuse and Neglect, and Child Abuse Clinical Resources. The purpose of this announcement is to request applications for a National Center in the one area in which no award was made: Child Sexual Abuse.

DATE: The closing date for receipt of applications is October 5, 1987.

ADDRESSES: Application receipt point: HDS Grants and Contracts Management Division, HDS/OMS, 200 Independence Avenue, SW., Room 345-F, Hubert H. Humphrey Building, Washington, DC 20201, Attention: Mary White, 13670-871.

FOR FURTHER INFORMATION CONTACT: Cynthia Darling, HDS/ACYF/Children's Bureau, National Center on Child Abuse and Neglect, P.O. Box 1182, Washington, DC 20013, (202) 245-2856.

SUPPLEMENTARY INFORMATION:

Part I. General Information

A. Background

The Child Welfare Services National Resource Center Grant program was undertaken to develop, expand, strengthen and improve the capacity of State and local, public and private child welfare agencies throughout the country to utilize exemplary methods and resources to provide effective services to children and families. National resource centers, focusing on nine different program areas related to child welfare services: Foster Care, Adoption, Family-Based Preventive Services, Developmental Disabilities, Youth Services, Program Management and Administration, Legal Resources on Child Welfare, Child Abuse and Neglect, and Child Sexual Abuse, would be established to be the focal point nationwide for technical assistance, training, and consultation in their respective areas.

Program announcements of the availability of funds to establish these nine Resource Centers for Child Welfare Services were published in the **Federal Register** on April 1, 1985 (50 FR 12918) and November 5, 1985 (50 FR 45962). Under those announcements, nine awards were made in eight of the nine areas described.

Proposals for grants in the area of child sexual abuse were not considered to be fully responsive to the announcements for a number of reasons: (1) Proposals did not describe centers of excellence and expertise but, instead, described loose configurations of existing organizations; (2) proposals did not adequately address the activities identified for the child sexual abuse priority area; (3) proposals did not reflect an awareness of, or proposed to duplicate, activities or services already being provided under other OHDS grant program initiatives or contracts; (4) proposals did not present a credible marketing strategy which would produce non-Federal funds for continuation of activities beyond the Federal grant period; and (5) proposals outlined projects which were local or regional rather than national in scope. As a result, no grants were awarded in the area of child sexual abuse.

B. Program Purpose

Child sexual abuse has been defined in a variety of ways and encompasses a wide range of behavior from fondling and exhibitionism, forcible rape and incest, to commercial exploitation through prostitution or the production of pornographic materials. In the Child Abuse Prevention and Treatment Act, the term *sexual abuse* includes the following activities under circumstances which indicate that the child's health or welfare is harmed or threatened with harm:

(i) The employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or having a child assist any other person to engage in any sexually explicit conduct (or any simulation of such conduct) for the purpose of producing any visual depiction of such conduct, or

(ii) The rape, molestation, prostitution, or other such form of sexual exploitation of children, or incest with children.

The Child Abuse Amendments of 1984 also broadened the definition of persons responsible for the child's welfare to include an employee of a residential facility or any staff person providing out-of-home care. This change broadens the scope of preventive efforts and extends protective services to children abused in out-of-home settings, such as day care centers.

Because of these legislative changes and the increase in the reports of child sexual abuse, the demand for resources, exemplary materials, and expertise in the prevention, identification and treatment of child sexual abuse remains high. Therefore, a National Resource Center on Child Sexual Abuse, similar to the other nine Child Welfare Services National Resource Centers currently supported by ACYF, is needed.

The Resource Center would assist State, local and private sector service providers, including child protective service providers; schools; day care providers; mental health and health providers; as well as law enforcement, and the judicial and legal communities in accessing current and timely program information and implementing innovative methods and strategies to improve services for children and families affected by child sexual abuse.

This program announcement solicits applications, specifies grantee responsibilities, and describes the application process for a grant to establish a National Resource Center on Child Sexual Abuse.

OHDS/ACYF proposes to support a three-year effort to collect, develop and disseminate resource materials and facilitate the exchange of information on effective and innovative approaches and techniques in the area of child sexual abuse prevention, identification, diagnosis, and treatment. The Resource Center will function as a national center of excellence and expertise recognized by the field as an essential resource to be accessed for training, consultative services, and state-of-the-art knowledge, on a payment for services basis so that the Resource Center can become self-supporting over a three-year period.

C. Statutory Authority

The statutory authority under which a grant will be awarded through this program announcement is section 4(a) of the Child Abuse Prevention and

Treatment Act, Pub. L. 93–247, as amended (42 U.S.C. 5103(a)).

D. Eligible Applicants

Any State, local public, or non-profit organization or agency, including accredited colleges and universities, located within, or proposing to operate the Center within, the contiguous United States may submit an application under this announcement. This geographic limitation is included to assure maximum accessibility of the greatest number of users at the most economical costs. Applications developed jointly by State, local, and community-based social services agencies, foundations, colleges or universities are encouraged.

E. Availability of Funds

OHDS expects to make one grant award for approximately $250,000 per year for each of three years, subject to the availability of funds and satisfactory grantee performance. The funding level may vary based upon the scope of work projected in the grant application.

Continuation funding will be based, in part, on the extent to which the project has succeeded in marketing its skills and services and obtained commitments for the purchase of services for the second and third year of the grant period.

Part II. Specific Responsibilities of the Grantee

A. Grantee Responsibilities

The National Resource Center on Child Sexual Abuse is expected to be task-oriented, time-limited and specific in focus. The Resource Center must have personnel who are well qualified to carry out the activities of the Center, as well as adequate resources and the organizational, professional, and educational capacity to address the critical issues related to the project's goals and objectives. Therefore, we are requesting applications which propose to establish a National Resource Center staffed by knowledgeable and experienced professionals capable of providing leadership, resource information and materials, technical assistance and professional consultation in the following areas:

- The prevention, identification, diagnosis, and treatment of child sexual abuse;
- The enhancement of the effectiveness of interrelated systems such as child protective services, judicial, mental health, law enforcement and medical systems processes;
- The investigation, management and prosecution of child sexual abuse cases from the initial report through disposition;
- The development of experimental, model and demonstration programs; and
- The training of professionals in multidisciplinary fields.

Examples of tasks to be performed include:

- The identification, verification, and dissemination of best case practices and case management approaches;
- The development of networking and coordination activities to establish linkages between public, private, and voluntary agencies, organizations, and individuals serving children and families; and
- The development of an analysis of the most up-to-date, reliable information on the phenomenon of group child sexual abuse as it differs from the handling of individual child sexual abuse cases.

The Resource Center must address the ethnic and cultural needs of children and families in the context of child sexual abuse with special attention to the requirements of Pub. L. 95–608, the Indian Child Welfare Act of 1978.

This Resource Center must also address both intrafamilial and extrafamilial sexual abuse of children as well as sexual exploitation of children as defined in the Child Abuse Prevention and Treatment Act (cited above). It must also be a resource to public, private, and voluntary agencies as well as multidisciplinary professionals concerned with the care and treatment of child sexual abuse victims and their families, e.g., child protective services workers, health care providers, law enforcement, judicial and legal personnel, counselors, therapists, school personnel, and others who work with children and youth on a daily basis.

The Resource Center must establish cooperative relationships with foundations, private sector organizations, and affiliated State and local agencies for the purpose of obtaining their participation in the planning and implementation of the proposed project. This participation will include a commitment to a specified and substantive involvement in and support of the goals and objectives of the project.

The Center must have a program component specifically designed to attract private sector initiatives, and involve private sector agencies and organizations in the activities of the Center.

The Resource Center must have a strategy for acquiring additional non-Federal support to sustain the full cost of the project when Federal funding terminates, e.g., contractual arrangements with State and local agencies and other relevant entities to acquire program income on a fee-for-service basis, and the marketing of exemplary resource materials, training, and consultation services. Approval of second and third year grants will be based, in part, on the extent to which the Center has succeeded in marketing its skills and services.

B. Grantee Share of the Project

At least 25 percent of the total cost of the proposed project must come from a source other than the Federal government (one non-Federal dollar match for every three Federal dollars requested from HDS). Applications proposing less than the 25 percent required match will be considered unresponsive and will not be reviewed. The non-Federal share of total project costs for each budget period may be in the form of grantee-incurred costs or third party in-kind contributions.

Part III. Criteria for Review and Evaluation of the Grant Application

In considering how the grantee will carry out the responsibilities under Part II of this announcement, competing applications will be reviewed and evaluated against the following criteria:

A. *Objectives and Need for This Assistance*—(10 Points). State the specific objectives and needs addressed by the project in terms of its national significance, its theoretical importance and its applicability to practices and subordinate objectives of the project. Provide a discussion of the "state-of-the-art" relative to the problem or area addressed by the proposal and indicate how the proposed effort will impact on it. For demonstration, training and technical assistance, and evaluation projects, indicate goals or service objectives of the proposal. Supporting documentation or other testimonies from concerned interests other than the applicant may be used. Any relevant data based on planning or demonstration studies must be summarized, evaluated and related to the proposed project.

B. *Results or Benefits Expected (Beneficial Impact)*—(15 Points). This section must identify the results and benefits—for target groups and human service programs—to be derived from implementing the proposed project. The anticipated contribution to policy and practice should be indicated.

C. *Approach (Project Implementation Plan)*—(30 Points).

Tasks to be Performed

Provide major milestones of events, activities and products and a timetable for completion, including the time commitments of all key staff to individual project tasks.

Design and Methodology

This portion of the program narrative must identify the specific problem(s), issue(s), and objectives of the proposal addressed by the applicant agency and provide a detailed discussion of how the approach provided for will accomplish these project objectives.

Evaluation

Where appropriate, evaluation plans and procedures must be described in detail and must be capable of measuring the degree to which project objectives have been accomplished.

Dissemination and Utilization

Describe the steps to be taken to disseminate and promote the utilization of project products and findings using Federal and/or non-Federal resources. The specific audiences to whom the products will be addressed must be specified.

D. *Staffing and Management*—(25 Points). This section must address:

Staffing Pattern

Describe the staffing pattern for the proposed project, clearly linking responsibilities to project tasks and specifying the contribution to be made by senior staff.

Competence of Staff

Indicate the qualifications of the project team, the variety of skills to be used, relevant research experience, educational background and the demonstrated ability to produce final results that are readily comprehensible and usable.

Adequacy of Resources

Specify the adequacy of the facilities, resources and organizational experience with regard to the tasks of the proposed project.

E. *Budget Appropriateness and Reasonableness*—(20 Points). This section must address:

Budget

Relate the proposed budget to the level of effort required to attain project objectives. Provide a cost/benefit analysis if possible. Demonstrate that the project's costs are reasonable in view of the anticipated results.

Assurances

Discuss collaborative efforts with other agencies or organizations. Written assurances should be included with the application if available.

Authorship

The author(s) of the application must be clearly identified together with their current relationship to the applicant organizations and any future project role they may have if the application is funded.

Part IV. Application Process

A. Availability of Forms

All instructions and forms required for submittal of applications are included in an application kit. The application kit may be obtained by writing or telephoning: HDS Grants and Contracts Management Division, OHDS/OMS, 200 Independence Ave. SW., Room 345–F, Hubert H. Humphrey Building, Washington, DC 20201, Attention: Mary White 13670–871, (202) 472–6712.

B. Application Submission

At a minimum, one signed original and two copies of the application, including all attachments, are required. Applications must be submitted to the HDS Grants and Contracts Management Division, Attention: Mary White, 13670–871, at the above-referenced address.

In order to be considered for a grant under this program announcement, an application must be submitted on the forms and in the manner required by this announcement. The application must be executed by an individual authorized to act for the applicant agency and to assume responsibility for the obligations imposed by the terms and conditions of the grant award.

C. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Pub. L. 96–511, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and recordkeeping requirement inherent in a program announcement. This program announcement does not contain information collection requirements beyond those approved for HDS discretionary grant applications approved under OMB Control Number 0980–0016.

D. Notification Under Executive Order 12372

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs" and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All the States that are eligible to apply, except Idaho and Nebraska, have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these areas need take no action regarding E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them to the prospective application and to receive any necessary instructions.

Applicants must submit any required material to the SPOC as early as possible so the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or date of contact if no submittal is required) on the SF–424, item 22a.

SPOCs have sixty (60) days starting from the application deadline date to comment on applications submitted under this announcement. Therefore, the comment period for State processes will end on December 3, 1987, to allow time for OHDS to review, consider, and attempt to accommodate SPOC input. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule.

When comments are submitted directly to HDS, they should be addressed to: HDS Grants and Contracts Management Division, OHDS/OMS, 200 Independence Ave. SW., Room 345–F, Hubert H. Humphrey Building, Washington, DC 20201, Attention: Mary White 13670–871.

OHDS will notify the State of any application received which has no indication that the State process has had an opportunity for review.

A list of State Single Points of Contact is included at the end of this announcement.

E. Application Consideration

Applications which are complete and conform to the requirements of this program announcement are subject to a competitive review and evaluation by qualified individuals. Applicants will be scored against the evaluation criteria outlined in Part III of this

announcement. The Commissioner, ACYF, determines the final action to be taken with respect to each grant application for this program. In addition to the results of the review, in making final decisions the Commissioner also will consider comments from Central and Regional Office staff.

After the Commissioner has made the final selection, unsuccessful applicants will be notified in writing of this final decision. The successful applicant will be notified through the issuance of a Financial Assistance Award which sets forth the amount of funds awarded, the budget period for which support is given, the non-Federal share requirements, and the total period for which project support is contemplated.

F. Closing Date for Receipt of Applications

The closing date for receipt of applications is October 5, 1987.

1. Mailed Applications

Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date at the above address; or

(b) Sent on or before the deadline date, and received in time to be considered during the competitive review and evaluation process. (Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Applications Submitted By Other Means

Applications which are not submitted in accordance with the above instructions shall be considered as meeting the deadline only if they are physically received before the close of business on or before the deadline date. Hand-delivered applications will be accepted at the HDS Grants and Contracts Management Division office during the normal working hours of 8:30 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays.

3. Late Applications

Applications which do not meet these criteria are considered late applications and will not be considered in the current competition.

4. Extension of Deadlines

OHDS may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is widespread disruption of the mails. However, if OHDS does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

(Catalog of Federal Domestic Assistance Program Number 13.670, Child Abuse and Neglect Discretionary Activities.)

Dated: June 30, 1987.

Dodie Livingston,

Commissioner, Administration for Children, Youth and Families.

Approved: June 20, 1987.

Jean K. Elder,

Assistant Secretary for Human Development Services-Designate.

Executive Order 12372—State Single Points of Contact

Alabama

Mrs. Donna J. Snowden, SPOC, Alabama State Clearinghouse, Alabama Department of Economic and Community Affairs, 3465 Norman Bridge Road, Post Office Box 2939, Montgomery, Alabama 36105–0939, Tel. (205) 284–8905

Alaska

None

Arizona

Department of Commerce, State of Arizona

Note.—Correspondence & questions concerning this State's E.O. 12372 process should be directed to: Janice Dunn, ATTN: Arizona State Clearinghouse, 1700 West Washington, Fourth Floor, Phoenix, Arizona 85007, Tel. (602) 255–5004.

Arkansas

Joe Gillesbie; Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Tel. (501) 371–1074

California

Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Tel. (916) 323–7480

Colorado

State Clearinghouse, Division of Local Government, 1313 Sherman Street, Rm. 520, Denver, Colorado 80203, Tel. (303) 866–2156

Connecticut

Gary E. King, Under Secretary, Comprehensive Planning Division, Office of Policy and Management, Hartford, Connecticut 06106–4459

Note.—Correspondence & questions concerning this State's E.O. 12372 process should be directed to: Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106–4459, Tel. (203) 566–3410.

Delaware

Executive Department, Thomas Collins Building, Dover, Delaware 19903, Attn: Francine Booth, Tel. (302) 736–4204

Florida

Ron Fahs, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32301, Tel. (904) 488–8114

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street, SW.—Room 608, Atlanta, Georgia 30334, Tel. (404) 656–3855

Hawaii

Roger A. Ulveling, Director, Department of Planning and Economic Development, P.O. Box 2359, Honolulu, Hawaii 96804

For Information Contact: Hawaii State Clearinghouse, Tel. (808) 548–3016 or 548–3085.

Idaho

None

Illinois

Tom Berkshire, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Tel. (217) 782–8639

Indiana

Ms. Peggy Boehm, Deputy Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Tel. (317) 232–5604

Iowa

A. Thomas Wallace, Iowa Dept. of Economic Development, Division of Community Progress, 200 East Grand Avenue, Des Moines, Iowa 50309, Tel. (515) 281–3864

Kansas

Martin Kennedy, Intergovernmental Liaison, Department of Administration, Division of Budget, Room 152–E, State Capitol Building, Topeka, Kansas 66612, Tel. (913) 296–2436

Kentucky

Bob Leonard, Kentucky State Clearinghouse, 2nd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Tel. (502) 564–2382

Louisiana

Colby S. La Place, Assistant Secretary, Dept. of Urban & Community Affairs, Office of State Clearinghouse, P.O. Box 94455, Capitol Station, Baton Rouge, Louisiana 70804, Tel. (504) 342–9790

Maine

State Planning Office. Attn: Intergovernmental Review Process/ Hal Kimbal. State House Station #38. Augusta, Maine 04333. Tel.

(207) 289–3154

Maryland

Guy W. Hager, Director, Maryland State Clearinghouse, for Intergovernmental Assistance, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Tel. (301) 225–4490

Massachusetts

Executive Office of Communities and Development, Attn: Beverly Boyle, 100 Cambridge Street, Rm. 904, Boston, Massachusetts 02202, Tel. (617) 727–3253

Michigan

Michelyn Pasteur, Director, Local Development Services, Department of Commerce, P.O. Box 30225, Lansing, Michigan 48909, Tel. (517) 373–3530, Staff Contact: Don Bailey, Tel. (517) 334–6190

Minnesota

Maurice D. Chandler, Intergovernmental Review, Minnesota State Planning Agency, Room 101, Capitol Square Building, St. Paul, Minnesota 55101, Tel. (612) 296–2571

Mississippi

Office of Federal State Programs, Department of Planning and Policy, 2000 Walter Sillers Bldg., 500 High Street, Jackson, Mississippi 39202.

For Information Contact: Mr. Marlan Baucum, Department of Planning and Policy, Tel. (601) 359–3150.

Missouri

Lois Pohl, Coordinator, Missouri Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809—Room 760, Truman Building, Jefferson City, Missouri 65102, Tel. (314) 751–4834

Montana

Sue Heath, Intergovernmental Review Clearinghouse, c/o Office of the Lieutenant Governor, Capitol Station, Helena, Montana 59620, Tel. (406) 444–5522

Nebraska

None

Nevada

Ms. Jean Ford, Director, Nevada Office of Community Services, Capitol Complex, Carson City, Nevada 89710, Tel. (702) 885–4420

Note.—Correspondence & questions concerning this State's E.O. 12372 process should be directed to: John Walker, Clearinghouse Coordinator, Tel. (702) 885–4420.

New Hampshire

David G. Scott, Acting Director, New Hampshire Office of State Planning, 2½ Beacon Street, Concord, New Hampshire 03301, Tel. (603) 271–2155

New Jersey

Mr. Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, 363 West State Street, Trenton, New Jersey 08625–0803, Tel. (609) 292–6613

Note.—Correspondence & questions concerning this State's E.O. 12372 process should be directed to: Nelson S. Silver, State Review Process, Division of Local Government, Services—CN 803, Trenton, New Jersey 08625–0803, Tel. (609) 292–9025.

New Mexico

Dean Olson, Director, Management and Program Analysis Division, Department of Finance and Administration, Management and Contracts Review Div., Clearinghouse Bureau, Room 424, State Capitol, Santa Fe, New Mexico 87503, Tel. (505) 827–3885

New York

Director of the Budget, New York State

Note.—Correspondence & questions concerning the State's E.O. 12372 process should be directed to: Harold W. Juhre Jr., New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Tel. (518) 474–1605.

North Carolina

Mrs. Chrys Baggett, Director, State Clearinghouse, Department of Administration, 116 West Jones Street, Raleigh, North Carolina 27611, Tel. (919) 733–4131

North Dakota

Bill Robinson, Office of Intergovernmental Assistance, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505, Tel. (701) 224–2094

Ohio

State Clearinghouse, Office of Budget and Management, 30 East Broad Street, Columbus, Ohio 43215

For Information Contact: Mr. Leonard E. Roberts, Deputy Director, Tel. (614) 466–0699.

Oklahoma

Don Strain, Oklahoma Department of Commerce, Office of Federal Assistance Management, 6601 Broadway Extension, Oklahoma City, Oklahoma 73116, Tel. (405) 843–9770

Oregon

Intergovernmental Relations Division, State Clearinghouse, Attn: Delores Streeter, Executive Building, 155 Cottage Street, NE., Salem, Oregon 97310, Tel. (503) 373–1998

Pennsylvania

Laine A. Heltebridle, Special Assistant, Pennsylvania Intergovernmental Council, P.O. Box 11880, Harrisburg, Pennsylvania 17108, Tel. (717) 783–3700

Rhode Island

Daniel W. Varin, Chief, Rhode Island Statewide Planning Program, 265 Melrose Street, Providence, Rhode Island 02907, Tel. (401) 277–2656

Note.—Questions & correspondence concerning this State's review process should be directed to: Mr. Michael T. Marfeo, Review Coordinator.

South Carolina

Danny L. Cromer, Grant Services, Office of the Governor, 1205 Pendleton Street, Rm. 477, Columbia, South Carolina 29201, Tel. (803) 734–0435

South Dakota

Sue Korte, State Clearinghouse Coordinator, State Government Operations, Second Floor, Capitol Building, Pierre, South Dakota 57501, Tel. (605) 773–3661

Tennessee

Charles Brown, Tennessee State Planning Office, 1800 James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37219, Tel. (615) 741–1676

Texas

Leon Willhite, State Planning Director, Office of the Governor, P.O. Box 13561, Capitol Station, Austin, Texas 78711

Note.—Questions concerning this State's review process should be directed to: Intergovernmental Relations Division, Tel. (512) 463–1814.

Utah

Dale Hatch, Director, Office of Planning and Budget, State of Utah, 116 State Capitol Building, Salt Lake City, Utah 84114, Tel. (801) 533–5245

Vermont

State Planning Office, Attn: Bernie Johnson, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Tel. (802) 828–3326

Virginia

Nancy Miller, Intergovernmental Affairs Review Officer, Department of Housing and Community Development, 205 North 4th Street, Richmond, Virginia 23219, Tel. (804) 786–4474

Washington

Washington Department of Community Development, ATTN: Washington Intergovernmental Review process, Dori Goodrich, Coordinator, Ninth and Columbia Building, Olympia, Washington

98504–4151, Tel. (206) 586–1240

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, Governors Office of Community, and Industrial Development, Building #6, Rm. 553, Charleston, West Virginia 25305, Tel. (304) 348–4010

Wisconsin

Secretary James R. Krauser, Wisconsin Department of Administration, 101 South Webster—GEF 2, P.O. Box 7864, Madison, Wisconsin 53707–7864, Tel. (608) 266–1741

Note.—Correspondence and questions concerning this States E.O. 12372 process should be directed to: Thomas Krauskopf, Federal-State Relations Coordinator, Wisconsin Department of Administration, P.O. Box 7864, Madison, Wisconsin 53707–7864, Tel. (608) 266–8349.

Wyoming

Ann Redman, Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Tel. (307) 777–7574

Virgin Islands

Toya Andrew, Federal Programs Coordinator, Office of the Governor, The Virgin Islands of the United States, Charlotte Amalie, St. Thomas 00801, Tel. (809) 774–6517

District of Columbia

Lovetta Davis, D.C. State Single Point of Contact for E.O. 12372, Executive Office of the Mayor, Office of Intergovernmental Relations, Rm. 416, District Building, 1350 Pennsylvania Avenue, NW., Washington, DC 20004, Tel. (202) 727–9111

Puerto Rico

Patricia G. Custodio, P.E., Chairman and Isael Soto Marrero, Director, Federal Proposal Review Office, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–9985, Tel. (809) 727–4444

Northern Mariana Islands

Planning and Budget Office, Office of the Governor, Saipan, CM 96950

American Samoa

None

Guam

Guam State Clearinghouse, Office of the Lieutenant Governor, P.O. Box 2950, Agana, Guam 96910

[FR Doc. 87–17751 Filed 8–4–87; 8:45 am]

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federal register

Wednesday
August 5, 1987

Part V

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Identification and Transfer of Effective Juvenile Justice Projects and Services; Effective Parenting Strategies for Families of High Risk Youth; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Identification and Transfer of Effective Juvenile Justice Projects and Services; Effective Parenting Strategies for Families of High Risk Youth

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of issuance of a solicitation for applications to conduct a demonstration program regarding effective parenting strategies for families of troubled youth.

SUMMARY: This guideline announces an OJJDP program initiative entitled the Identification and Transfer of Effective Juvenile Justice Projects and Services: Effective Parenting Strategies for Families of High Risk Youth.

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) pursuant to section 224(a)(4) of the Juvenile Justice and Delinquency Prevention Act, as amended, is sponsoring a comprehensive demonstration initiative to identify, assess and demonstrate effective programs designed to strengthen families.

The purpose of this program is to provide communities with the necessary information and skills to adopt and implement family strengthening approaches which support the prevention, intervention, and treatment of high risk youth.

An additional purpose of this program is to focus national attention upon selected juvenile justice projects that have demonstrated a significant degree of operational success over a period of time and that are suitable for adoption by state and local service providers.

OJJDP proposes to accomplish this task by sponsoring this demonstration effort which will include:

- Identification and assessment of selected programmatic approaches;
- Development of descriptive program operation manuals;
- Development of training and technical assistance materials to transfer the program information contained in the operation manuals to demonstration sites; and
- Provision of training and technical assistance to demonstration sites.

Eligibility

Public agencies and private not-for-profit organizations which possess capability to conduct a demonstration program of effective parenting strategies for families of high risk youth are invited to submit applications to enter into a cooperative agreement with OJJDP. OJJDP will select the applicant which presents the most cost effective approach, and which best demonstrates knowledge of and experience in the fields of family strengthening and juvenile justice; and experience in the areas of operations manual development, program assessment, and training and technical assistance. The project period for this program is three (3) years. Up to $350,000 has been allocated for the first budget period of 24 months. One non-competing continuation award is anticipated. Applicants are encouraged to present cost-competitive proposals. The deadline for receipt of applications is September 7, 1987.

FOR FURTHER INFORMATION CONTACT: Lois Brown, Special Emphasis Division, 202/724–8491, or Catherine Sanders, Research and Program Development, 202/724–5929, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue NW., Washington, DC 20531.

SUPPLEMENTAL INFORMATION:

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I. Introduction and Background

Family factors are most influential in the early socialization of children, and family management practices are significant predictors of subsequent delinquency and drug problems. Family focused interventions which seek to improve family management skills appear promising as a prevention strategy.

Highly developed social learning approaches to improving family management skills have been implemented and evaluated (Alexander and Parsons, 1973; Klein, 1977; Patterson, 1982). Parent training combines knowledge building with skill development. Typically, trainers use lectures, reading assignments, or videotapes to provide instruction in skills, followed by demonstration, modeling, and supervised practice to insure skill acquisition at the level of application (Fraser et al., 1986).

Training that teaches parents to monitor their children's behavior, to use moderate contingent discipline for undesired behavior and to consistently reward prosocial behavior (Patterson and Fleishman, 1979) has been shown to reduce children's antisocial behaviors and to produce increases in parent-child attachment and decreases in children's skill deficits (Fleishman, 1981; Patterson and Reid, 1973; Peed, Roberts and Forehand, 1977). Moreover, at least four randomized experimental tests of parent training have shown significant reductions in preadolescents' problem behaviors (Karoly and Rosenthal, 1977; Martin, 1977; Patterson, Chamberlain and Reid, 1982; Walters and Gilmore, 1973).

Kumpfer and Associates (DeMarsh & Kumpfer, 1986; Kumpfer & DeMarsh, 1986) have designed a family skills training program specifically for children of drug abusers participating in treatment programs. Research suggests that these children are at high risk of substance abuse. The Strengthening Families Program is a structured skills training program that teaches parents how to monitor and control their child's behavior. Children participate in a social skills class while parents meet in weekly training sessions. In the second hour of each session, parents and children meet with individual trainers to practice principles introduced in skills classes. Post-treatment evaluations revealed significant improvements in parent-child communication skills and reductions in children's behavior problems. Children in the program also reported significant post-test reductions in their intentions to use tobacco and alcohol.

The evidence regarding the effectiveness of parenting training in reducing childhood behavior disorders suggests the promise of this approach as a prevention strategy for delinquent behavior and drug abuse. Because childhood behavior disorders are significant risk factors for later involvement in illegal activities, training designed for the developmental stage of a child should help parents develop skills to reduce children's early behavior problems in preschool and early elementary years, to increase academic performance in middle elementary grades and to deal with social influences toward drug use in late elementary and junior high school years. To date, little experimental research on the effectiveness of parent training for drug abuse prevention has been conducted, though single case interventions (Bry, 1983) and preliminary studies of group experiments (Hawkins et al., in press) suggest the promise of these approaches in this area.

This program is aimed at identifying promising and effective approaches (e.g., training in family management practices, counseling, support groups, etc.) that can be integrated into comprehensive community strategies to strengthen families.

II. Program Goals and Objectives

A. Goals

1. To identify and assess effective parenting strategies for families of high risk youth;
2. To provide the capability to selected localities to implement effective parenting strategies for families of high risk youth through intensive training and technical assistance; and
3. To disseminate effective parenting strategy designs for families of high risk youth.

B. Objectives

1. Assess existing research and programs which focus on parenting strategies for families of high risk youth;
2. Develop operational manuals based on selected programs;
3. Develop training and technical assistance materials to document and transfer selected program models; and
4. Provide training and technical assistance to selected sites to demonstrate the program models.

III. Program Strategy

OJJDP planning and program development activities are guided by a framework which specifies four sequential phases: research, development, demonstration and dissemination.

The purpose of the demonstration phase is to identify promising or effective operational programs, and to demonstrate the program models in selected jurisdictions. Programs in the demonstration phase are developed incrementally in four discrete stages: (1) Assessment, (2) operational manual development, (3) training and technical assistance development, and (4) provision of training and technical assistance to demonstration sites. This solicitation calls for applications to implement the *demonstration* phase of the program development process in order to assist the juvenile justice system in designing and implementing more effective parenting strategies for families of troubled youth. The purpose of this demonstration is to identify operational promising or effective parenting strategies, and demonstrate the program models in selected sites.

An advisory committee established specifically for this program will provide comments and recommendations to the recipient regarding the program strategy and activities. It may be necessary to change or supplement advisory committee members for different stages of the program. The advisory committee members should have combined expertise in juvenile justice, parent training, youth development, research and program evaluation, and training and technical assistance delivery experience and knowledge of community youth services delivery systems. Each stage of the incremental demonstration process is designed to result in a complete and publishable product (e.g., final demonstration report) and a dissemination strategy to inform the field of the development of the program, and the results and products of each stage. A decision will be made at the completion of each stage, based on availability of funds, and the quality and utility of the products, whether to invest additional funds to complete the current stage or terminate the program.

Stage 1—Assessment

The first stage of the program consists of an asseesment of programs and information related to the implementation and operation of programs dealing with parenting strategies for families of high risk youth. The literature review should address the extent of the problem and define the aspects and impact of the problem on the family unit, siblings, parents and the troubled youth. The literature reviews should focus on the types of youth and families where the problem is most prevalent; risk factors relating to family dissolution and the system's responses to the affected families and youth. The purpose of the literature review is to identify the most definitive theoretical and empirical research findings in order to apply them to the review of operational programs, and the selection of the most promising or effective approaches.

The recipient will develop criteria for identifying promising approaches to strengthening families of troubled youth through parent training and related support strategies, and use the criteria to select programs for review and documentation. Information to be collected and assessed should include, at a minimum, the historical development of the program; conceptual framework/theoretical assumptions; number and type of families and youth served; program costs per unit of service and per client; evaluation findings; sources of funding; staffing requirements; and program approach to management and administration.

The assessment should provide the basis for selecting the programs most appropriate for demonstration. The assessment phase may reveal that many programs have very effective components, but there are none which meet the majority of the criteria at a sufficient level to justify nationwide demonstration. If this is the case, an additional developmental phase will be initiated to design prototypical programs based on the best information available through the assessment and other sources. Evaluation issues which should be addressed through the demonstration program should be identified.

Activities

The major activities of this stage are:
1. Establishment of the advisory committee;
2. Development of the assessment plan;
3. Review of the literature;
4. Development of criteria for identifying promising programs;
5. Identification and description of operational promising programs;
6. Preparation of assessment report; and,
7. Development and implementation of a dissemination strategy.

Products

The products to be completed in this stage are:
1. Assessment plan—specifying each step of the assessment process in detail;
2. Draft report which includes:
—literature review
—criteria for identifying promising programs
—recommendations for refining the goals and objectives of the program
—descriptions of promising/effective programs
3. Final report;
4. Recommendations for developing program operation manuals; and,
5. Dissemination strategy to inform the field of the development of the program, and the products and results of this stage.

Stage 2—Development of Descriptive Program Operation Manuals

Upon successful completion of Stage 1, and with the approval of OJJDP, the recipient will develop descriptive program operation manuals for strengthening families through effective parent training and related support strategies for families of troubled youth.

The activities and products of this stage will be based on the information generated as a result of the assessment. Appropriate technical and subject matter expertise will be utilized to design the operation manuals which detail the promising programs.

The operation manuals will provide guidance regarding: identification of the appropriate target population; relationship of the program to other public and private youth and family serving agencies; funding; program organization and management; the philosophy and content of the intervention; resource development; program monitoring; and evaluation of program effectiveness. This information will become part of a training and technical assistance package for dissemination to the appropriate state and local agencies. The recipient will also develop a strategy for demonstrating the promising approaches.

Activities

The major activities of this stage are:

1. Preparation of a plan for developing the operation manuals;
2. Development of the operation manuals;
3. Participation and review by the advisory committee;
4. Development of recommendations for a program announcement to select demonstration sites;
5. Development of a demonstration stragegy; and,
6. Development and implementation of a dissemination strategy.

Products

The products to be completed in this stage are:

1. Plan for operation manuals development;
2. Draft and final operations manuals design(s);
3. Demonstration strategy; and,
4. Dissemination strategy to inform the field of the development of the program, and the products and results of this stage.

Stage 3—Training and Technical Assistance Development Activities

Upon successful completion of Stage 2, and with the approval of OJJDP, the recipient will prepare a plan for deveoping the training and technical assistance packages. Based on the plan, the recipient will transfer the information contained in the program operation manuals and related materials into a training and technical assistance package. Comprehensive training manuals that detail the program design and operation must be developed to encourage and facilitate implementation of the promising programs in the final stage of the demonstration phase.

The training manual should be the focal point of the entire training and technical assistance package. The major audience will be policymakers and practitioners involved in resource allocation and program development related to families with troubled youth. The manual should be designed for presentation in formal training sessions and for independent use in jurisdictions that do not participate in formal sessions. Therefore, each manual should include a compete description of a promising program and incorporate related policies and procedures. The manual should also contain instructions and supplementary materials for trainers to facilitate presentation, and to assure understanding and successful adaption and implementation of the promising programs.

The recipient will recruit and prepare the training and technical assistance personnel to be involved in this demonstration effort. Following this, the training curricula will be tested by the recipient on a limited basis. The recipient will develop a set of recommendations for use by OJJDP in issuing a program announcement for the selection of demonstration sites. Further, the recipient will develop and implement a dissemination strategy to ensure broad distribution of the operations manual and related materials.

The recipient will, as part of the demonstration strategy, develop a strategy to conduct a series of seminars or conferences, nationally, to inform the field about the promising programs.

Activities

The major activities of this stage are:

1. Preparation of a plan for developing the training and technical assistance package;
2. Development of the training and technical assistance materials;
3. Recruitment and preparation of the training and technical assistance personnel;
4. Testing of training curriculum package;
5. Participation and review by the advisory committee;
6. Development of a dissemination strategy to inform the field of the development of the program, and the products and results of this stage.

Products

The products to be completed during this stage are:

1. Plan for the development of the training and technical assistance package;
2. Identification of training and technical assistance personnel;
3. Draft and final training and technical assistance materials, including the training manual and information materials; and,
4. Dissemination strategy.

Stage 4—Provision of Training and Technical Assistance to Demonstration Sites

While a decision to demonstrate the model designs will be made during or following completion of the operations manual development stage, the applicant is expected to explain the methods and approaches that would be employed to implement this stage. As noted, funds for this stage will be provided through noncompetitive continuation awards. In order to ensure the applicant's understanding of the entire demonstration effort, the initial application must address and explain the implementation and coordination of all four stages of the initiative (i.e., assessment, operations manual development, training and technical assistance development, and provision of training and technical assistance to demonstration sites).

Upon successful completion of Stage 3, and with the approval of OJJDP, the recipient will prepare a plan for providing the training and technical assistance to demonstration sites. During this stage, the recipient will provide site selection assistance to OJJDP to facilitate the selection of the demonstration sites. Once these sites are selected and become operational, the recipient will provide intensive training and technical assistance support to them, to enhance the overall operational success of these sites, and to assist the demonstration sites implementing the program evaluation. The recipient will implement a dissemination strategy, to present the program and evaluation results to policymakers and practitioners at the state and local level. Finally, the recipient will be expected to work cooperatively with an independent evaluator to ensure the integrity of the data collection and feedback activities.

Activities

The major activities of this stage are:

1. Assistance to OJJDP in review and selection of demonstration sites;
2. Provision of intensive training and technical assistance to demonstration sites;
3. Assistance to sites in implementing the program evaluation; and,
4. Implementation of a dissemination strategy.

Products

The products to be completed during this stage are:

1. Plan for providing training and technical assistance to demonstration sites;

2. Dissemination strategy to inform the field of the development of the program, and the products and results of this stage.

IV. Dollar Amount and Duration

Up to $350,000 has been allocated for the initial award. One cooperative agreement will be awarded competitively, and the initial budget period will be for 24 months. It is anticipated that this demonstration program will entail three (3) years of program activities (i.e. three year project period), and consist of four phases (assessment, operational manual development, training and technical assistance development, and training and technical assistance to demonstration sites). The initial award will provide support for stages one through three. Supplemental funds will be allocated for an additional budget period.

Each non-competing continuation award, i.e. each additional budget period within the approved three year project period, may be withheld for justifiable reasons. They include: (1) The results do not justify further program activity; (2) the recipient is delinquent in submitting required reports; (3) adequate grantor agency funds are not available to support the project; (4) the recipient has failed to show satisfactory progress in achieving the objectives of the project or otherwise failed to meet the terms and conditions of the award; (5) a recipient's management practices have failed to provide adquate stewardship of grantor agency funds; (6) outstanding audit exceptions have not been cleared; and (7) any other reason which would indicate that continued funding would not be in the best interest of the Government.

V. Eligibility Criteria

Eligible applicants include public agencies and not-for-profit private research and/or juvenile and family service agencies and organizations. Applicant agencies or organizations may submit joint proposals with other eligible organizations provided one is designated in the application as the applicant, and any co-applicants are designated as such. The applicant or co-applicants must demonstrate in the application that they experience in the following areas in order to be eligible for consideration:

A. Design and implementation of research on the effectiveness of family strengthening programs; and design and implementation of family strengthening programs;

B. Demonstrated knowledge of the issues associated with the development, implementation and operation of family strengthening programs; and

C. Management and financial capability to effectively implement a project of this scope and complexity.

VI. Program Application Requirements

All applicants must submit a completed Standard Form 424, Application for Federal Assistance (SF 424), including a program narrative, a detailed budget and a budget narrative. All applications must include in the program narrative information outlined in this section of the solicitation. The program narrative should not exceed 70 double-spaced pages in length. Applications which propose non-competitive contracts for the provision of specific services must include a sole source justification for any procurement in excess of $10,000.

In submitting applications which contain more than one organization, the relationships among the parties must be set forth in the application. As a general rule, organizations which describe their working relationship in the development of products and the delivery of services as primarily cooperative or collaborative in nature will be considered as co-applicants. In the event of a co-applicant submission, one co-applicant must be designated as the payee to receive and disburse project funds and be responsible for the supervision and coordination of the activities of the other co-applicants. Under this arrangement, each organization would agree to be jointly and severally responsible for all project funds and services. Each co-applicant must sign the SF–424 and indicate their acceptance of the conditions of joint and several responsibility with the other applicants.

In addition to the requirements specified in the instructions for preparation of Standard Form 424, the following information must be included in the application:

A. Organizational Capability—Applicants must demonstrate that they are eligible to compete for this cooperative agreement on the basis of eligibility criteria established in this solicitation.

1. Organizational Experience—Applicants must concisely describe their organizational experience with respect to the eligibility criteria specified above. Applicants must demonstrate how their organizational experience and capabilities will enable them to achieve the goals and objectives of this initiative. Applicants are invited to append one example of prior work products of similar nature to their application.

2. Financial Capability—In addition to the assurances provided in Part V, Assurances (SF 424), applicants must also demonstrate that their organization has or can establish fiscal controls and accounting procedures which assure that Federal funds available under this agreement are disbursed and accounted for properly. Applicants who have not previously received federal funds will be asked to submit a copy of the Office of Justice Programs (OJP) Accounting System and Financial Capability Questionnaire (OJP Form 7120/1).

Copies of the form will be provided in the application kit and must be prepared and submitted along with the application. Other applicants may be requested to submit this form. All questions are to be answered regardless of instructions (Section C.I.B. note). The CPA certification is required only of those applicants who have not previously received Federal funding.

B. Program Goals—A succinct statement of your understanding of the goals and objectives of the program should be included. The application should also include a problem statement and a discussion of the potential contribution of this program to the field.

C. Program Strategy—Applicants should describe the proposed approach for achieving the goals and objectives of the Program. A discussion of how each of the four stages of the program would be accomplished should be included.

D. Program Implementation Plan—Applicants should prepare a plan which outlines the major activities involved in implementing the program and describes how they will allocate available resources to implement the program, and how the program will be managed.

The plan must also include an annotated organizational chart depicting the roles and describing the responsibilities of key organizational/functional components; and a list of key personnel responsible for managing and implementing the four major elements of the program. Applicants must present detailed position descriptions, qualifications, and selection criteria for each position. Applicants should also provide recommendations for program advisory committee members. This documentation and individuals' resumes may be submitted as appendices to the application.

E. Time-Task Plan—Applicants must develop a time-task plan for the 24-month budget period, clearly identifying major milestones and products. This

must include designation of organizational responsibility and a schedule for the completion of the tasks and products identified in section III and indicate the anticipated cost schedule per month for the entire budget period.

F. Products—Applicants must concisely describe the interim and final products of each stage of the program, and must address the purpose, audience, and usefulness to the field of each product.

G. Program Budget—Applicants shall provide a 24-month budget with a detailed justification for all costs, including the basis for computation of these costs. Applicants should include a budget estimate to complete the balance of the program. Applications submitted by co-applicants and/or those containing contract(s) must include detailed budgets for each organization's expenses. The budget should include funds for a four person advisory committee to meet four times during the first 24-month budget period.

VII. Procedures and Criteria for Selection

All applications will be evaluated and rated based on the extent to which they meet the following weighted criteria. In general, all applications received will be reviewed in terms of their responsiveness to the minimum program application requirements, organizational capability, and thoroughness and innovativeness in responding to the program strategy requirements. Applications will be evaluated by a peer review panel according to the OJJDP Competition and Peer Review Policy, 28 CFR Part 34, Subpart B, published August 2, 1985 at 50 FR 31366–31367. The selection criteria and their point values (weights) are as follows:

A. Organizational Capability (20 Points)

1. The extent and quality of organizational experience in the development, delivery, and coordination of juvenile and family related research, training, or technical assistance which have been national in scope. (10 points)

2. Adequate fiscal controls and accounting procedures to ensure that the applicant can effectively implement a project of this size and scope, and to ensure the proper disbursal and accounting of Federal funds. (10 points)

B. Soundness of the Proposed Strategy (30 Points)

Understanding of the nature of the program area and the soundness of the approach to each stage of the program for meeting the goals and objectives; and potential utility of proposed products.

C. Qualifications of Project Staff (20 Points)

1. The qualifications of staff identified to manage and implement the program including staff to be hired through contracts. (10 Points)

2. The clarity and appropriateness of position descriptions, required qualifications and selection criteria relative to the specific functions set out in the Implementation Plan. (10 Points)

D. Clarity and appropriateness of the program implementation plan (15 Points)

Adequacy and appropriateness of the activities, and the project management structure; and the feasibility of the time-task plan.

E. Budget (15 Points)

Completeness, reasonableness, appropriateness and cost-effectiveness of the proposed costs, in relationship to the proposed strategy and tasks to be accomplished.

Applications will be evaluated by a peer review panel. The results of peer review will be a relative aggregate ranking of applications in the form of "Summary of Ratings". These will ordinarily be based on numerical values assigned by individual peer reviewers. Peer review recommendations, in conjunction with the results of internal review and any necessary supplementary review, will assist the Administrator in considering competing applications and in selection of the application for funding. The final award decision will be made by the OJJDP Administrator.

VIII. Submission Requirements

All applicants responding to this solicitation should be aware of the following requirements for submission:

1. Organizations which plan to respond to this announcement are requested to submit written notification of their intent to apply to OJJDP by August 31, 1987. Such notification should specify: the name of the applicant organization, mailing address, telephone number, and primary contact person. In the event that organizations intend to apply as co-applicants, each of the co-applicants are to provide the above information. The submission of this notification is optional. It is requested to assist OJJDP in estimating the workload associated with the review of applications and for notifying potential applicants of any supplemental information related to the preparation of their applications.

2. Applicants must submit the original signed application and three copies to OJJDP. The necessary forms for applications (Standard Form 424) will be provided upon request. Applications must be received by mail or hand delivered to the OJJDP by 5:00 p.m. EST on September 7, 1987. Those applications sent by mail should be addressed to Lois Brown, SED/OJJDP, U.S. Department of Justice, 633 Indiana Avenue NW., Washington, DC 20531. Hand delivered applications must be taken to the OJJDP, Room 742, 633 Indiana Avenue NW., Washington, DC between the hours of 8:00 a.m. and 5:00 p.m. except Saturdays, Sundays or Federal holidays.

3. The OJJDP will notify applicants in writing of the receipt of their application. Subsequently, applicants will be notified by letter as to the decision made regarding whether or not their submission will be recommended for funding. It is anticipated that the grant may be awarded as early as September, 1987.

IX. Civil Rights Compliance

A. All recipients of OJJDP assistance must comply with the nondiscrimination requirements of the Juvenile Justice and Delinquency Prevention Act of 1974 as amended; Title VI of the Civil Rights Act of 1964; section 504 of the Rehabilitation Act of 1973 as amended; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Departmnent of Justice Non-Discrimination Regulations (28 CFR Part 42, Subparts C, D, E, and G).

B. In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office of Civil Rights Compliance (OCRC) of the Office of Justice Programs.

C. Applicants shall maintain such records and submit to the OJJDP upon request timely, complete and accurate data establishing the fact that no person or persons will be or have been denied or prohibited from participation in, benefits of, or denied or prohibited from obtaining employment in connection with any program activity funded in whole or in part with funds made available under this program because of their race, national origin, sex, religion, handicap or age. In the case of any program under which a primary recipient of Federal funds extends financial assistance to any other recipient or contracts with any other person(s) or group(s), such other

recipient, person(s) or group(s) shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to assure its civil rights compliance obligations under any award.

X. References

Hawkins, J.D., Lishner, D.M., Jenson, J.M., Catalano, R.F. "Delinquents and Drugs: What the Evidence Suggests About Prevention and Treatment Programming," Paper prepared for the National Institute on Drug Abuse, July, 1986.

Verne L. Speirs,

Administrator, Office of Juvenile and Delinquency Prevention.

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Wednesday
August 5, 1987

Part VI

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Demonstration of Post Adjudication Non-Residential Intensive Supervision Programs; Notice

DEPARTMENT OF JUSTICE

Demonstration of Post Adjudication Non-Residential Intensive Supervision Programs

AGENCY: Office of Juvenile and Delinquency Prevention, Justice.

ACTION: Notice of issuance of a solicitation for applications to demonstrate post adjudication, non-residential, intensive supervision programs for serious juvenile offenders.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) pursuant to section 224(a)(5) of the Juvenile Justice and Delinquency Prevention Act announces a program entitled: Demonstration of Post Adjudication Non-Residential Intensive Supervision Programs for Serious Juvenile Offenders.

Two of the most widely accepted findings of juvenile delinquency research during the past decade concern the contribution of chronic offenders to the nation's crime problem and the ineffectiveness of correctional programs in reducing subsequent criminality. Program evaluations have not identified particular intervention strategies that consistently produce recidivism rates lower than would be expected in the absence of the intervention, although there is growing evidence that some strategies seem to be effective with different tyes of offenders. Since the ultimate fate of the juvenile justice system rests largely on its capability to control serious juvenile crime, the focus will be on programs for reducing recidivism among serious juvenile offenders.

The purpose of this project is to assist the field by identifying promising and effective intensive supervision programs and demonstrating the program models in selected sites.

Public agencies and not-for-profit private organizations are invited to submit applications to enter into a cooperative agreement with OJJDP. OJJDP will select the applicant which presents the most cost-effective approach and which best demonstrates the organizational capability, knowledge, and experience to conduct a multisite demonstration program. The project period is three years. OJJDP has allocated up to $350,000 for the first 24 months. Based on successful completion of the first budget period a non-competitive continuation project is anticipated. Applicants are encouraged to submit cost-competitive proposals. The deadline for the receipt of applications is September 7, 1987.

The competition will be conducted according to the OJJDP Competition and Peer Review Policy, 28 CFR Part 34, Subpart A published August 2, 1985 at 50 FR 31365–31367.

FOR FURTHER INFORMATION CONTACT: Richard Sutton, Research and Program Development Division, Telephone (202) 724–5929, or Frank Smith, Special Emphasis Division, Telephone (202) 724–5914, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Ave., NW., Washington, DC 20531.

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I. Introduction and Background

Juvenile delinquency research has documented the unacceptably high contribution of serious juvenile offenders to the national crime problem. Juveniles accounted for approximately 30 percent of all 1985 arrests for property and violent offenses combined. Violent juvenile crime constituted a relatively small percentage (4.2 percent) of all 1985 juvenile arrests. Based on national studies of self-reported delinquency, most American adolescents (up to 70 percent) have been involved in delinquent behavior. Serious juvenile crime is concentrated, however, among a small proportion of juvenile offenders.

Chronic juvenile offenders, who constitute approximately five percent of the male juvenile population and less than 18 percent of all male juveniles arrested, represent more than a costly failure for the juvenile justice system. They also represent a substantial proportion of the group that will eventually become the core of the adult career criminal population. Age at first arrest, frequency of juvenile contacts, and confinement to a state training school are all strong predictors of adult recidivism (Blumstein et al., 1986: Hoffman, 1983; Klein and Caggiano, 1986). High rate offending chronic juvenile offenders are at the core of the predatory street crime problem (Blumstein et. al., 1986; Chaiken and Chaiken, 1982; Greenwood and Abrahamse, 1982; Visher, 1986).

In 1985, a total of 1,040 public operated state and local juvenile detention and correctional facilities held approximately 49,300 juveniles. At the same time, approximately 2,000 private facilities housed about 34,000 juveniles.

Most states now spend somewhere between $25,000 and $50,000 per year to provide security and program services for youth, often after they have passed through an extensive series of community-based programs. After their release, however, more than 70 percent are usually re-arrested within one year and more than 50 percent are returned to some form of secure confinement. (Greenwood and Abrahamse, 1982; Haapasen and Jesness, 1982).

One reason for this failure may be the inadequacies of the correctional programs to which they are committed. The principal factors that will influence post adjudicatory supervision issues in the immediate future are: (1) Current facility overcrowding, (2) a projected decline in the numbers of offenders, and (3) effectiveness of existing programs. Temporary overcrowding will be alleviated by favorable demographic trends, necessitating alternatives to capital-intensive approaches. The population is shifting toward a higher proportion of low crime rate adults and a lower proportion of high crime rate juveniles as the baby boom cohorts are aging out of the juvenile-court jurisdiction. It is essential to develop intensive supervision programs that can control serious juvenile offenders, without the costs and inflexibility of traditional secure confinement.

In response to intense public and professional criticism, juvenile agencies throughout the country have begun to experiment with a variety of different supervisory strategies and techniques. Among the more stringent approaches that have been deployed are: mandatory substance abuse treatment, electronic monitoring, reportive sanctioning, and intensive probation supervision. Two dominant factors appear to be driving current efforts to develop new programs of this type: the search for viable and meaningful sentencing options to relieve crowding, and the attempt to satisfy public demand for more accountable forms of community-based control. Typically, intensive supervision programs are designed for serious and/or chronic offenders who otherwise would have been committed to correctional facilities, but through an objective system of diagnosis and classification, have been identified as amenable to community sentencing. The definition of serious and chronic offenders varies for different communities depending on local norms regarding delinquent behavior, law enforcement policies, etc., however, it usually encompasses at least two

dimensions—the nature of the presenting offense and prior offense history. The programs are usually characterized by small caseloads, individualized community sentencing plans, intensive surveillance, and specialized roles for probation officers. (Greenwood, Peter W. and Franklin Zimring, 1985).

Program Goals and Objectives

A. Goals

1. To identify and assess operational or effective intensive supervision programs;
2. To provide the capability to selected localities to implement effective intensive supervision programs for serious offenders through intensive training and technical assistance; and,
3. To disseminate effective post adjudicatory non residential intensive supervision program designs for the supervision of serious juvenile offenders.

B. Objectives

1. Assess existing research and programs which focus on post adjudicatory non-residential intensive supervision;
2. Develop operational manuals based on selected programs;
3. Develop training and technical assistance materials to transfer selected program models; and,
4. Provide training and technical assistance to selected sites to demonstrate the program models. (Applicants are advised that this stage of the demonstration initiative will not be funded during the initial budget period, however, demonstration of the program is one of the primary objectives of this initiative.)

III. Program Strategy

OJJDP planning and program development activities are guided by a framework which specifies four sequential phases of development: research, development, demonstration and dissemination.

The purpose of the demonstration phase is to identify promising or effective operational programs, and to implement the program models in selected jurisdictions in order to demonstrate their feasibility and effectiveness to the field.

OJJDP programs located at the demonstration phase are developed incrementally in four discrete stages: (1) Assessment, (2) operational manual development, (3) training and technical assistance development, and (4) training and technical assistance to demonstration sites. This solicitation calls for applications to complete the *demonstration* phase of the development process in order to assist the juvenile justice system in designing and implementing more effective intensive supervision programs. The purpose of this demonstration is to identify operational promising or effective intensive supervision programs, and demonstrate the program models in selected sites.

An advisory committee established specifically for this program will provide comments and recommendations to the recipient regarding the program strategy and activities. It may be necessary to change or supplement advisory committee members for different stages of the program. The advisory committee members should have combined expertise in juvenile corrections research and program evaluation, training and technical assistance delivery, and experience and knowledge of community youth services delivery systems. Each stage of the incremental demonstration process is designed to result in a complete and publishable product (e.g., final demonstration report) and a dissemination strategy to inform the field of the development of the program, and the results and products of each stage. A decision will be made at the completion of each stage, based on availability of funds, and the quality and utility of the products, whether to invest additional funds to complete the current stage or terminate the program.

Stage 1—Assessment

The first stage of the program consists of an assessment of programs and information related to the implementation and operation of post adjudication non-residential intensive supervision programs. The literature review should address the definition of "serious" offender, number and characteristics of serious offenders adjudicated in juvenile courts, and the effectiveness of dispositions for these youth. The purpose of the literature review is to identify the most definitive theoretical and empirical research findings in order to apply them to the review of operational programs, and the selection of the most promising or effective approaches.

The recipient will develop criteria for identifying promising approaches to post adjudication, non-residential, intensive supervision, and use the criteria to select programs for review and documentation. Information to be collected and assessed should include, at a minimum, the historical development of the program; conceptual framework/theoretical assumptions; number and type of youth served; program costs per unit of service and per client; evaluation findings; sources of funding; staffing requirements; and program approach to management and administration.

The assessment should provide the basis for selecting the programs most appropriate for demonstration. The assessment phase may reveal that many programs have very effective components, but there are none which meet the majority of the criteria at a sufficient level to justify nationwide demonstration. An additional developmental phase will be initiated to design prototypical programs based on the best information available through the assessment and other sources. Evaluation issues which should be addressed through the demonstration program should be identified.

Activities

The major activities of this stage are:

1. Establishment of the advisory committee;
2. Development of the assessment plan;
3. Review of the literature;
4. Development of criteria for identifying promising programs;
5. Identification and description of operational promising programs;
6. Preparation of assessment report; and,
7. Development and implementation of a dissemination strategy.

Products

The products to be completed in this stage are:

1. Assessment plan—specifying each step of the assessment process in detail;
2. Draft report which includes:

—Literature review
—Criteria for identifying promising programs
—Recommendations for refining the goals and objectives of the program
—Descriptions of promising/effective programs

3. Final report;
4. Recommendations for developing program operation manuals; and,
5. Dissemination strategy to inform the field of the development of the program, and the products and results of this stage.

Stage 2—Development of Descriptive Program Operation Manuals

Upon successful completion of Stage 1, and with the approval of OJJDP, the recipient will develop descriptive program operation manuals for post adjudication, non-residential, intensive supervision programs.

The activities and products of this stage will be based on the information generated as a result of the assessment. Appropriate technical and subject matter expertise will be utilized to design the operation manuals which detail the promising programs.

The operation manuals will provide guidance regarding: identification of the appropriate target population; relationship of the program to other public and private youth and family serving agencies; funding; program organization and management; the philosophy and content of the supervision; resource development; program monitoring; and evaluation of program effectiveness. This information will become part of a training and technical assistance package for dissemination to the appropriate state and local agencies. The recipient will also develop a strategy for demonstrating the promising approaches.

Activities

The major activities of this stage are:

1. Preparation of a plan for developing the operation manuals:
2. Development of the operation manuals;
3. Participation and review by the advisory committee;
4. Development of recommendations for a program announcement to select demonstration sites;
5. Development of a demonstration strategy; and,
6. Development and implementation of a dissemination strategy.

Products

The products to be completed in this stage are:

1. Plan for operation manuals development;
2. Draft and final operations manuals design(s);
3. Demonstration strategy; and,
4. Dissemination strategy to inform the field of the development of the program, and the products and results of this stage.

Stage 3—Training and Technical Assistance Development Activities

Upon successful completion of Stage 2, and with the approval of OJJDP, the recipient will prepare a plan for developing the training and technical assistance packages. Based on the plan, the recipient will transfer the program operation manuals and related materials into a training and technical assistance package. Comprehensive training manuals that detail the program design and operation must be developed to encourage and facilitate implementation of the promising programs in the final stage of the demonstration phase.

The training manual should be the focal point of the entire training and technical assistance package. The major audience will be policymakers and practitioners involved in resource allocation and program development related to post adjudication, non-residential, intensive supervision programs. The manual should be designed for presentation in formal training sessions and for independent use in jurisdictions that do not participate in formal training sessions. Therefore, each manual should include a complete description of a promising program and incorporate related policies and procedures. The manual should also contain instructions and supplementary materials for trainers to facilitate presentation, and to assure understanding and successful adaptation and implementation of the promising programs.

The recipient will recruit and prepare the training and technical assistance personnel to be involved in this demonstration effort. Following this, the training curricula will be tested by the recipient on a limited basis. The recipient will develop a set of recommendations for use by OJJDP in issuing a program announcement for the selection of demonstration sites. Further, the recipient will develop and implement a dissemination strategy to ensure broad distribution of the operations manual and related materials.

The recipient will, as part of the demonstration strategy, develop a strategy to conduct a series of seminars or conferences, nationally, to inform the field about the promising programs.

Activities

The major activities of this stage are:

1. Preparation of a plan for developing the training and technical assistance package;
2. Development of the training and technical assistance materials;
3. Recruitment and preparation of the training and technical assistance personnel;
4. Testing of training curriculum package;
5. Participation and review by the advisory committee;
6. Development of a dissemination strategy to inform the field of the development of the program, and the products and results of this stage.

Products

The products to be completed during this stage are:

1. Plan for the development of the training and technical assistance package;
2. Identification of training and technical assistance personnel;
3. Draft and final training and technical assistance package including the training manual and information materials; and,
4. Dissemination strategy.

Stage 4—Provision of Training and Technical Assistance to Demonstration Sites

While a decision to demonstrate the model designs will be made during or following completion of the operations manual development stage, the applicant is expected to explain the methods and approaches that would be employed to implement this stage. As noted, funds for this stage will be provided through noncompetitive continuation awards. In order to ensure the applicant's understanding of the entire demonstration effort, the initial application must address and explain the implementation and coordination of all four stages of the initiative (i.e., assessment, operations manual development, training and technical assistance development, and provision of training and technical assistance to demonstration sites).

During this stage, the recipient will provide site selection assistance to OJJDP to facilitate the selection of the demonstration sites. Once these sites are selected and become operational, the recipient will provide intensive training and technical assistance support to them, to enhance the overall operational success of these sites. Further, the recipient must provide similar intensive training and technical assistance to those demonstration sites implementing the program evaluation. The recipient will implement a dissemination strategy, to present the program and evaluation results to policymakers and practitioners at the state and local level. Finally, the recipient will be expected to work cooperatively with an independent evaluator to ensure the integrity of the data collection and feedback activities.

Activities

The major activities of this stage are:

1. Assistance to OJJDP in review and selection of demonstration sites;
2. Provision of intensive training and technical assistance to demonstration sites;
3. Assistance to sites in implementing the program evaluation; and
4. Implementation of a dissemination strategy.

Products

The products to be completed during this stage are:

1. Plan for providing training and technical assistance to demonstration sites;

2. Dissemination strategy to inform the field of the development of the program, and the products and results of this stage.

IV. Dollar Amount and Duration

Up to $350,000 has been allocated for the initial award. One cooperative agreement will be awarded competitively, and the initial budget period will be for 24 months. It is anticipated that this demonstration program will entail three (3) years of program activities (i.e. three year project period), and consist of four stages (assessment, operational manual development, training and technical assistance development, and training and technical assistance to demonstration sites). The initial award will provide support for stages one through three. Supplemental funds will be allocated for an additional budget period.

Each noncompeting continuation award, i.e. each additional budget period within the approved three year project period, may be withheld for justifiable reasons. They include: (1) The results do not justify further program activity; (2) the recipient is delinquent in submitting required reports; (3) adequate grantor agency funds are not available to support the project; (4) the recipient has failed to show satisfactory progress in achieving the objectives of the project or otherwise failed to meet the terms and conditions of the award; (5) a recipient's management practices have failed to provide adequate stewardship of grantor agency funds; (6) outstanding audit exceptions have not been cleared; and (7) any other reason which would indicate that continued funding would not be in the best interest of the Government.

V. Eligibility Criteria

Eligible applicants include public agencies and not-for-profit private research, and juvenile justice development and service delivery agencies and organizations. Applicant agencies or organizations may submit joint proposals with other eligible organizations provided one is designated in the application as the applicant, and any co-applicants are designated as such. The applicant or co-applicants must demonstrate in the application that they have experience in the following areas in order to be eligible for consideration:

A. Design and implementation of research on the effectiveness of correctional programs; and design and implementation of correctional programs;

B. Demonstrated knowledge of the issues associated with the development, implementation and operation of juvenile intensive supervision programs; and

C. Management and financial capability to effectively implement a project of this scope and complexity.

VI. Program Application Requirements

All applicants must submit a completed Standard Form 424, Application for Federal Assistance (SF–424), including a program narrative, a detailed budget and a budget narrative. All applications must include in the program narrative the information outlined in this section of the solicitation. The program narrative should not exceed 70 double-spaced pages in length. Applications which propose non-competitive contracts for the provision of specific services must include a sole source justification for any procurement in excess of $10,000.

In submitting applications which contain more than one organization, the relationships among the parties must be set forth in the application. As a general rule, organizations which describe their working relationship in the development of products and the delivery of services as primarily cooperative or collaborative in nature will be considered as co-applicants. In the event of a co-applicant submission, one co-applicant must be designated as the payee to receive and disburse project funds and be responsible for the supervision and coordination of the activities of the other co-applicants. Under this arrangement, each organization would agree to be jointly and severally responsible for all project funds and services. Each co-applicant must sign the SF–424 and indicate their acceptance of the conditions of joint and several responsibility with the other applicants.

In addition to the requirements specified in the instructions for preparation of Standard Form 424, the following information must be included in the application:

A. *Organizational Capability*—Applicants must demonstrate that they are eligible to compete for this cooperative agreement on the basis of eligibility criteria established in this solicitation.

1. Organizational Experience—Applicants must concisely describe their organizational experience with respect to the eligibility criteria specified above. Applicants must demonstrate how their organizational experience and capabilities will enable them to achieve the goals and objectives of this initiative. Applicants are invited to append one example of prior work products of similar nature to their application.

2. Financial Capability—In addition to the assurances provided in Part V, Assurances (SF–424), applicants must also demonstrate that their organization has or can establish fiscal controls and accounting procedures which assure that Federal funds available under this agreement are disbursed and accounted for properly. Applicants who have not previously received federal funds will be asked to submit a copy of the Office of Justice Programs (OJP) Accounting System and Financial Capability Questionnaire (OJP Form 7120/1).

Copies of the form will be provided in the application kit and must be prepared and submitted along with the application. Other applicants may be requested to submit this form. All questions are to be answered regardless of instructions (Section C.I.B. note). The CPA certification is required only of those applicants who have not previously received Federal funding.

B. *Program Goals*—A succinct statement of your understanding of the goals and objectives of the program should be included. The application should also include a problem statement and a discussion of the potential contribution of this program to the field.

C. *Program Strategy*—Applicants should describe the proposed approach for achieving the goals and objectives of the Program. A discussion of how each of the four stages of the program would be accomplished should be included.

D. *Program Implementation Plan*—Applicants should prepare a plan which outlines the major activities involved in implementing the program and describes how they will allocate available resources to implement the program, and how the program will be managed.

The plan must also include an annotated organizational chart depicting the roles and describing the responsibilities of key organizational/functional components; and a list of key personnel responsible for managing and implementing the four major elements of the program. Applicants must present detailed position descriptions, qualifications, and selection criteria for each position. Applicants should also provide recommendations for program advisory committee members. This documentation and individuals' resumes

may be submitted as appendices to the application.

E. *Time-Task Plan*—Applicants must develop a time-task plan for the 24-month project period, clearly identifying major milestones and products. This must include designation of organizational responsibility and a schedule for the completion of the tasks and products identified in Section III and indicate the anticipated cost schedule per month for the entire project period.

F. *Products*—Applicants must concisely describe the interim and final products of each stage of the program, and must address the purpose, audience, and usefulness to the field of each product.

G. *Program Budget*—Applicants shall provide a 24-month budget with a detailed justification for all costs, including the basis for computation of these costs. Applicants should include a budget estimate to complete the balance of the program. Applications submitted by co-applicants and/or those containing contract(s) must include detailed budgets for each organization's expenses. The budget should include funds for a four person advisory committee to meet four times during the first 24-month budget period.

VII. Procedures and Criteria for Selection

All application will be evaluated and rated based on the extent to which they meet the following weighted criteria. In general, all applications received will be reviewed in terms of their responsiveness to the minimum program application requirements, organizational capability, and thoroughness and innovativeness in responding to strategic issues in project implementation. Applications will be evaluated by a peer review panel according to the OJJDP Competition and Peer Review Policy, 28 CFR Part 34, Subpart B, published August 2, 1985 at 50 FR 31366–31367. The selection criteria and their point values (weights) are as follows:

A. Organizational Capability (20 Points):

1. The extent and quality of organizational experience in the development, delivery, and coordination of post adjudication non-residential intensive supervision related research, training, or technical assistance which have been national in scope. (10 points)

2. Adequate fiscal controls and accounting procedures to ensure that the applicant can effectively implement a project of this size and scope, and to ensure the proper disbursal and accounting of Federal funds. (10 points)

B. Soundness of the Proposed Strategy (30 Points). Understanding of the nature of the program area and the soundness of the approach to each stage of the program for meeting the goals and objectives; and potential utility of proposed products.

C. Qualifications of Project Staff (20 Points):

1. The qualifications of staff identified to manage and implement the program including staff to be hired through contracts. (10 points)

2. The clarity and appropriateness of position descriptions, required qualifications and selection criteria relative to the specific functions set out in the Implementation Plan. (10 points)

D. Clarity and appropriateness of the program implementation plan (15 Points). Adequacy an appropriateness of the activities, and the project management structure; and the feasibility of the time-task plan.

E. Budget (15 Points).

Completeness, reasonableness, appropriateness and cost-effectiveness of the proposed costs, in relationship to the proposed strategy and tasks to be accomplished.

Applications will be evaluated by a peer review panel. The results of peer review will be a relative aggregate ranking of applications in the form of "Summary of Ratings". These will ordinarily be based on numerical values assigned by individual peer reviewers. Peer review recommendations, in conjunction with the results of internal review and any necessary supplementary review, will assist the Administrator in considering competing applications and in selection of the application for funding. The final award decision will be make by the OJJDP Administrator.

VIII. Submission Requirements

All applicants responding to this solicitation should be aware of the following requirements for submission:

1. Organizations which plan to respond to this announcement are requested to submit written notification of their intent to apply to OJJDP by August 17, 1987. Such notification should specify: The name of the applicant organization, mailing address, telephone number, and primary contact person. In the event that organization intend to apply as coapplicants, each of the co-applicants are to provide the above information. The submission of this notification is optional. It is requested to assist OJJDP in estimating the workload associated with the review of applications and for notifying potential applicants of any supplemental information related to the preparation of their applications.

2. Applicants must submit the original signed application and three copies to OJJDP. The necessary forms for applications (Standard Form 424) will be provided upon request. Applications must be received by mail or hand delivered to the OJJDP by 5:00 p.m. EST on September 7, 1987. Those applications sent by mail should be addressed to Richard Sutton, NIJJDP/OJJDP, U.S. Department of Justice, 633 Indiana Avenue, NW., Washington, DC 20531. Hand delivered applications must be taken to the OJJDP, Room 780, 633 Indiana Avenue, NW., Washington, DC between the hours of 8:00 a.m. and 5:00 p.m. except Saturdays, Sundays or Federal holidays.

3. The OJJDP will notify applicants in writing of the receipt of their application. Subsequently, applicants will be notified by letter as to the decision made regarding whether or not their submission will be recommended for funding. It is anticipated that the grant may be awarded as early as September, 1987.

IX. Civil Rights Compliance

A. All recipients of OJJDP assistance must comply with the non-discrimination requirements of the Juvenile Justice and Delinquency Prevention Act of 1974 as amended; Title VI of the Civil Rights Act of 1964; section 504 of the Rehabilitation Act of 1973 as amended; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Department of Justice Non-Discrimination Regulations (28 CFR Part 42, Subparts C, D, E, and G).

B. In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds or race, color, religion, national origin or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office of Civil Rights Compliance (OCRC) of the Office of Justice Programs.

C. Applicants shall maintain such records and submit to the OJJDP upon request timely, completre and accurate data establishing the fact that no person or persons will be or have denied or prohibited from participation in, benefits of, or denied or prohibited from obtaining employment in connection with any program activity funded in whole or in part with funds made available under this program because of their race, national origin, sex, religion, handicap or age. In the case of any

program under which a primary recipient of Federal funds extends financial assistance to any other recipient or contracts with any other person(s) or group(s), such other recipient, person(s) or group(s) shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to assure its civil rights compliance obligations under any grant award.

X. References

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Verne L. Speirs,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

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