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Presidential Documents

Title 3—

The President

Proclamation 5720 of October 5, 1987

Polish American Heritage Month, 1987

By the President of the United States of America

A Proclamation

During October the people of the United States recognize and rejoice in the many accomplishments of generations of Polish Americans. From the founding of our Republic to the present day, Poles have enriched, strengthened, and defended our Nation. Millions of Polish Americans have attained great success in the arts, sciences, scholarship, and every other field of endeavor, but perhaps their most special gifts to America have been the faith and love of liberty Poles have cherished through the centuries.

That Polish love of liberty manifested itself in the hard, early days of the American Revolution when Polish freedom fighters such as Kosciuszko and Pulaski stood with us for independence. They knew the profound truth that freedom's cause is universal, that in struggling for our freedom they were working for Poland's freedom and for all mankind's. They knew that once America had fired "the shot heard 'round the world" no tyrant could ever again rest easy.

Today, as always, Americans stand in solidarity with the continuing Polish struggle for political, religious, and economic liberty. By advocating these precious freedoms so eloquently and forthrightly, His Holiness John Paul II and Lech Walesa have come to symbolize hope, justice, and human dignity to all Americans and to countless millions around the world. Their idealism, self-sacrifice, and devotion inspire us as we express our thanks to Polish Americans and our pride in our country's Polish heritage.

The Congress, by Senate Joint Resolution 135, has designated the month of October 1987 as "Polish American Heritage Month" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE I, RONALD REAGAN, President of the United States of America, do hereby proclaim October 1987 as Polish American Heritage Month. I urge all Americans to join their fellow citizens of Polish descent in observance of this month.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of October, 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. 87-23357
Filed 10-5-87; 4:36 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5721 of October 5, 1987

Benign Essential Blepharospasm Awareness Week, 1987

By the President of the United States of America

A Proclamation

A little-known but debilitating neuromuscular disease produces functional blindness in thousands of Americans. The disorder, benign essential blepharospasm, causes involuntary and usually uncontrollable spasms of the muscles around the eyes that force the eyelids shut. As the disease progresses, the spasms become almost continuous.

Approximately 30,000 Americans suffer from benign essential blepharospasm. Most of them first experience symptoms in their fifth or sixth decade, although younger people are also affected. In the early stages of the disease, when the patient experiences an occasional extra wink or blink, there is only a slight impact on the quality of life. But when the spasms are more frequent, the patient cannot perform simple tasks such as reading or cooking, and ordinary activities such as driving a car become dangerous.

Treatment with drugs or surgery can temporarily relieve the symptoms of benign essential blepharospasm, but as yet there is no cure. Scientists are attempting to find improved treatments and to learn more about the causes of this condition. Three biomedical research agencies—the National Institute of Neurological and Communicative Disorders and Stroke, the National Eye Institute, and the National Institute of Mental Health—lead the Federal research attack. Support for research is also provided by the Benign Essential Blepharospasm Research Foundation, Inc., a voluntary agency known for its efforts to assist patients and their families.

To increase public awareness of benign essential blepharospasm, the Congress, by House Joint Resolution 224, has designated the week of October 18 through October 24, 1987, as "Benign Essential Blepharospasm Awareness Week" and authorized and requested the President to issue a proclamation in observance of that week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning October 18, 1987, as Benign Essential Blepharospasm Awareness Week, and I call upon the people of the United States to observe that week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of October, 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. 87-23358
Filed 10-5-87; 4:37 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5722 of October 5, 1987

Leif Erikson Day, 1987

By the President of the United States of America

A Proclamation

Our Nation sets aside October 9 each year to honor Leif Erikson and to celebrate our country's Nordic heritage. Almost a thousand years ago this young Viking explorer set out from Norway to convert Greenlanders to Christianity. He eventually reached North America and brought back reports of places he called Helluland, Markland, and Vinland. The explorers, missionaries, settlers, and adventurers who followed him in later centuries shared his bold spirit. The memory of Leif Erikson continues to inspire all who would chart new territory for the good of mankind.

Many who settled in North America were Nordics. Like "Leif the Lucky" they displayed great determination and courage as they came to a new world. They and their descendants have truly contributed much to our national heritage; the strength of character and spirit of adventure they trace to their ancestors, including Leif Erikson, are traits Americans will always revere as quintessentially American.

In honor of Leif Erikson and our Nordic American heritage, the Congress, by a joint resolution approved on September 2, 1964 (78 Stat. 849, 36 U.S.C. 169c), has authorized the President to proclaim October 9 of each year as "Leif Erikson Day."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim October 9, 1987, as Leif Erikson Day, and I direct the appropriate government officials to display the flag of the United States on all government buildings on that day. I also invite the people of the United States to honor Leif Erikson and our Nordic American heritage by holding appropriate exercises and ceremonies in suitable places throughout our land.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of October, 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. 87-23359
Filed 10-5-87; 4:38 pm]
Billing code 3195-01-M

Rules and Regulations

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

DEPARTMENT OF AGRICULTURE

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This document amends the delegations of authority from the Secretary of Agriculture and General Officers of the U.S. Department of Agriculture (USDA) to designate the Assistant Secretary for Governmental and Public Affairs as the central printing authority and the central public information authority in the USDA.

EFFECTIVE DATE: October 7, 1987.

FOR FURTHER INFORMATION CONTACT: Robert L. Siegler, Deputy Assistant General Counsel, USDA, Washington, DC, (202) 447-6035.

SUPPLEMENTARY INFORMATION: In 1977, the Secretary of Agriculture designated the Assistant Secretary for Governmental and Public Affairs as the central printing authority in the USDA. In addition, the Assistant Secretary by virtue of his responsibilities is the central public information authority in the USDA. The purpose of this document is to reflect those responsibilities in the delegations made to the Assistant Secretary.

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

Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by the Regulatory Flexibility Act, and thus, is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

Accordingly, Part 2, Subtitle A, Title 7, Code of Federal Regulations is amended as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority for Part 2 continues to read as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953, unless otherwise noted.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

2. Section 2.29 is amended by revising paragraphs (c)(4) and (c)(5) to read as follows:

§ 2.29 Delegations of authority to the Assistant Secretary for Governmental and Public Affairs.

* * * * *

(c) * * *

(4) Serve as the central public information authority in the USDA, with the authority to determine policy for all USDA communication activities and agency information activities in order to provide leadership and centralized operational direction for USDA and agency information activities so that all material shall effectively support USDA policies and programs, including the defense program.

(5) Serve as the central printing authority in the USDA, with authority to represent the USDA with Joint Committee on Printing of the Congress, the Government Printing Office, and other Federal and State agencies on information matters.

* * * * *

For Subpart C:

Date: October 2, 1987.

Richard E. Lyng,

Secretary of Agriculture.

[FR Doc. 87-23167 Filed 10-6-87; 8:45 am]

BILLING CODE 3410-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Regulation A]

Extensions of Credit by Federal Reserve Banks; Change in Discount Rates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors has ameded its Regulation A, "Extensions of Credit by Federal Reserve Banks," for the purpose of increasing discount rates.

The action reflects the intent of the Federal Reserve to deal effectively and in a timely way with potential inflationary pressure.

The Board acted on requests submitted by the Boards of Directors of the twelve Federal Reserve Banks. The discount rate is the interest rate that is charged depository institutions when they borrow from their district Federal Reserve Banks.

EFFECTIVE DATE: The changes were effective on the dates specified below.

FOR FURTHER INFORMATION CONTACT: William W. Wiles, Secretary of the Board (202/452-3257); for the hearing impaired *only*, Telecommunications Device for the Deaf (TTD) (202/452-3544), Earnestine Hill or Dorothea Thompson, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Pursuant to the authority of sections 10(b), 13, 14, 19, et al., of the Federal Reserve Act, the Board has amended its Regulation A to incorporate changes in discount rates on Reserve Bank extensions of credit. Further, under the authority of 5 U.S.C. 553(b)(3)(B) and (d)(3), these amendments are being published without prior general notice of proposed rulemaking, public participation, or deferred effective date. The Board has for good cause found that current economic and financial considerations require that these amendments be adopted immediately.

List of Subjects in 12 CFR Part 201

Banks, banking, Credit, Federal Reserve System.

For the reasons outlined above, the Board of Governors amends 12 CFR Part 201 as set forth below:

PART 201—[AMENDED]

1. The authority citation for 12 CFR Part 201 continues to read as follows:

Authority: Secs. 10(a), 10(b), 13, 13a, 14(d) and 19 of the Federal Reserve Act (12 U.S.C. 347a, 347b, 343 et seq., 347c, 348 et seq., 357, 374, 374a and 461); and sec. 7(b) of the International Banking Act of 1978 (12 U.S.C. 347d).

2. Section 201.51 is revised to read as follows:

§ 201.51 Short-term adjustment credit for depository institutions.

The rates for short-term adjustment credit provided to depository institutions under § 201.3(a) of Regulation A are:

Federal Reserve Bank	Rate	Effective
Boston	6	Sept. 9, 1987.
New York	6	Sept. 4, 1987.
Philadelphia	6	Do.
Cleveland	6	Do.
Richmond	6	Sept. 5, 1987.
Atlanta	6	Sept. 4, 1987.
Chicago	6	Do.
St. Louis	6	Sept. 9, 1987.
Minneapolis	6	Sept. 8, 1987.
Kansas City	6	Sept. 4, 1987.
Dallas	6	Sept. 11, 1987.
San Francisco	6	Sept. 9, 1987.

3. Section 201.52 is revised to read as follows:

§ 201.52 Extended credit for depository institutions.

(a) Seasonal credit. The rates for regular seasonal credit extended to depository institutions under § 201.3(b)(1) of Regulation A are:

Federal Reserve Bank	Rate	Effective
Boston	6	Sept. 9, 1987.
New York	6	Sept. 4, 1987.
Philadelphia	6	Do.
Cleveland	6	Do.
Richmond	6	Sept. 5, 1987.
Atlanta	6	Sept. 4, 1987.
Chicago	6	Do.
St. Louis	6	Sept. 9, 1987.
Minneapolis	6	Sept. 8, 1987.
Kansas City	6	Sept. 4, 1987.
Dallas	6	Sept. 11, 1987.
San Francisco	6	Sept. 9, 1987.

(b) Temporary seasonal credit program. At the option of the borrower, interest on credit advanced under the temporary simplified seasonal credit program as revised on February 18, 1986, can be either at the basic discount rate (see § 201.51) or at a rate that is one-half percentage point above the basic rate and that will remain fixed during the time the credit is outstanding. The fixed rate for new loans may be changed as the basic discount rate and extended credit rates are changed. In no case should such borrowing, including renewals, be outstanding beyond February 1988.

(c) Other extended credit. The rates for other extended credit provided to depository institutions under sustained liquidity pressures or where there are exceptional circumstances or practices involving a particular institution under § 201.3(b)(2) of Regulation A are:

Federal Reserve Bank	Rate	Effective
Boston	6	Sept. 9, 1987.
New York	6	Sept. 4, 1987.
Philadelphia	6	Do.
Cleveland	6	Do.
Richmond	6	Sept. 5, 1987.
Atlanta	6	Sept. 4, 1987.
Chicago	6	Do.
St. Louis	6	Sept. 9, 1987.
Minneapolis	6	Sept. 8, 1987.
Kansas City	6	Sept. 4, 1987.
Dallas	6	Sept. 11, 1987.
San Francisco	6	Sept. 9, 1987.

These rates apply for the first 30 days of borrowing. For credit outstanding for more than 30 days, a flexible rate will be charged which takes into account rates on market sources of funds, but in no case will the rate charged be less than the basic discount rate plus one-half percentage point. Where credit provided to a particular depository institution is anticipated to be outstanding for an unusually prolonged period and in relatively large amounts, the 30-day time period may be shortened.

By order of the Board of Governors of the Federal Reserve System, October 1, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-23155 Filed 10-6-87; 8:45 am]

BILLING CODE 6210-01-M

EXPORT-IMPORT BANK OF THE UNITED STATES

12 CFR Part 404

Freedom of Information Reform Act of 1986; Revision of Fees, Fee Waiver Policy and Other Changes

AGENCY: Export-Import Bank of the United States.

ACTION: Final rule.

SUMMARY: The Export-Import Bank of the United States (Eximbank) is amending and updating its regulations which govern the processing of requests under the Freedom of Information Act, as amended (FOIA). These changes are necessary to implement certain provisions of the Freedom of Information Reform Act of 1986 (Pub. L. 99-570). Pursuant to Pub. L. 99-570, these amendments are written to follow the Uniform Freedom of Information Act Fee Schedule and Guidelines, published in the **Federal Register** in final form by the Office of Management and Budget on March 27, 1987.

DATE: Effective date: November 6, 1987.

FOR FURTHER INFORMATION CONTACT: Gregory Beams, (202) 566-8194 or Steven E. Hendrix, (202) 566-4784, Office of the General Counsel, Export-Import Bank of the United States, 811 Vermont Avenue, NW., Washington, DC 20571.

SUPPLEMENTARY INFORMATION: The Freedom of Information Reform Act of 1986 ("Reform Act") required the Office of Management and Budget to develop and issue a schedule of fees and guidelines applicable to the processing of FOIA requests. After publication of the proposed schedule and guidelines in the **Federal Register** on January 16, 1987, and consideration of numerous comments received, OMB issued its final rule regarding fees and relevant guidelines in the **Federal Register** on March 27, 1987. The Department of Justice provided agencies with advisory fee waiver policy guidance in a Memorandum dated April 2, 1987, issued by the Assistant Attorney General. The following amendments to 12 CFR Part 404 conform to OMB's schedule and guidelines, and utilize the Department of Justice guidance respecting fee waiver policy. Technical changes have also been made to reflect changess in the titles of Eximbank officers, and requirements for the use of specific forms have been deleted.

Eximbank published notice of these amendments to its regulations regarding Disclosure of Information on June 8, 1987, (52 FR 21569). Eximbank received comments from two organizations on the proposed rules. One organization submitted its comments after the comment period had closed. Eximbank fully considered the comments submitted by the organization despite the fact that they were submitted after the comment period had closed. Responses to the comments are provided on a section-by-section basis as follows:

Responses to Comments

Section 404.6(a)(8) Definitions: Representatives of the News Media.

Both commenters requested Eximbank to reexamine and change its definition of "representative of the news media." Eximbank, following OMB's guidelines, proposed to define "a representative of the news media" as "any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the

public," with "news" defined pursuant to the OMB guidelines as information that is about current events or that would be of current interest to the public. The commenters felt the definition of news should be dropped to preclude determinations by agency officials of what is news.

OMB concluded in the Sectional analysis to its final guidelines that it is reasonable to give some weight to the term "news" when developing the definition of a representative of the news media. Eximbank agrees with OMB's conclusion on this point. Therefore, in the final rule, "news media" is limited to those persons or organizations who disseminate information that is about current events or would be of current interest to the public.

Section 404.6(a)(8) Definitions: Freelance Journalist.

One commeter asked that the proposed definition of "freelance journalist" be deleted. The commenter suggested that the criterion in Eximbank's proposed rule for freelancer eligibility—i.e., "demonstrates a solid basis for expecting publication"—is at variance with the way many freelancers work in selling their project only after completion. Further, the commenter asserted that the criterion would work against first-time freelancers.

Eximbank's criteria for freelancer eligibility are taken directly from OMB's final guidelines to the agencies. OMB addressed the issues raised by the commenter in the supplementary information section and sectional analysis accompanying its final guidelines.

Eximbank believes that the OMB concept strikes a workable balance in expanding the "news media" to include freelance journalists but not just anyone calling himself or herself a freelance journalist. For these reasons, Eximbank is retaining the definition of "freelance journalist."

Section 404.6(e) Charges for Unsuccessful Search.

One commenter stated that this section omitted the opportunity for the requester to consult with the agency with the object of reformulating the request to meet his or her needs at a lower cost, as provided in the OMB guidelines. Eximbank agrees with this suggestion and has modified its rule accordingly.

Section 404.6(f) Aggregating Requests.

One commenter claimed that the proposed rule failed to note the presumption against aggregation when the requests have been made more than 30 days apart as noted in the OMB guidelines. The presumption described by the commenter is different from the presumption in the OMB guidelines, which contain a presumption in favor of aggregation when requests have been made less than 30 days apart. For requests made more than 30 days apart, the OMB guidelines state that "For requests made over a longer period, however, such a presumption becomes harder to sustain and agencies should have a solid basis for determining that aggregation is warranted in such cases." The only presumption noted in the OMB guidelines is in favor of aggregation and consequently, Eximbank does not believe that any presumption against aggregation need be incorporated into its final rule.

Section 404.6(i) Fee Waivers and Appeals.

The Freedom of Information Reform Act requires that individual agency regulations set forth procedures and guidelines for determining when FOIA fees should be waived or reduced. Both commenters objected to Eximbank's provision to implement this requirement, which Eximbank based upon the policy guidelines for fee waiver standards issued by the Department of Justice on April 2, 1987. The OMB Guidelines do not provide guidance on when fees should be waived, or address the statutory standard governing the waiver of FOIA fees, 5 U.S.C. 552(a)(4)(A)(iii).

The commenters felt that the Department of Justice guidance restricts the granting of fee waivers beyond what Congress intended in enacting the statute. One commenter recommended that Eximbank simply reiterate the language of the statute regarding waiver of fees, and the other commenter recommended that the fee waiver section be revised relying exclusively on original intent rather than on the Justice Department policy guidance. The commenters also suggested that the Justice guidance requires an agency to judge the newsworthiness of the requested material, or required an agency to assess the intentions of the requester.

Eximbank does not regard the Department of Justice guidance as expanding or restricting the availability of waivers under the statute. In the words of the Memorandum, "The Department of Justice stands committed to encouraging agencies to waive fees under the FOIA whenever the statutory fee waiver standard is met. By the same token, of course, agencies also are expected to respect the balance drawn in the statute, safeguarding federal funds by granting waivers or reductions only where it is determined that the statutory standard is satisfied."

The Department of Justice guidance as incorporated in Eximbank's regulations provides for a consistent analysis of fee waiver requests by breaking down the statutory standard (5 U.S.C. 552(a)(4)(A)(iii)) into a logical sequence of steps. The information requested as well as the requester's intentions must be considered in determining whether disclosure of the information is or is not, in the words of the Reform Act, "primarily in the commercial interest of the requester." For these reasons, Eximbank believes that its provisions regarding fee waiver are appropriate and consistent with the legislative intent and purpose, and that substantive changes in its fee waiver provisions are not warranted. The language has been slightly modified to clarify the manner in which the provisions will be applied to an individual fee waiver request.

Eximbank has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in:

(1) An annual effect on the economy of $100 million or more:

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

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

Eximbank has certified that this rule will not have a significant economic impact on a substantial number of small entities because only a very small percentage of that group will likely be affected by this regulation—i.e., those entities that choose to submit requests for records under the Freedom of Information Act, 5 U.S.C. 552. As a result, neither an initial nor final Regulatory Flexibility Analysis has been or will be prepared. This rule does not contain a collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 12 CFR Part 404

Disclosure of information.

For the reasons set forth in the preamble, 12 CFR Part 404 is amended as set forth below:

PART 404—[AMENDED]

1. The authority citation for Part 404 is revised to read as follows:

Authority: 5 U.S.C. 552; 12 U.S.C. 635; Freedom of Information Reform Act of 1986, Pub. L. 99-570; Debt Collection Act of 1982, Pub. L. No. 97-365.

§ 404.3 [Amended]

2. Amend 12 CFR 404.3(d) by removing "Public Affairs Office in Room 1267" and adding in lieu thereof "Office of the Secretary in Room 933".

§ 404.4 [Amended]

3. Amend 12 CFR 404.4(c)(1) by removing "Senior Vice President-Research and Communications" wherever it appears and adding in lieu thereof "Office of the General Counsel".

4. Amend 12 CFR Part 404.4(c)(1) by removing "EIB Form 73-5, described in paragraph (d) of this section, may be used in lieu of a letter for purposes of making the request."

5. Amend 12 CFR 404.4(c)(3) by removing "Senior Vice President-General Counsel" and adding in lieu thereof "General Counsel".

6. Amend 12 CFR Part 404.4(c)(4) by removing "Senior Vice President-General Counsel" and adding in lieu thereof "General Counsel".

7. Remove § 404.4(c)(6) and § 404.4(c)(7) in their entirety, and amend § 404.4(c)(8) by renumbering it as § 404.4(c)(6).

8. Remove 12 CFR 404.4(d).

9. Revise § 404.6 to read as follows:

§ 404.6 Schedule of fees.

(a) *Definitions.* (1) The term "direct costs" means those expenditures which Eximbank actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery.

(2) The term "search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Searches may be done manually or by computer using existing programming.

(3) The term "duplication" refers to the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others. The copy provided must be in a form that is usable by requesters.

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

(5) The term " 'commercial' 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 requester or the person on whose behalf the request is made. In determining whether a requester belongs in this category, Eximbank must determine the use to which a requester will put the documents requested. Where Eximbank has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, Eximbank may seek additional clarification before assigning the request to a specific category.

(6) 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.

(7) 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 (a)(5) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(8) 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. 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. "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but Eximbank may also look to the past publication record of a requester in making this determination.

(b) *Fees to be charged—general.* Eximbank will charge fees that recoup the full allowable direct costs it incurs, and will use the most efficient and least costly methods to comply with requests for documents made under the FOIA. Eximbank may contract with private sector services to locate, reproduce and disseminate records in response to FOIA requests when that is the most efficient and least costly method, and does not result in an ultimate cost to the requester greater than it would be if Eximbank had performed these tasks. Eximbank will not contract out responsibilities which the FOIA provides that it alone may discharge, such as determining applicability of an exemption, or determining whether to waive or reduce fees. When documents responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs, such as the Government Printing Office or the National Technical Information Service, Eximbank will inform requesters of the steps necessary to obtain records from those sources.

(1) *Manual searches for records.* Eximbank will charge for search and review work performed by its employees according to the following fee schedule:

Clerical, hourly rate—$12.00
Professional, hourly rate—$24.00

(2) *Computer searches for records.* Eximbank will charge the actual direct cost of providing the service. This will include the cost of operating the central processing unit for that portion of operating time that is directly attributable to searching for records responsive to a FOIA request and operator/programmer salary apportionable to the search. Operator/programmer salary will be calculated at basic pay plus 16 percent. Average rates for CPU operating costs and operator-programmer salaries involved in FOIA searches will be established and periodically revised to reflect actual direct costs. These rates will be available upon request.

(3) *Review of records.* Only requesters who are seeking documents for commercial use will be charged for time

Eximbank spends reviewing records to determine whether they are exempt from mandatory disclosure. Charges will be assessed only for the initial review, i.e., the review undertaken the first time Eximbank analyzes the applicability of a specific exemption to a particular record or portion of a record. Eximbank will not charge for review at the administrative appeal level of an exemption already applied. However, records or portions of records withheld in full under an exemption which is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review may be assessed. Eximbank will charge for employee time spent in review according to the rates set forth in paragraph (b)(1) of this section.

(4) *Duplication of records.* The per page charge for paper copy reproduction of documents is $.25. For copies prepared by computer, such as tape or printouts, or for other methods of reproduction or duplication, Eximbank will charge according to their actual direct cost. If Eximbank estimates that duplication charges are likely to exceed $25.00, it will notify the requester of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Such notice will offer a requester the opportunity to confer with Eximbank personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(5) *Other charges.* Complying with requests for special services such as those listed below is entirely at the discretion of Eximbank. Eximbank will recover the full costs of providing services such as those enumerated below to the extent that it elects to provide them:

(i) Certifying that records are true copies;

(ii) Sending records by special methods such as express mail, etc. (Charges will not be made for ordinary packaging and mailing.)

(6) *Restrictions on assessing fees.* With the exception of requesters seeking documents for a commercial use, Eximbank will provide the first 100 pages of duplication and the first two hours of search time without charge. Except for commercial use requesters, Eximbank will not begin to assess fees until after it has provided the free search and reproduction, and will not charge a fee in any case of $6.00 or less. For example, for a request that involved two hours and ten minutes of search time and resulted in 105 pages of documents, Eximbank would determine the cost of only 10 minutes of search time and only five pages of reproduction. If this cost was equal to or less than $6.00, no charges would result. For searches made by computer, when the cost of the search (including the operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of two hours of the salary of the person performing the search, Eximbank will begin to assess charges for computer search.

(c) *Fees to be charged—categories of requesters.* There are four categories of FOIA requesters, with specific levels of fees for each category prescribed by law. Requesters in each category must reasonably describe the records sought.

(1) *Commercial use requesters.* When Eximbank receives a request for documents for commercial use, it will assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Inclusion in this fee category is determined not by the identity of the requester, but by the use to which the information will be put. Commercial use requesters are not entitled to two hours of free search time nor 100 free pages of reproduction of documents. Eximbank will recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records.

(2) *Educational and non-commercial scientific institution requesters.* Eximbank will provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. To be included in this category it must be apparent from the nature of the request that the request serves a scholarly research goal of the institution, rather than an individual goal.

(3) *Requesters who are representatives of the news media.* Eximbank will provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must meet the criteria in paragraph (a)(8) of this section, and his or her request must not be made for a commercial use. A reqeust for records supporting the news dissemination function of the requester will not be considered to be a request that is for a commercial use.

(4) *All other requesters.* Eximbank will charge requesters who do not fit into any of the categories above fees which recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time will be furnished without charge. Requests from record subjects for records about themselves filed in Eximbank systems of records will continue to be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for reproduction.

(d) *Charging interest—notice and rate.* Eximbank will begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the billing was sent. Receipt of the fee at Eximbank will stay the accrual of interest. Interest will be at the rate prescribed in Section 3717 of Title 31 U.S.C. and will accrue from the date of the billing.

(e) *Charges for unsuccessful search.* Eximbank will assess charges for time spent searching, even if it fails to locate the records or if records located are determined to be exempt from disclosure. Prior to undertaking a search, if Eximbank estimates that search fees are likely to exceed $25.00, it will notify the requester of the estimated amount of the fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. The notice will offer the requester the opportunity to consult with agency personnel with the object of reformulating the request to meet the requester's needs at lower cost.

(f) *Aggregating requests.* A requester may not file multiple requests at the same time each seeking a portion of a document or documents, solely in order to avoid payment of fees. When Eximbank reasonably believes that a requester or a group of requesters acting in concert is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, Eximbank may aggregate any such requests and charge accordingly. In no case will Eximbank aggregate multiple requests on unrelated subjects from one requester.

(g) *Method of payment and advance payments.* All payments to Eximbank shall be in the form of cash, check, or money order payable to the Export-Import Bank of the United States. Eximbank will not require a requester to make an advance payment—i.e., payment before work is commenced or continued on a request, unless:

(1) Eximbank estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250.00, in which case Eximbank will notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up the full estimated charges in the case of requesters with no history of payment or;

(2) A requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 days of the date of the billing), in which case Eximbank will require the requester to pay the full amount owed plus any applicable interest or demonstrate that he has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before Eximbank begins to process a new request or a pending request from the requester. The administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., 10 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits) will begin only after Eximbank has received fee payments described above.

(h) *Effect of the Debt Collection Act of 1982 (Pub. L. 97-365).* In accordance with the provisions and authorities of the Debt Collection Act of 1982, Eximbank reserves the right to disclose information to consumer reporting agencies and to use collection agencies, where appropriate, to encourage payment of fees.

(i) *Fee waivers and appeals.* (1) Eximbank will waive or reduce applicable fees upon request, only if it determines that in the particular instance, disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and the disclosure is not primarily in the commercial interest of the requester.

(i) In determining whether disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, Eximbank will consider the following factors:

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

(B) The informative value of the information to be disclosed: Whether the disclosure is likely to contribute to an understanding of government operations or activities;

(C) 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;

(D) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities.

(ii) In determining whether disclosure of the information is not primarily in the commercial interest of the requester, Eximbank will consider the following factors:

(A) 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

(B) 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.

(2) The requester in all cases has the burden of presenting sufficient evidence or information to justify the requested waiver or reduction. The requester may use the procedures set forth in § 404.5 to appeal the denial of a waiver request under this section.

Hart Fessenden,

General Counsel.

[FR Doc. 87-23176 Filed 10-6-87; 8:45 am]

BILLING CODE 6690-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-ACE-09]

Alteration of Control Zone; Hutchinson, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: The nature of this action is to correct the legal description of the Hutchinson, Kansas, Municipal Airport control zone. The latitude coordinates contain an error and should read "lat. 38°03'56" N." This action will not increase the size of the existing airspace.

EFFECTIVE DATE: October 14, 1987.

FOR FURTHER INFORMATION CONTACT: Dale Carnine, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION: The FAA has determined that the latitude coordinates for the Hutchinson, Kansas, Municipal Airport control zone are incorrectly cited in the published description. Action is taken herein to correct this error. The latitude coordinates cited as "lat. 38°06'56" N." should be changed to read "lat. 38°03'56" N." Since this action does not increase the size of the Hutchinson control zone and only corrects a typographical error, notice and public procedure hereon are unnecessary and good cause exists for making this amendment effective in less than thirty (30) days. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C, dated January 2, 1987.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 71 of the FAR (14 CFR Part 71) as follows:

PART 71—[AMENDED]

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

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

§ 71.171 [Amended]

2. By amending § 71.171 as follows:

Hutchinson, Kansas [Revised]

Within a 5-mile radius of Hutchinson Municipal Airport (lat. 38°03'56" N., long.

97°51'37" W.). This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

This amendment becomes effective 0901 U.t.c. October 14, 1987.

Issued in Kansas City, Missouri, on September 22, 1987.

Clarence E. Newbern,

Assistant Manager, Air Traffic Division.

[FR Doc. 87-23121 Filed 10-6-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-ACE-05]

Designation of Control Zone; Fort Leavenworth, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to designate a part-time control zone at the Sherman Army Airfield, Fort Leavenworth, Kansas, based on a request from the Department of the Army. The effective dates and times of the control zone, when established, will be published in the Airport/Facility Directory.

EFFECTIVE DATE: 0901 U.t.c., January 14, 1988.

FOR FURTHER INFORMATION CONTACT: Dale Carnine, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION: The Department of the Army has requested that a part-time control zone be established for the Sherman Army Airfield, Fort Leavenworth, Kansas. This control zone will be effective during the specific dates and times established in advance by a Notice to Airmen and will be continuously published in the Airport/Facility Directory. Control zones are designed to contain IFR operations in controlled airspace to the surface around airports within a specified radius and along the final approach course to the IAP. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C, dated January 2, 1987.

Discussion of Comments

On page 27824 of the **Federal Register** dated July 24, 1987, the Federal Aviation Administration published a Notice of Proposed Rulemaking which would amend § 71.171 of Part 71 of the Federal Aviation Regulations so as to designate a control zone at Fort Leavenworth, Kansas. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. One comment was received. The Aircraft Owners and Pilots Association (AOPA) stated that although they did not specifically object to the proposal, they had concerns about access problems pilots would experience when operating to/from the Elton Airport. AOPA advised that they had determined that the Elton Airport would be encompassed by the control zone. The FAA has determined that the Elton Airport is over 5.9 statute miles from the Sherman Army Airfield and is therefore outside of the existing airport traffic area and control zone. Accordingly, the FAA has determined that this action will not place any additional burden on the users of the Elton Airport and the rule is hereby adopted as proposed.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federa1 Aviation Administration (FAA) proposes to amend Part 71 of the FAR (14 CFR Part 71) as follows:

PART 71—[AMENDED]

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

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

§ 71.171 [Amended]

2. By amending § 71.171 as follows:

Fort Leavenworth, Sherman Army Airfield, Kansas [New]

Within a five mile radius of Sherman Army Airfield (latitude 39°22'06" N., longitude 94°54'52" W.), excluding that portion which overlies the Kansas City, Missouri International Airport Control Zone. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the airport/facility directory.

Issued in Kansas City, Missouri, on September 23, 1987.

Clarence E. Newbern,

Assistant Manager, Air Traffic Division.

[FR Doc. 87-23122 Filed 10-6-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-AWP-20]

Establishment of a Transition Area at Herlong, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a new transition area at Herlong, CA. This transition area will provide controlled airspace for aircraft executing instrument approach procedures to Amedee Army Airfield (Amedee AAF), CA.

EFFECTIVE DATE: 0901 Ut.c., January 14, 1988.

FOR FURTHER INFORMATION CONTACT: Frank T. Torikai, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261; telephone (213) 297-1648.

SUPPLEMENTARY INFORMATION:

History

On July 21, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a new transition area at Herlong, CA, (52 FR 27416). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes a new transition area at Herlong, CA. This transition area will provide controlled airspace for aircraft executing instrument approach procedures to Amedee AAF, CA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 25, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Herlong, CA. [NEW]

That airspace extending upward from 700 feet above the surface within an area bounded by a line beginning at lat. 40°20'15" N., long. 119°48'23" W., to lat. 40°07'58" N., long. 119°51'43" W., to lat. 40°11'30" N., long. 120°16'43" W., to lat. 40°20'32" N., long. 120°14'30" W., thence to the point of beginning; that airspace extending upward from 1,200 feet above the surface within an area bounded by the 23 mile and 12 mile arcs northeast of the Amedee VOR (lat. 40°16'05" N., long. 120°09'03" W.) and the Amedee 039° and 179° radials; and that airspace extending upward from 9,500 feet MSL within an area bounded by a line beginning at lat. 40°20'15" N. long. 119°48'23" W., to lat. 40°16'52" N., long. 119°26'00" W., to lat. 40°04'25" N., long. 119°29'20" W., to lat. 40°07'58" N., long. 119°51'43" W., thence to the point of beginning.

Issued in Los Angeles, California, on September 23, 1987.

James A. Holweger,

Assistant Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 87–23120 Filed 10–6–87; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 175

[T.D. 87–125]

Petitioner's Desire To Contest Decision Denying Domestic Interested Party Petition Concerning Classification of Fiber Reinforced Cellulosic Plastic Sausage Casings

AGENCY: Customs Service, Treasury.

ACTION: Notice of petitioner's desire to contest decision on domestic interested party petition.

SUMMARY: This document advises the public of the desire of a domestic interested party to judicially contest Customs decision denying its petition requesting the reclassification of certain imported fiber reinforced cellulosic plastic sausage casings composed of paper, regenerated cellulose and glycerin. Based upon the product's component material in chief value, it has been held that the correct classification of the product is under item 790.47, Tariff Schedules of the United States (TSUS), as sausage casings not specifically provided for, whether or not cut to length, other. The petitioner contests this decision, contending that all cellulosic plastic sausage casings are to be classified under item 790.45, TSUS, as sausage casings, not specifically provided for, whether or not cut to length, of cellulosic plastics materials. This classification would subject the product to a higher rate of duty. The petitioner has advised Customs that it intends to pursue this matter through appropriate court proceedings.

FOR FURTHER INFORMATION CONTACT: Sheila Murphy, Classification and Value Division (202–566–8181).

SUPPLEMENTARY INFORMATION:

Background

In Internal Advice (IA) 162/79, file 061462, dated May 27, 1983, Customs determined that the component materials in certain imported fiber reinforced cellulosic plastic sausage casings were paper, regenerated cellulose and glycerin. In this ruling, Customs described the nine-step process for producing the casings and specified the points in the process at which the value of each of the component materials was to be computed. In accordance with this ruling, Customs determined that the casings were not in chief value of cellulosic plastics materials and were to be classified under item 790.47, Tariff Schedules of the United States (TSUS; 19 U.S.C. 1202), as sausage casings, not specially provided for, whether or not cut to length, other. On January 12, 1984, Customs issued ruling 073604, which reaffirmed the conclusions reached in IA 162/79.

On September 30, 1985, a petition challenging Customs classification of the product was filed with Customs under section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), and Part 175, Customs Regulations (19 CFR Part 175), on behalf of a domestic company which manufactures and wholesales a product similar to that classified in IA 162/79. A notice of receipt of the petition was published in the **Federal Register** on October 15, 1986 (51 FR 36703), advising the public of the petitioner's contentions and requesting comments on the petition.

Three major arguments were set forth in the petition against Customs classification of the product and in favor of the petitioner's view that the product should be classified under item 790.45, TSUS, as sausage casings, not specially provided for, whether or not cut to length, of cellulosic plastics materials. This classification would subject the product to a higher rate of duty than that of item 790.47, TSUS.

First, it was argued that IA 162/79 was issued in disregard of section 502(b), Tariff Act of 1930, as amended (19 U.S.C. 1502(b)), which bars Customs from reversing or modifying a prior interpretation of the TSUS without the concurrence of the Attorney General or the Court of International Trade. By issuing the 1983 ruling, the petitioner stated, Customs reversed rulings made on October 31, 1975 (038749) and May 12, 1977 (051718), without seeking such concurrence. In those rulings Customs held that fiber reinforced cellulosic plastic sausage casings were classifiable under item 790.45, TSUS. Because Customs did not seek concurrence, the petitioner argued, the IA is void.

The petitioner also argued that the legislative history of the Tariff Schedules Technical Amendments Act of 1965 (Pub. L. 89–241, 79 Stat. 933, amending 19 U.S.C. 1202), reveals a Congressional intent to provide special protection for manufacturers of sausage casings of cellulosic plastic origins

whether or not that material is the component material in chief value.

Finally, the petitioner argued that the method set out in IA 162/79 for determining the component material in chief value of fiber reinforced cellulosic plastic sausage casings was incorrect, and that if correct cost allocations were used, the casings would be classifiable as in chief value of cellulosic plastic materials. The petitioner maintained that certain costs were incorrectly attributed to the paper and to the glycerin rather than to the regenerated cellulose.

Three comments were received in response to the October 15, 1986, notice. As only one of these comments supported the petitioner's viewpoint, and this comment made arguments similar to petitioner's, the following discussion will address these points raised by the petitioner.

Discussion of Comments

It is Customs position that IA 162/79, setting out a new method for determining the component material in chief value of the casings, was not issued in violation of 19 U.S.C. 1502(b). In the principal case construing this section, *Joanna Western Mills Co.* v. *United States*, 64 Cust. Ct. 218, C.D. 3983 (1970), a petitioner under 19 U.S.C. 1516 claimed that a previously issued abstracted decision should have been followed. The Customs Court held that the provisions for the concurrence of the Attorney General in 19 U.S.C. 1502(b) were of a directory nature only, and that failure to comply did not render void the official actions taken. The court also determined that 19 U.S.C. 1502(b) was enacted solely for the protection of the United States, and was not intended to benefit any designated class of persons. The Court further found that the petitioner had ample means available to contest the classification.

In Customs view, the legislative history does not support petitioner's claim that the description of sausage casings to be classified under item 790.45, TSUS, of "Of cellulosic plastics material," should be interpreted to read "Almost wholly of cellulosic plastics materials." Before the enactment of the TSUS, sausage casings not provided for as intestines or other prepared animal parts were classified according to component material in chief value. Both the legislative history and the provision in the TSUS use the term "of," defined as naming a component material in chief value. We find no intent to classify the casings, instead, according to essential character.

Finally, we do not agree with the petitioner's method for determining the component material in chief value of the casings, assuming component material in chief value to be the correct standard We find no justification for breaking down the paper, one of the component materials, into its most basic substances, nor in failing to allocate to the paper the costs of bringing it into a condition where nothing remains to be done to it but to unite it with the other component materials in the finished product. Nor do we agree that the costs of the glycerin, another component material of the casings, should be attributed to the cost of the regenerated cellulose rather than attributed to the glycerin itself. The glycerin in the casings affects both the regenerated cellulose and the paper component materials. It does not become a permanent ingredient in the casings, as it is washed out before the casing is used.

Decision on Petition

After careful analysis of the petition and the comments received in response to the notice, and further review of the matter, including review of materials submitted by importers and the petitioner during the development of our position in IA 162/79, Customs decided to continue to classify the casings under item 790.47, TSUS. Customs determined that IA 162/79 was properly issued, that the casings are properly classifiable according to their component material in chief value, and that the current method of determining the component material in chief value of the casings is correct. The petitioner was informed of this decision by letter to their counsel dated June 8, 1987 (CLA-2 CO:R:CV:G 079612 SM).

Notice of Petitioner's Desire To Contest

In response to Customs decision to deny the petition, on June 29, 1987, the Petitioner filed notice of its intention to judicially contest the decision in accordance with section 516(c), Tariff Act of 1930, as amended (19 U.S.C. 1516(c)), and § 175.23, Customs Regulations (19 CFR 175.23).

Customs has reconsidered the matter in light of the petitioner's letter, but remains of the opinion that its June 8, 1987, decision is correct. That decision will stand in the absence of a contrary judgment by the U.S. Court of International Trade of the U.S. Court of Appeals for the Federal Circuit.

Authority

This notice is published under the authority of section 516(c), Tariff Act of 1930, as amended (19 U.S.C. 1516(c)), and § 175.24, Customs Regulations (19 CFR 175.24).

Drafting Information

The principal author of this document was Harold M. Singer, Regulations Control Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

William Von Raab,
Commissioner of Customs

Approved: September 23, 1987.

Francis A. Keating, II,
Assistant Secretary of the Treasury.

[FR Doc. 87-23182 Filed 10-6-87; 8:45 am]
BILLING CODE 4820-02-M

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19 CFR Part 175

[T.D. 87-126]

Decision on Domestic Interested Party Petition Concerning Classification of Orange Juice Concentrate-Based Product

AGENCY: Customs Service, Treasury.

ACTION: Final interpretive rule.

SUMMARY: This document gives notice of a change in the tariff classification of an orange juice concentrate-based product consisting of orange juice concentrated to 65° Brix to which certain ingredients were added. The product was classified under item 183.05, Tariff Schedules of the United States (TSUS), as other edible preparations, not specifically provided for. After review and analysis of comments received in response to publication of a notice of a domestic interested party petition challenging that classification, Customs has determined that the product is properly classifiable as concentrated orange juice or orange juice made from concentrated orange juice under item 165.29, TSUS. The duty rate for item 165.29, TSUS, is higher than the duty rate for item 183.05, TSUS.

EFFECTIVE DATE: This decision will be effective as to merchandise entered, or withdrawn from warehouse, for consumption, on or after November 20, 1987.

FOR FURTHER INFORMATION CONTACT: Thomas L. Lobred, Classification and Value Division, U.S. Customs Service (202-566-8181).

SUPPLEMENTARY INFORMATION:

Background

On July 26, 1984, Customs issued ruling 553167 (C.S.D. 84-117, 18 Cust. B and Dec. No. 49 at 43, December 5, 1984), which stated that a product consisting of 87 percent orange juice concentrate (65° Brix), 10.5 percent orange peel extract, 2.25 percent citrus acid and less than one percent total of sodium benzoate,

orange oil and artificial color, was properly classifiable under the provision for other edible preparations, not specifically provided for, in item 183.05, Tariff Schedules of the United States (TSUS; 19 U.S.C. 1202).

In this ruling, Customs dismissed classification under item 166.40, TSUS, as beverages, not specifically provided for, and item 165.35, TSUS, as any other citrus fruit juice concentrate (now item 165.36, TSUS). Item 166.40, TSUS, was not applicable because Headnote 1, Schedule 1, Part 12, Subpart B, TSUS, indicates that item 166.40, TSUS, only covers products fit for use as beverages, and the subject product is not, in its condition as imported, potable and ready to consume. Classification under item 165.35, TSUS, was precluded because the subject product was not within the common or commercial understanding of orange juice concentrate, having been processed beyond the scope thereof by the addition of significant and substantial "foreign" or excess ingredients.

On October 17, 1985, a petition was submitted on behalf of a domestic interested party representing domestic citrus growers, pursuant to section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), and Part 175, Customs Regulations (19 CFR Part 175). The petitioner challenged the tariff classification holding in C.S.D. 84–117. The petitioner stated that the tariff provision relating to fruit juices was amended by section 117, Trade and Tariff Act of 1984 (Pub. L. 98–753), to include in new items 165.27 and 165.29, TSUS, an *eo nomine* provision for orange juices, both in natural and in all forms. The duty rates for items 165.27 and 165.29, TSUS, are higher than the duty rate for item 183.05, TSUS.

The petitioner argued that the basic principles of tariff classification require that the subject product be classified under item 165.29, TSUS, because an *eo nomine* designation such as item 165.29, TSUS, without limitation or shown contrary legislative intent, judicial decision or administrative practice, and without proof of commercial designation, will include all forms of the article. The mere fact that there may be some added ingredients does not preclude its classification in the *eo nomine* provision. It argued that the added ingredients do not alter the subject product's essential character as orange juice concentrate.

The petitioner also argued that Customs definition of orange juice, which is adopted from the Food and Drug Administration (FDA's) standards of identity, is questionable inasmuch as FDA regulations (21 CFR Part 146) should not define or determine the common meaning of the term for tariff purposes.

A notice inviting the public to comment on the petition was published in the **Federal Register** on July 30, 1986 (51 FR 27196). The period of time within which comments could be submitted on the petition was extended by notice published in the **Federal Register** on October 2, 1986 (51 FR 35240). Of the nine comments received, seven supported revocation of C.S.D. 84–117 and two favored Customs affirming its decision.

Discussion of Comments

One commenter questioned whether the petitioner qualified as an "interested party" within the meaning of 19 U.S.C. 1677(9) (C), (D), or (E), qualified to submit a petition under 19 U.S.C. 1516.

Under 19 U.S.C. 1677(9)(E), an interested party includes "a trade or business association a majority of whose members manufacture, produce, or wholesale a like product in the United States". This provision, which was promulgated in Title X of the Trade Agreements Act of 1979 (Pub. L. 96–39), represents an expansion of the types of entities which are now eligible to file a domestic interested party petition under 19 U.S.C. 1516. Counsel for petitioners submitted a letter that the petitioner qualified as a domestic interested party and, in the absence of information to the contrary, Customs has no reason to doubt or question this statement.

The substantive comments urging revocation of C.S.D. 84–117 supported the analysis submitted in the petition. In addition, one commenter argued that if an orange juice concentrate-based product with certain additives was entitled to a lower duty rate than concentrated orange juice, importers would be encouraged to include the additives. This would result in the manufacture of more adulterated orange juice products. Another commenter stated that permitting the product with additives to have a lower duty rate could encourage importers of products without additives to claim the product has additives in order to obtain the lower rate. The commenter notes that the presence of added ingredients would be difficult to detect by Customs.

Customs understands and sympathizes with the enforcement and marketing problems inherent in C.S.D. 84–117 that these commenters note. However, the decision on the correct classification must rest on legal analysis of the issues rather than on enforcement or marketing problems that may occur.

The two commenters who believe that Customs should affirm the position in C.S.D. 84–117 set forth the following arguments:

(1) In C.S.D. 84–117, Customs did not use the FDA regulations to limit the provisions for citrus juice and control the classification of orange juice under the TSUS. Customs was correct in accepting the logical proposition that inasmuch as the orange juice concentrate-based product could not be bought or sold in the U.S. as orange juice, it could not be either commercially or commonly known as orange juice in the U.S.

(2) The amendments made by Pub. L. 98–573 with respect to orange juice are of no consequence in the classification of the product at issue. Under General Headnote 10(c)(i), TSUS, a superior heading cannot be enlarged by inferior headings indented under it, but can be limited thereby. The superior heading in this case is citrus juice. Accordingly, if the product could not be classified *eo nomine* as citrus juice, it cannot be classified *eo nomine* as orange juice.

(3) Contrary to the assertions of the petitioner, there are not sufficient amounts of the subject product being imported to seriously disrupt the market for domestic and imported concentrated and unconcentrated orange juice.

Regarding the first argument, the commenter is correct that Customs did not use the FDA regulations to limit the provisions for citrus juice and control the classification of orange juice under the TSUS, but had decided that the product could not be either commercially or commonly known as orange juice in the U.S. However, after careful analysis and review, Customs has concluded that notwithstanding the presence of additives to the orange juice-concentrate based product, the essential character of the product is orange juice concentrate and this product is now covered by the *eo nomine* provision for other orange juice in item 165.29, TSUS.

Regarding the consequences of the amendments to the TSUS made by section 117 of Pub. L. 98–573, Customs has been convinced that the amendments created an *eo nomine* designation in item 165.29, TSUS, under which the subject product falls.

Customs finds support for this view in *Robert Bosch Corp. et al.* v. *United States*, 63 Cust. Ct. 96, 103–104, C.D. 3881 (1969) in which the Court states:

> The principle is well settled that where an article is in character or function something other than as described by a specific statutory provision—either more limited or more diversified—and the difference is significant, it cannot find classification within such provision. . . . By contrast, where the

difference is in the nature of improvement or amplification, and the essential character is preserved or only incidentally altered, the applicable rule is as expressed in *Nootka Packing Co., et al.* v. *United States*, 22 CCPA 464, T.D. 47464 (1935), that an unlimited *eo nomine* statutory designation includes all forms of the article in the absence of a contrary legislative intent or commercial designation. *United States* v. *National Carloading Corp. et al.*, 48 CCPA 70 C.A.D. 767 (1961); *United Carr Fastener Corporation* v. *United States* (Northern Screw Corp., Party in Interest), 54 CCPA 89, C.A.D. 913 (1967).

Regarding the comment concerning the volume of the subject product being imported, any classification or change in classification is not made on the basis of volume of importations, but rather on legal analysis of the issues.

C.S.D. 84–117 Revoked

After careful consideration of all the comments received and further review of the matter, Customs has concluded that C.S.D. 84–117 should be revoked. An orange-juice concentrate-based product consisting of orange juice concentrate to 65° Brix to which certain ingredients were added is to be classified as concentrated orange juice or orange juice made from concentrated orange juice, under item 165.29, TSUS.

Authority

This notice is published under the authority of section 516(b), Tariff Act of 1930, amended (19 U.S.C. 1516(b), and § 175.22, Customs Regulations (19 CFR 175.22).

Drafting Information

The principal author of this document was Harold M. Singer, Regulations Control Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

William von Raab,
Commissioner of Customs.

Approved: September 25, 1987.

Francis A. Keating, II,
Assistant Secretary of the Treasury.

[FR Doc. 87–23183 Filed 10–6–87; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 86F–0494]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 2-(2*H*-benzotriazol-2-yl)-4,6-bis(1-methyl-1-phenylethyl)phenol as a light stabilizer for polycarbonate resins and polyethylene phthalate polymers. This action responds to a petition filed by Ciba-Geigy Corp.

DATES: Effective October 7, 1987; objections by November 6, 1987.

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

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

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of February 3, 1987 (52 FR 3350), FDA announced that a petition (FAP 7B3976) had been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) of the food additive regulations be amended to provide for the safe use of 2-(2*H*-benzotriazol-2-yl)-4,6-bis(1-methyl-1-phenylethyl)phenol as a light stabilizer for polycarbonate resins and polyethylene phthalate polymers complying with 21 CFR 177.1580 and 177.1630, respectively.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive is safe, and that the regulations should be amended in 21 CFR 178.2010(b) as set forth below.

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

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

Any person who will be adversely affected by this regulation may at any time on or before November 6, 1987, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, Part 178 is amended as follows:

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

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

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

2. Section 178.2010 is amended in paragraph (b) by alphabetically inserting a new item under "Substances," to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
2-(2*H*-benzotriazol-2-yl)-4,6-bis(1-methyl-1-phenylethyl)phenol (CAS Reg. No. 70321-86-7).	For use only at levels not to exceed 0.5 percent by weight of polycarbonate resins complying with § 177.1580 of this chapter and polyethylene phthalate polymers complying with § 177.1630 of this chapter.

* * * * *

Dated: September 29, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-23189 Filed 10-6-87; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Parts 610 and 660

[Docket No. 84N-0205]

Additional Standards for Diagnostic Substances for Laboratory Tests; Amendment of Additional Standards for Reagent Red Blood Cells

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its additional standards for Reagent Red Blood Cells as part of the agency's retrospective review of current regulations. FDA is making the standards more flexible and is revising the regulations to reflect recent scientific knowledge and experience in the use of Reagent Red Blood Cells.

DATES: Effective November 6, 1987, except for § 660.35. Amendments to labeling requirements in § 660.35 become effective October 7, 1988, for all affected products initially delivered for introduction into interstate commerce.

FOR FURTHER INFORMATION CONTACT: Joseph Wilczek, Center for Drugs and Biologics (HFN-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8046.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 11, 1985 (50 FR 24542), FDA proposed to amend the additional standards for Reagent Red Blood Cells. As defined in the proposal, Reagent Red Blood Cells is a licensed biological product prepared from human red blood cells and is used to detect or identify human blood group antibodies.

Under section 351 of the Public Health Service Act (42 U.S.C. 262), biological products, including Reagent Red Blood Cells, offered for sale in interstate commerce must be licensed and meet certain standards that ensure their continued safety, purity, and potency.

FDA proposed to amend the additional standards in 21 CFR Parts 610 and 660 for Reagent Red Blood Cells to reflect recent experience and scientific knowledge in the use of these products, and to continue an ongoing retrospective review program of FDA regulations. FDA has reviewed the Reagent Red Blood Cell regulations and has proposed amendments to relieve unnecessary regulatory burdens and to increase flexibility in the regulations without compromising consumer protection.

FDA provided interested persons 60 days to submit written comments on the proposal. In response, FDA received seven letters of comment. One letter of comment fully supported the proposed rule. A summary of other comments and FDA's responses follow:

1. One comment on paragraph (b) of proposed § 660.30 *Reagent Red Blood Cells* asked whether or not FDA will require human umbilical cord blood to be tested for hepatitis B surface antigen (HBsAg) and human immunodeficiency virus (HIV) (formerly human T-cell lymphotropic virus type III (HTLV-III)).

FDA believes that testing umbilical cord blood for HBsAg and HIV is an essential procedure for assuring the safety of Reagent Red Blood Cells manufactured from umbilical cord blood. Accordingly, FDA will continue to require that manufacturers specify in their product license applications that HBsAg testing be done on umbilical cord blood. In the **Federal Register** of February 21, 1986 (51 FR 6362), FDA proposed to amend the biologics regulations to require that blood and blood products be tested by a serologic test for HIV. Until the proposed rule becomes final, FDA strongly recommends that HIV testing be added as an amendment to each manufacturer's product license to assure the safety of the Reagent Red Blood Cell product.

2. One comment pointed out that proposed § 660.31 *Suitability of the donor* was incorrectly designated as § 660.331.

FDA agrees with the comment and is correcting this typographical error in the final rule.

3. Four comments were received on proposed § 660.33 *Testing of source material.*

(a) FDA proposed to amend § 660.33 to permit testing of reagent red blood cell source material with a single donor source of specific antibody if approved by the Director, Office of Biologics Research and Review. One comment stated that the Director, Office of Biologics Research and Review, in evaluating a manufacturer's request to use a single donor source of specific antibody, should be guided by the importance and availability of the particular reagent red blood cell antigen.

FDA agrees with the comment and advises that permission to test a Reagent Red Blood Cell product for a specific antigen with a single donor source will likely be granted where only one source of antibody is available.

(b) One comment questioned the requirement in proposed § 660.33 that "any discrepancy between the results of these two tests shall be resolved by testing at least one additional antiserum before concluding that the antigen is present or absent." The comment stated that manufacturers could not meet the proposed requirement in cases where only one or two sources of rare antibody are available. The comment suggested that discrepancies be resolved in accordance with the manufacturer's product license application. If the comment's suggestion were adopted, license applications might provide for the use of alternative methods such as repeat tests with different personnel or for the use of the antiserum in a different manner, e.g., different concentrations in the assay.

FDA agrees with the comment to allow for alternative methods to resolve test discrepancies in situations where fewer than three donor sources of an antibody specificity are available. FDA is amending § 660.33 by inserting the following sentence: "Where fewer than three donor sources of an antibody specificity are available, test discrepancies shall be resolved in accordance with the manufacturer's product license application." This revision will permit manufacturers greater flexibility in testing reagent red blood cell source material when test discrepancies occur.

(c) One comment recommended that the last sentence in proposed § 660.33 be revised to read "shall include at least the following common antigens * * *." The comment suggested the addition of the words "at least" to identify the listed antigens as minimum criteria for evaluating Group O Reagent Red Blood Cells.

FDA agrees with the comment and is amending the final rule to include the words "at least" in the last sentence of § 660.33 to more accurately define the specificity of Group O Reagent Red Blood Cells used in the detection or identification of unexpected antibodies.

(d) One comment on proposed § 660.33 suggested that the phrase "detection and identification" be revised

to read "detection or identification" to be consistent with similar proposed changes in §§ 660.34(b) and 660.35 (e) and (i).

FDA agrees with the comment. In the final rule, FDA is revising § 660.33 as suggested.

4. Two comments were received on proposed § 660.34(a) *Processing method.*

(a) One comment stated that the word "consistently" incorrectly modifies the verb "shown" rather than the words "to yield." The comment also stated that the phrase "throughout the dating period" is similarly misplaced, and should immediately follow the word "detecting."

FDA agrees with the comment and is amending proposed § 660.34(a) as suggested for clarity.

(b) A second comment on proposed § 660.34(a) suggested deleting the word "all" in the phrase "capable of detecting all alloantibodies." The comment pointed out that the word "all" is unnecessary and should be avoided because of its rigid implications.

FDA agrees with the comment and is deleting the word "all" in the final rule from the phrase "capable of detecting all alloantibodies."

5. Three comments were received on proposed § 660.34(b) *Products prepared from pooled red blood cells.*

(a) One comment suggested that products prepared from pooled red blood cells should not be recommended for the identification of unexpected antibodies, except in the case of umbilical cord cells which serve only as an aid in antibody identification. The comment also suggested that the last sentence of the paragraph is misplaced and should immediately follow the first sentence of the paragraph.

FDA agrees with the comment and is revising § 660.34(b) as suggested. As described in detail in paragraph 6 of this preamble, FDA believes that pooled red blood cells may not detect a weakly reacting antibody in the patient's serum sample. Therefore, FDA believes that single donor cell samples should be used in screening a patient's serum.

(b) FDA proposed to remove the requirement in existing § 660.34(b) *Red blood cell concentration* that each lot of final product have a red blood cell concentration of no less than 2 percent. One comment suggested that the current requirement should be retained. The comment indicated that transfusion service personnel may not perceive significant reactions in pretransfusion testing when using Reagent Red Blood Cell products containing less than 2 percent red blood cells, thereby potentially compromising patient care.

FDA disagrees with the comment. As stated in the proposed rule, FDA believes that recent advances in biotechnology, such as changes in testing methodology, may result in the use of Reagent Red Blood Cell products that are safe, reactive, and effective in concentrations of less than 2 percent. Through the licensing requirements of the Public Health Service Act and 21 CFR Parts 600 and 601, FDA will continue to require provisions in manufacturers' license applications that assure the safety, reactivity, and effectiveness of Reagent Red Blood Cells at appropriate concentrations. Accordingly, FDA rejects the comment. For further discussion, see also paragraph 13 of this preamble.

6. One comment on proposed § 660.34(b) objected to the requirement of limiting the use of pooled Reagent Red Blood Cells to tests that do not determine transfusion compatibility. The comment disagreed with the implication of the proposed amendment, namely that individual donor cells will, by the virtue of their individuality, comprise a more sensitive antibody detection system than pooled reagent red blood cells. The comment submitted limited data, performed in-house, that supported the contention that pooled red blood cells are not less sensitive than individual donor cells in detecting antibodies in the serum of a patient who may require a blood transfusion. The comment also pointed out that the proposed requirement would have a significant economic impact on a substantial number of small business entities by affecting every transfusion service in the United States which currently uses pooled Reagent Red Blood Cells for the detection of antibodies in pretransfusion patient sera. The proposed rule would require transfusion services to use paired Reagent Red Blood Cells because commercially available single donor/single vial red blood cell reagents containing all appropriate antigens do not exist. The comment stated that the use of paired instead of pooled Reagent Red Blood Cells would result in additional workload and increased expenses for these transfusion services.

FDA disagrees with the comment. FDA believes that single donor cell samples are preferable to pooled cell preparations for screening the serum of patients when maximum sensitivity is required. Only half of the cells in a pooled cell preparation will contain a given antigen if one of the donors contributing to the pool lacks that antigen. Thus, a pooled cell preparation may not detect a weakly reacting antibody in a patient's serum sample. These weakly reactive antibodies may cause premature destruction of transfused incompatible red cells.

The agency finds that the data submitted are unacceptable because of a design flaw in the experiment. The paired and pooled Reagent Red Blood Cells used in the comparision testing were purchased from different manufacturers with different expiration dates and likely different antigenic compositions. The agency believes that the paired screening cells used in the study should have been tested separately and then pooled and retested to determine if the pooled cells were of comparable sensitivity in detecting weakly reacting antibodies instead of using pooled cells of unspecified composition from a different manufacturer. Accordingly, the agency does not concur with the conclusion base on submitted data.

The agency disagrees with the comment's suggestion that the requirement that pooled reagent red blood cells shall not be recommended for pretransfusion tests done in lieu of a major crossmatch will have a significant economic impact on transfusion services. The antibody screening procedure often replaces the antiglobulin major crossmatch in pretransfusion compatibility tests, and the agency believes that the use of paired cells for the antibody screening procedure is merited to protect patients from potential delayed hemolytic transfusion reactions and will not have a significant economic impact on a substantial number of small businesses. A further discussion of the economic impact of this rule is contained below in the section titled "Environmental and Economic Assessments."

7. Two comments on proposed § 660.34(c) *Absence of antibodies* observed that the new name for anti-human serum products is anti-human globulin.

FDA agrees with the comments and is amending this inadvertent error in the final rule.

8. Two comments on proposed § 660.34(d) *Final container* suggested that empty final containers used to hold Reagent Red Blood Cell products need not be sterile, consistent with the additional standards for Anti-Human Globulin (21 CFR 660.51(b)). The comments stated that Reagent Red Blood Cells and Anti-Human Globulin are similar type in vitro diagnostic reagents, and the final containers for Anti-Human Globulin are required to be "clean," not "sterile."

FDA agrees with the comments and notes that there is no final product

sterility testing requirement for Reagent Red Blood Cell products because there is no practical way to ensure sterility without damaging the product. The final product, however, contains bacteriostatic preservatives such as neomycin and chloramphenicol to reduce the likelihood of significant microbial growth during the storage period. To provide increased assurance that the product is safe and effective at time of use, FDA also requires that blood banks perform checks for reactivity and specificity of Reagent Red Blood Cells on a regularly scheduled basis, under FDA's current good manufacturing practice regulations for blood and blood components (21 CFR 606.65(c)). For these reasons, FDA believes that the use of "clean" final containers will not diminish the safety, purity, or potency of the products and therefore the word "sterile" can be deleted in proposed § 660.34(d) without compromising consumer protection.

9. One comment on proposed § 660.34(d) concerned color coding of final product labels, container caps, and dropper labels of reagent red blood cell products. The comment requested that FDA provide for uniform color coding so that manufacturers would not use different colors for the same reagent.

FDA agrees with the comment that the color-coding for Reagent Red Blood Cell products should be uniform. Because the proposed regulation requires that specific colors be approved by the Director, Office of Biologics Research and Review, FDA believes that no further amendment to this paragraph is needed.

10 One comment on proposed § 660.34(e) *Date of manufacture* asked for a clarification of the word "immediately" used in the preamble of the proposed rule. Section § 660.34(e) would permit indefinite storage of reagent red blood cell source material at −65° C or colder before manufucture into a final product, provided that the cells are immediately frozen after collection. The comment stated that some time delay before freezing should be permitted, depending on factors such as the type of anticoagulant used.

To assure the continued purity, specificity, and effectiveness of the final product, FDA believes that reagent red blood cell source material should be frozen within 6 days of collection at −65° C or colder. This time interval allows a blood collection center enough time to ship the reagent red blood cell source material to an in vitro manufacturer for further processing and freezing of the cells. For clarity, FDA is amending the dating period information in § 610.53(c) to state that reagent red blood cell source material may be stored at −65° C or colder rather than at −65° C as stated in the proposed rule. Because a manufacturer can submit supporting data and request a different period of time to freeze reagent red blood cell source material, FDA believes that the time interval for freezing cells after collection should not be codified in the additional standards, but rather be specified in the manufacturer's product license application.

11. Two comments on proposed § 660.34(f) *Retention samples* requested that retention of samples should be maintained throughout the dating period of the product without reference to § 610.53(c) which lists minimum dating periods for licensed biological products. One comment stated that because some manufacturers have been granted extended dating periods for their products, the wording of the proposed rule would allow retention samples to be discarded before the actual expiration date of the product.

FDA agrees with the comments that the proposed wording is confusing, and is amending the final rule in § 660.34(f) by removing the reference to § 610.53(c).

12. One comment on proposed § 660.35 *Labeling* requested that manufacturers be permitted to identify their products by using a distinctive logo on the container label outside of the main panel. The comment noted that this revision is similar to an existing provision in the additional standards for Anti-Human Globulin in § 660.55(a)(1).

FDA agrees that manufacturers may use a distinctive logo on the container label provided that the logo is placed outside of the main panel and the product complies with all other applicable labeling requirements. Accordingly, in proposed § 660.35, FDA is redesignating paragraph (a) as (a)(2), and adding paragraph(a)(1) to restrict the use of logos or company names to the bottom or end of the label outside the main panel of final container labels for Reagent Red Blood Cells.

13. One comment on proposed § 660.35(c) stated that the proposed removal of the lowest permissible reagent red blood cell concentration of 2 percent in § 660.34(b) of the existing regulations requires that a more narrowly defined concentration range for Reagent Red Blood Cells be given. The comment noted that a variance of ±1 percentage unit would not be appropriate for a product having a declared concentration of 1 percent. The comment also pointed out that accurate measurement of reagent red blood cell concentration is difficult to perform for products containing less than a 2 percent concentration of cells.

FDA agrees with the comment that a more narrowly defined concentration range is needed and believes that a practical limit in determining reagent red blood cell concentration for products containing less than a 2 percent concentration is ±0.5 percentage units. Reagent red blood cell manufacturers should be able to achieve this accuracy in measurement by using a red blood cell counting procedure. Accordingly, FDA is revising § 660.35(c) to include a provision that if the red blood cell concentration is less than 2 percent, the variance in actual cell concentrations must be within 0.5 percentage units of the stated concentration on the container and package labels.

14. One comment on proposed § 660.35(d) stated that the cautionary labeling statement concerning pooled cells is not restrictive enough. The comment asked that the package label or package insert be revised to state that pooled cells shall not be used for pretransfusion tests to detect unexpected antibodies in patients' samples.

The agency agrees with the comments. The agency believes, as stated in paragraph 6 above, the weak antibodies may not be detected with pooled reagent red blood cells. Accordingly, the agency is amending the final rule in accordance with the comment's suggestion by rewording the second sentence to require that the package labeling state that pooled cells are not recommended for pretransfusion tests, done in lieu of a major crossmatch, to detect unexpected antibodies in patients' samples.

15. Four comments on proposed § 660.35(i) objected to the proposed requirement that manufacturers list in the package insert those antigens that are most likely to decrease in reactivity during storage. One comment stated that listing specific "labile" antigens in reagent red blood cell circulars may be confusing and misleading while another comment pointed out that the decrease in reactivity of certain antigens is largly anecdotal and not supported by hard scientific data. One comment also requested that FDA delete the proposed requirement to note in the package insert that the rate at which reactivity (agglutinability) is lost is partially dependent upon individual donor charactistics that are neither controlled nor predicted by the manufacturer. The comment stated that this cautionary statement seemed excessive.

FDA agrees in part with the comments. FDA agrees that listing antigens in the package insert that are likely to decrease in reactivity during

storage may be confusing and misleading to users of the reagents. FDA is therefore removing this proposed requirement from the final rule. FDA disagrees, however, with the suggestion that the cautionary labeling statement concerning potential variation in loss of antigen reactivity be deleted from the package insert. FDA believes that this cautionary labeling statement is informative in alerting users of the product that reagent red blood cell antigens may lose reactivity at variable rates that can be neither controlled nor predicted by the manufacturer. Accordingly, FDA rejects the latter comment.

16. Two comments on proposed § 660.35(k) suggested a more general wording of the cautionary labeling statement directed towards HBsAg testing. The comments asked for more general wording to encompass serological testing for HIV.

FDA agrees with the comments and is revising the cautionary labeling statement as suggested to apply to hepatitis as well as other infectious agents for which the agency may require a warning statement in the future, such as a codified requirement for testing serologically for HIV (see 51 FR 6362). The general wording of § 660.35(k) will eliminate the need for FDA to propose new labeling regulations and the need for blood establishments to revise their product package inserts if FDA requires tests for other infectious agents in the future.

17. Two comments were received on proposed § 660.36 *Samples and protocols*, which would require that manufacturers submit to FDA selected protocols and samples within 30 days after each routine FDA establishment inspection. One comment considered this information confidential and proprietary, and stated that it should not be made available in response to requests under the Freedom of Information Act. The second comment stated that protocol records are available for review during routine inspections and can be reviewed most efficiently by FDA inspectors on-site at a manufacturing facility.

To the extent the information is protected from disclosure under the Freedom of Information Act, FDA agrees with the first comment that proprietary information found in protocol records is not available for public disclosure as specified in 21 CFR 20.61, which precludes disclosure of trade secret or confidential commercial or financial information. FDA disagrees with the second comment that manufacturing protocols can be reviewed most efficiently on-site at the manufacturing facility. An FDA inspector may not have enough time to thoroughly review all manufacturing protocols during an inspection. For this reason, FDA will continue to require the submission to FDA of selected manufacturing protocols and samples after each routine inspection for review and evaluation. Accordingly, the latter comment is rejected.

18. One comment on proposed § 660.36(c) stated that the term "cell panel" does not specify whether the Reagent Red Blood Cells from a new donor are for use in the detection or the identification of unexpected antibodies. The comment assumed that the term "cell panel" referred to Reagent Red Blood Cells intended for the identification of unexpected antibodies.

FDA agrees with the comment and is amending the final rule in § 660.36(c) to clarify that the term "cell panel" refers to those products intended for the identification of unexpected antibodies. The agency is also amending this paragraph to clarify that umbilical cord samples are not subject to the submission requirements stated in this paragraph because umbilical cord cells serve only as an aid in identification of unexpected antibodies.

Accordingly, FDA is amending the additional standards for Reagent Red Blood Cells with the changes described above and other minor clarifying changes.

Environmental and Economic Assessments

The agency has determined under 21 CFR 25.24(c)(10) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

The agency has examined the economic consequences of this rulemaking and has determined that it does not require either a regulatory impact analysis, as specified in Executive Order 12291, or a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96–354). The amendments to the additional standards are expected to benefit manufacturers of Reagent Red Blood Cells because the amendments relieve certain burdens on the industry, such as removing restrictions on color coding of products, allowing use of company logos and trademarks, and removing the requirement that final containers be sterile.

Other amendments to current biologic regulations are intended to allow more flexibility and discretion in marketing manufacturers' products while maintaining the same level of consumer protection. These changes include removing a minimum concentration requirement for Reagent Red Blood Cells and allowing manufacturers the option of listing either the date of manufacture or length of the dating period in the accompanying package insert or constitution matrix for Reagent Red Blood Cell products.

There are five licensed manufacturers of Reagent Red Blood Cells. Very few blood banks and transfusion services will be required to perform any additional testing when determining transfusion compatibility in patients' blood samples. The American Red Cross, the American Association of Blood Banks, and the Council of Community Blood Centers use paired rather than pooled Reagent Red Blood Cells for pretransfusion testing. These blood banking organizations represent an overwhelming majority of the approximately 7,200 transfusion services in the United States. FDA believes that any additional testing by the few transfusion services not affiliated with these organizations is warranted to protect patients from possible transfusion reactions caused by unexpected antibodies. The agency concludes that the rule is not a major rule as defined by Executive Order 12291. Further, the agency certifies that the rule, if implemented, will not have a significant impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act.

Paperwork Reduction Act of 1980

Sections 660.34, 660.35 and 660.36 of this final rule contain collection of information requirements that were submitted for review and approval to the Director of the Office of Management and Budget (OMB), as required by section 3507 of the Paperwork Reduction Act of 1980. The requirements were approved and assigned OMB control number 0910–0073.

Effective Dates

This regulation is effective November 6, 1987, except § 660.35. Labeling requirements in § 660.35 will become effective October 7, 1988 for all affected products initially introduced or initially delivered for introduction into interstate commerce.

List of Subjects

21 CFR Part 610

Biologics, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 660

Biologics, Labeling.

Therefore, under the Public Health Service Act and under authority delegated to the Commissioner of Food and Drugs, Parts 610 and 660 are amended as follows:

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

1. The authority citation for 21 CFR Part 610 is revised to read as follows:

Authority: Secs. 201, 501, 502, 510, 701, 52 Stat. 1040–1042 as amended, 1049–1051 as amended by 76 Stat. 780, 1055–1056 as amended, 76 Stat. 794 as amended, and sec. 301 of Pub. L. 87–781 (21 U.S.C. 321, 351, 352, 360 and note, 371), the Public Health Service Act (secs. 351 and 361, 58 Stat. 702 and 703 as amended (42 U.S.C. 262 and 264)), and the Administrative Procedure Act (secs. 4 and 10, 60 Stat. 238 and 243, as amended (5 U.S.C. 553, 702, 703, 704)); 21 CFR 5.10 and 5.11.

2. In § 610.53 in the table in paragraph (c) is amended by revising the item "Reagent Red Blood Cells" to read as follows:

§ 610.53 Dating periods for licensed biological products.

* * * * *

(c) * * *

Product	Manufacturer's storage period 1 to 5 °C (unless otherwise stated)	Manufacturer's storage period 0 °C or colder (unless otherwise stated)	Dating period after leaving manufacturer's storage when stored at 2 to 8 °C (unless otherwise stated)
A	B	C	D
*	*	*	*
Reagent red blood cells	Not applicable	Not applicable	Thirty-five days from earliest date of collection if kept in liquid form (indefinite storage of reagent red blood cell source material at −65 °C or colder).
*	*	*	*

* * * * *

PART 660—ADDITIONAL STANDARDS FOR DIAGNOSTIC SUBSTANCES FOR LABORATORY TESTS

3. The authority citation for 21 CFR Part 660 continues to read as follows:

Authority: Secs. 215, 351, 58 Stat. 690 as amended, 702 as amended (42 U.S.C. 216, 262); 21 CFR 5.10.

4. In Part 660, by revising Subpart D, consisting of §§ 660.30 through 660.36, to read as follows:

Subpart D—Reagent Red Blood Cells

Sec.
660.30 Reagent Red Blood Cells.
660.31 Suitability of the donor.
660.32 Collection of source material.
660.33 Testing of source material.
660.34 Processing.
660.35 Labeling.
660.36 Samples and protocols.

Subpart D—Reagent Red Blood Cells

§ 660.30 Reagent Red Blood Cells.

(a) *Proper name and definition.* The proper name of the product shall be Reagent Red Blood Cells, which shall consist of a preparation of human red blood cells used to detect or identify human blood-group antibodies.

(b) *Source.* Reagent Red Blood Cells shall be prepared from human peripheral blood meeting the criteria of §§ 660.31 and 660.32, or from umbilical cord cells which shall be collected and prepared according to the manufacturer's product license application.

§ 660.31 Suitability of the donor.

Donors of peripheral blood for Reagent Red Blood Cells shall meet the criteria for donor suitability under § 640.3 of this chapter, except that paragraphs (b)(5) and (6), (d), and (e) of § 640.3 shall not apply.

§ 660.32 Collection of source material.

Blood for Reagent Red Blood Cells from donors of peripheral blood shall be collected as prescribed under § 640.4 of this chapter, except that paragraphs (c), (d), (g), and (h) of § 640.4 shall not apply.

§ 660.33 Testing of source material.

Except as provided in this section, a sample of each blood incorporated into the Reagent Red Blood Cell product shall be individually tested, with no fewer than two donor sources of each antibody specificity employed, to confirm the identification of all blood group antigens specified in the labeling as present or absent. The manufacturer shall perform at least one of the required tests for each factor. The Reagent Red Blood Cell product may be tested with a single donor source of antibody specificity if only one source of antibody is available, and the Director, Office of Biologics Research and Review, has approved the use of a single donor source of antiserum. Each of these tests shall be conducted and interpreted independently, and any discrepancy between the results of these two tests shall be resolved by testing with at least one additional antiserum before concluding that the antigen is present or absent. Where fewer than three donor sources of an antibody specificity are available, test discrepancies shall be resolved in accordance with the manufacturer's product license application. Group O Reagent Red Blood Cells used in the detection or identification of unexpected antibodies shall include at least the following common antigens in each lot of the product: D, C, E, c̄, e, K, k̄, Fy^a, Fy^b, Jk^a, Jk^b, Le^a, Le^b, P_1, M, N, S, and s̄.

§ 660.34 Processing.

(a) *Processing method.* The processing method shall be one that has been shown to yield consistently a product that is capable of detecting, throughout the dating period, alloantibodies corresponding to all required blood group antigens specified in the labeling as present.

(b) *Products prepared from pooled red blood cells.* If the product is recommended for the detection of unexpected antibodies, the pool shall be prepared by combining equal amounts of cells from no more than two donors. Umbilical cord cells are exempt from this requirement. Pooled cells shall not be recommended for pretransfusion tests, done in lieu of a major crossmatch, to detect unexpected antibodies in patients' samples.

(c) *Absence of antibodies.* Each lot of final product shall be free of demonstrable antibodies, including anti-A and anti-B, unless the package insert and container lable include instructions to wash the cells before use. The final product shall also be direct antiglobulin test negative when tested with polyspecific anti-human globulin.

(d) *Final container.* The final containers used for each lot of product shall be clean and shall permit observation of the contents for hemolysis or a change in color. The final container label, container cap, and dropper bulb of a Reagent Red Blood Cell product may be color-coded with a visual match to a specific color approved by the Director, Office of Biologics Research and Review.

(e) *Date of manufacture.* The date of manufacture of the product shall be the date that the blood is withdrawn from the donor or obtained from umbilical cords. The period during which the reagent red blood cell source material is kept by the manufacturer in storage in a frozen state at −65 °C or colder is excluded from the dating period. If the product consists of red blood cells from two or more donors, the date of manufacture of the final product shall be the date of withdrawal of blood from the donor of the oldest constituent blood. When a product consists of more than one container, e.g., cell panel, the date of manufacture of each container of the product shall be the earliest date that blood was withdrawn from a donor for any container of the product.

(f) *Retention samples.* Retention samples shall be maintained as required by § 600.13 of this chapter, except that samples must be retained only throughout the dating period of the product.

(Collection of information requirements approved by the Office of Management and Budget under control number 0910–0073.)

§ 660.35 Labeling.

In addition to the items required by § 809.10 of this chapter and other applicable labeling provisions of this chapter, the following information shall be included in the labeling:

(a)(1) A logo or company name may be placed on the final container label, however, the logo or company name shall be located along the bottom or end of the label, oustide of the main panel.

(2) If washing the cells is required by the manufacturer, the container label shall include appropriate instructions; if the cells should not be washed before use, e.g., if washing will adversely affect the product, the package insert shall explain.

(b) The container label of Group O cells shall state: "FOR USE IN DETECTION OF UNEXPECTED ANTIBODIES" or "FOR USE IN IDENTIFICATION OF UNEXPECTED ANTIBODIES" or "NOT FOR USE IN DETECTION OR IDENTIFICATION OF UNEXPECTED ANTIBODIES".

(c) Except as provided in this section, the container and package labels shall state the percentage of red blood cells in the suspension either as a discrete figure with a variance of more than ±1 percentage unit or as a range the extremes of which differ by no more than 2 percentage units. If the stated red blood cell concentration is less than 2 percent, the variance shall be no more than ±0.5 percentage unit.

(d) The words "pooled cells" shall appear on the container and package labels of products prepared from pooled cells. The package label or package insert shall state that pooled cells are not recommended for pretransfusion tests, done in lieu of a major crossmatch, to detect unexpected antibodies in patients' samples.

(e) The package insert of a pooled product intended for detection of unexpected antibodies shall identify the number of donors contributing to the pool. Products designed exclusively for ABO Serum Grouping and umbilical cord cells need not identify the number of donors in the pool.

(f) When the product is a multicontainer product, e.g., a cell panel, the container label and package label shall be assigned the same identifying lot number, and shall also bear a number or symbol to distinguish one container from another. Such number or symbol shall also appear on the antigenic constitution matrix.

(g) The package label or package insert shall state the blood group antigens that have been tested for and found present or absent on the cells of each donor, or refer to such information in an accompanying antigenic constitution matrix. Cells for ABO Serum Grouping are exempt from this requirement. The package insert or antigen constitution matrix shall list each of the antigens tested with only one source of antibody.

(h) The package label or package insert shall bear the cautionary statement: "The reactivity of the product may decrease during the dating period."

(i) The package insert of a product intended for the detection or identification of unexpected antibodies shall note that the rate at which antigen reactivity (e.g., agglutinability) is lost is partially dependent upon individual donor characteristics that are neither controlled nor predicted by the manufacturer.

(j) The package insert shall provide adequate directions for use.

(k) The package insert shall bear the statement: "CAUTION: ALL BLOOD PRODUCTS SHOULD BE TREATED AS POTENTIALLY INFECTIOUS. SOURCE MATERIAL FROM WHICH THIS PRODUCT WAS DERIVED WAS FOUND NEGATIVE WHEN TESTED IN ACCORDANCE WITH CURRENT FDA REQUIRED TESTS. NO KNOWN TEST METHODS CAN OFFER ASSURANCE THAT PRODUCTS DERIVED FROM HUMAN BLOOD WILL NOT TRANSMIT INFECTIOUS AGENTS."

(l) The package insert or the antigenic constitution matrix for each lot of product shall specify the date of manufacture or the length of the dating period.

(m) Manufacturers shall identify with a permanent donor code in the product labeling each donor of peripheral blood used for detection or identification of unexpected antibodies.

(Collection of information requirements approved by the Office of Management and Budget under control number 0910–0073.)

§ 660.36 Samples and protocols.

(a) The following shall be submitted to the Office of Biologics Research and Review Sample Custodian (ATTN: HFN–895), Bldg. 29A, Rm. 1C02, Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, within 30 days after each routine establishment inspection by FDA.

(1) From a lot of final product, samples from a cell panel intended for identification of unexpected antibodies. The sample shall be packaged as for distribution and shall have at least 14 days remaining in the dating period when shipped to the Office of Biologics Research and Review.

(2) A protocol which shall include the following:

(i) Complete test records of at least two donors of the samples submitted, including original and confirmation phenotyping records.

(ii) Bleeding records or receipt records which indicate collection date, volume, and HBsAg test results.

(iii) Manufacturing records which document all steps involved in the preparation of the product.

(iv) Test results which verify that the final product meets specifications.

(v) Identity test results.

(b) A copy of the antigenic constitution matrix specifying the antigens present or absent shall be submitted to the Director, Office of Biologics Research and Review, at the time of initial distribution of each lot of Reagent Red Blood Cells for detection or identification of unexpected antibodies. Products designed exclusively to identify Anti-A, Anti-A_1, and Anti-B, as well as products composed entirely of umbilical cord cells, are excluded from this requirement.

(c) Except for umbilical cord samples, whenever a new donor is used, a sample of red blood cells from each new donor used in a cell panel intended for the identification of unexpected antibodies shall be submitted by the manufacturer to the Director, Office of Biologics Research and Review. The sample should contain a minimum volume of 0.5 milliliter of red blood cells.

(Collection of information requirements approved by the Office of Management and Budget under control number 0910–0073.)

Dated: September 15, 1987.

Richard J. Davis,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-23038 Filed 10-6-87; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 218

Assessments for Incorrect or Late Reports and Failure To Report

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule; correction.

SUMMARY: The Minerals Management Service (MMS) is correcting an error which appeared in the **Federal Register** on July 22, 1987 (52 FR 27545). That **Federal Register** Notice amended 30 CFR 216.40 and 218.40 which provide for assessments against lessees, operators, and other reporters who report incorrectly, late, or fail to report under the MMS Auditing and Financial System (AFS) and the Production Accounting and Auditing System (PAAS).

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures, (303) 231-3432, Lakewood, Colorado.

SUPPLEMENTARY INFORMATION: The MMS amended 30 CFR 216.40 and 218.40 to provide more flexibility in establishing the amount of assessments against lessees, operators, and other reporters who report incorrectly, late, or fail to report to the AFS and the PAAS. The amendment to § 218.40 contained a clerical error which is corrected by this Notice.

Dated: September 23, 1987.

Jerry D. Hill,

Associate Director for Royalty Management.

The following correction is made to the amendment to 30 CFR 218.40 which was published in the **Federal Register** on July 22, 1987 (52 FR 27545):

§ 218.40 [Corrected]

On page 27547 in the issue of July 22, 1987, in the first column, the designation pargraph "(g)" is corrected to read paragraph "(e)".

[FR Doc. 87-23136 Filed 10-6-87; 8:45 am]

BILLING CODE 4310-MR-M

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 915

Approval of Amendment to Iowa Permanent Regulatory Program

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

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of a proposed amendment to the Iowa permanent regulatory program (hereinafter referred to as the Iowa program) received by OSMRE pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment is a modification of Iowa statute concerning permanent program performance standards. This final rule will allow Iowa to bring its program into conformance with the Federal standards. Iowa will now be able to respond to OSMRE requirements for regulatory reform due to Federal regulation changes under SMCRA promulgated after March 13, 1979. Consistency of State and Federal standards is required by SMCRA.

EFFECTIVE DATE: October 7, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Kovacic, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106; Telephone: (816) 374-5527.

SUPPLEMENTARY INFORMATION:

I. Background of the Iowa Program

On February 28, 1980, the Secretary of the Interior received a proposed regulatory program from the State of Iowa. On April 10, 1981, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary conditionally approved the Iowa program (46 FR 5885).

Information pertinent to the general background of the permanent program submission, as well as the Secretary's findings, the disposition of comments and explanation of the condition of approval of the Iowa program, can be found in the April 10, 1981 **Federal Register** (46 FR 5885). Subsequent actions concerning the Iowa program are identified in 30 CFR 915.15 and 915.20.

II. Submission of Proposed Amendment

On August 1, 1986, OSMRE notified the State of Iowa that the State needed to remove the phrase "on or before March 13, 1979" from Chapter 83-7 of the Iowa Code, pursuant to 30 CFR 732.17(f)(1). Prior to this amendment, Iowa statute only required that rules should be consistent with the environmental performance standards of SMCRA and the permanent regulations issued pursuant to it on or before March 13, 1979. The above language precluded Iowa from consistency with regulation changes promulgated after March 13, 1979. In order for Iowa to respond to OSMRE requirements for regulatory reform after March 13, 1979, this language had to be revised.

On April 28, 1987, the State of Iowa submitted to OSMRE an amendment to its approved permanent regulatory program. The amendment consisted of signed legislation amending Iowa's Coal Mining Statute, Chapter 83. Section 83.7, Code 1987 is amended by strking the section and inserting the following in its place:

83.7 Environmental Protection Performance Standards

The division shall adopt rules for environmental protection performance standards that are consistent with Federal regulations authorized under the Federal Surface Mining Control and Reclamation Act and amendments to that Act.

On July 9, 1987, the Director announced receipt of the proposed amendment and opened the public comment period (52 FR 25888). Since no one requested a public hearing, none was held.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.17(h)(6), are the Director's findings concerning the proposed amendment.

Because of the language "on or before March 13, 1979" from Chapter 83-7 of the Iowa Code, the State of Iowa could not maintain its regulations in a manner no less effective than the Federal regulations. This is a requirement of 30 CFR 732.17(h)(9), 732.15 (a) and (b) and 730.5 (a) and (b).

Iowa has striken the language "on or before March 13, 1979" from the Iowa statute. The replacement language allows the State of Iowa to keep its environmental protection performance standards consistent with Federal regulations under SMCRA and amendments to SMCRA.

Therefore, the Director finds that the amendment to the Iowa program as proposed is consistent with the Federal requirements.

IV. Public Comment

The Director solicited public comments on the proposed amendment by **Federal Register** notice on July 9,

1987 (52 FR 25888), that specified August 10, 1987, as the closing date of the comment period. No public comments were received. No one made a request to present testimony at a public hearing; therefore, the hearing scheduled for August 3, 1987 was canceled.

Various State and Federal agencies were also invited to comment on the proposed amendment. The Iowa State Historical Department supported adoption of the amendment. The Soil Conservation Service recommended approval of the amendment. The Mine Safety and Health Administration had no objections to the amendment. The U.S. Environmental Protection Agency, Office of Water Enforcement and Permits and the Regional Administrator for Region VII, responded that they had no comment on the amendment.

V. Director's Decision

Based on the findings, the Director is approving the amendment to the Iowa program as submitted April 28, 1987. The Federal regulations at 30 CFR Part 915 are being amended to implement this decision.

VI. Procedural Matters

1. Compliance with the National Environmental Policy Act

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

2. Executive Order 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for action directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSMRE is exempt from the requirement to prepare a Regulatory Impact Analysis, and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal Rules will be met by the State.

3. Paperwork Reduction Act

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

List of Subjects in 30 CFR Part 915

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

Date: September 30, 1987.

Brent Wahlquist,

Acting Deputy Director, Operations and Technical Services, Office of Surface Mining Reclamation and Enforcement.

30 CFR Part 915 is amended as follows:

PART 915—IOWA

1. The authority citation for Part 915 continues to read as follows:

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. Section 915.15 is amended by adding paragraph (g) as follows:

§ 915.15 Approval of regulatory program amendments.

* * * * *

(g) The following amendment submitted to OSMRE on April 28, 1987, is approved effective October 7, 1987. Code of Iowa, 1987, Chapter 83, Section 83.7.

[FR Doc. 87-23191 Filed 10-6-87; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 6E3414, 6E3325/R886 (FRL-3272-2)]

Pesticide Tolerances for Paraquat and Benomyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes tolerances for residues of the desiccant, defoliant, and herbicide paraquat and the fungicide benomyl and its metabolites in or on certain raw agricultural commodities (RAC). These rules to establish maximum permissible levels for residues of the pesticides in or on the RAC were requested by the Interregional Research Project No. 4 (IR-4).

DATE: Effective on October 7, 1987.

ADDRESS: Written objections, identified by the document control number [PP 6E3414, 6E3325/R886], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Room 3708, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail:

Donald R. Stubbs, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M Street, SW Washington, DC 20460.

Office location and telephone number Room 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703) 557-1806.

SUPPLEMENTARY INFORMATION: EPA issued proposed rules for paraquat and benomyl and its metabolites, published in the **Federal Register** of April 8, 1987 (52 FR 11292 and 11293, respectively), which announced that the Interregional Research Project No. 4, New Jersey Agricultural Experiment Station, P.O Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petitions (PP) as follows to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the following agricultural experiment stations:

1. *PP 6E3414.* Petition submitted on behalf of Agricultural Experiment Station of New Hampshire for paraquat on tyfon (a cross between Chinese cabbage and turnips that is grown for animal feeding purposes) at 0.05 part per million (ppm).

2. *PP 6E3325.* Petition submitted on behalf of Agricultural Experiment Station of Florida for benomyl and its metabolites on watercress at 10.0 ppm.

There were no comments or requests for referral to an advisory committee received in response to the proposed rules.

The data submitted and relevant information have been evaluated and discussed in the proposed rules. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after the date of publication in the **Federal Register**, file written objections with the Hearing Clerk, Environmental Protection Agency, Rm. M-3708 (A-110), 401 M Street, SW., Washington, DC 20460. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are legally sufficient to justify the relief sought.

The Office of Management and Budget (OMB) has exempted this regulation

from OMB requirements of Executive Order 12291 pursuant to section 8(b) of that Order.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: September 23, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 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. Section 180.205(b) table is amended by adding and alphabetically inserting the raw agricultural commodity tyfon to read as follows:

§ 180.205 Paraquat; tolerances for residues.

* * * * *

(b) * * *

Commodities	Parts per million
* * * * *	
Tyfon	0.05

3. Section 180.294 is amended by designating the current paragraph and list of tolerances as paragraph (a) and adding new paragraph (b), to read as follows:

§ 180.294 Benomyl; tolerances for residues.

(a) * * *

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for residues on the fungicide benomyl (methyl 1-[butylcarbamoyl]-2-benzimidazolecarbamate) and its metabolites containing the benzimidazole moiety (calculated as benomyl) in or on the raw agricultural commodities:

Commodities	Parts per million
Watercress	10.0

[FR Doc. 87-22786 Filed 10-6-87; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 466 and 476

[HSQ-145-FC]

Medicare and Medicaid Programs; Entities Performing Quality of Care Review of Services Provided by Risk-Basis Health Maintenance Organizations and Competitive Medical Plans

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

ACTION: Final rule with comment period.

SUMMARY: This final rule provides for review by Utilization and Quality Control Peer Review Organizations (PROs) of the quality of care furnished by risk-basis health maintenance organizations and competitive medical plans under 42 CFR Part 417, Subpart C. It also provides for this same review by non-PRO entities and identifies the requirements that these non-PRO entities must meet. This rule is necessary for the timely implementation of section 1154(a)(4) of the Social Security Act, as amended by section 9353(a)(2) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509).

Additionally, this rule corrects a technical error in the PRO regulations governing disclosure of confidential information to State agencies.

DATES: *Effective date:* These regulations are effective on October 7, 1987. They are being issued in final for reasons explained in the Waiver of Proposed Rulemaking section under Supplementary Information below.

Comment period: We will consider any comments we receive at the appropriate address, as provided below, no later than 5:00 p.m. on December 7, 1987, and revise the regulations as necessary.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HSQ-145-FC, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code HSQ-145-FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Kay Terry, (301) 594-7909.

SUPPLEMENTARY INFORMATION:

I. Background

A. Utilization and Quality Control Peer Review Organizations (PROs): General

The Peer Review Improvement Act of 1982 (Title I, Subtitle C of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248)) amended Part B of Title XI of the Social Security Act (the Act) to establish the Utilization and Quality Control Peer Review Organization (PRO) program. The 1982 legislation provided that PROs assume the responsibilities that previously had been assigned to Professional Standard Review Organizations. Those responsibilities include the review of health care services funded under Medicare (Title XVIII of the Act) to determine whether those services are medically necessary, are furnished at the appropriate level of care, and are of a quality that meets professionally recognized standards. In addition, PROs monitor and validate a sample of diagnostic and procedural information supplied by providers to fiscal intermediaries regarding prospective payments to hospitals.

To carry out their responsibilities, PROs acquire information from the medical records of patients and from other records maintained by health institutions, practitioners and claims payment agencies. In addition, they generate information regarding the quality and appropriateness of health care services. PROs use this information to develop and review profiles (patterns of utilization and practice) and to assess the quality of care being furnished. PROs transmit their determinations to intermediaries responsible for making payments under the Act.

The PROs legislation contained several provisions affecting data collection and disclosure. Under section 1154(a)(7)(C) of the Act, PROs have the authority to examine pertinent records of any practitioner or provider of health care services for which the PROs has review responsibility. Section 1154(a)(9) of the Act requires that a PRO "collect

such information relevant to its functions and keep and maintain such records, in such form as the Secretary may require to carry out the purposes of this part and shall permit access to and use of any such information and records as the Secretary may require for such purposes, subject to the provisions of section 1160 of the Act." Other relevant language in section 1154(a)(10) of the Act authorizes PROs to exchange information with claims payment agencies, other PROs, and other public or private review organizations as may be appropriate. Section 1160 of the Act contains the majority of a PRO's satutory responsibilities concerning the disclosure of information. This section recognizes both the need to protect the interests of patients, health care practitioners and providers of health care in the confidentiality of their medical records and the need to disclose certain information.

On April 17, 1985, we published in the **Federal Register** several final rules that implemented the PRO program (50 FR 15312–15374). The PRO regulations are located in various parts of title 42 of the CFR (that is, Part 405, 462, 466, 473, 476, 489, and 1004).

B. Quality of Care Review of Risk-Basis HMOs and CMPs

On October 21, 1986, the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509) was enacted. Section 9353(a)(2)(B) of Pub. L. 99–509) added section 1154(a)(4)(B) to the Act to provide that inpatient services and outpatient services furnished to Medicare enrollees by eligible organizations (that is, risk-basis health maintenance organizations (HMOs) and competitive medical plans (CMPs)) in accordance with a contract under section 1876 of the Act be reviewed for the quality of care provided. Based on this review, a determination must be made as to whether the quality of those services meets professionally recognized standards of health care, including whether appropriate health care services have not been provided or have been provided in inappropriate settings. Section 9353(a)(6)(B) of Pub. L. 99–509 specifies that section 9353(a)(2)(B) shall apply to contracts as of April 1, 1987.

Section 9353(a)(2)(D) of Pub. L. 99–509 added section 1154(a)(4)(C) to the Act to require that the Secretary may provide, by contract under competitive procurement procedures on a State-by-State basis in up to 25 States, for the review described above to be performed by either a Utilization and Quality Control Peer Review Organization (PRO) or an organization that is not a PRO but which meets the requirements for PROs set forth in sections 1152 and 1153(b) of the Act.

Section 9353(a)(6)(C) of Pub. L. 99–509 specifies that section 9353(a)(2)(D) shall apply to contracts awarded as of January 1, 1987. On January 5, 1987, we published a notice (52 FR 362) to solicit comments on a tentative list of 25 States in which we intend to provide for competitive contracting for the review of HMO and CMP services.

Section 1154(a)(4)(B) of the Act provides that if an entity other than the current PRO wins the contract to preform quality of care reviews of risk-basis HMOs and CMPs, as allowed under section 1154(a)(4)(C) of the Act, the requirement for such reviews will not apply to affected PROs for affected contract periods.

II. Provisions of the Regulations

Quality of Care Review of Risk-Basis HMOs and CMPs

This interim final rule is necessary to implement section 1154(a)(4) of the Act as established by section 9353(a)(2) of Pub. L. 99–509. The statutory requirements regarding the quality of care review of HMO and CMP services by PROs are sufficiently clear to be self-implementing. The statute is also explicit in its intent to permit entities other than PROs to perform quality of care reviews of services provided by risk-basis HMOs and CMPs. Furthermore, as discussed above, certain PRO statutory requirements are likewise applicable to these other non-PRO entities.

Accordingly, we are amending the introductory sections of Part 466, Subpart C of 42 CFR to incorporate the statutory additions to PRO review responsibilities, and to specify the extent to which the PRO regulations will apply to non-PRO entities that win contracts under section 1154(a)(4)(C) of the Act. In particular, we are adding a new § 466.72, which provides that, under section 1154(a)(4) of the Act, a PRO must determine whether the quality of services (including both inpatient and outpatient services) provided by an HMO or CMP (under a risk-basis contract under section 1876 of the Act) meets professionally recognized standards of health care, including whether appropriate health care services have not been provided or have been provided in inappropriate settings. Section 466.72 also provides that, for purposes of review under that section, non-PRO entities will be subject to the PRO rules regarding acquisition, protection, and disclosure of peer review information (42 CFR Part 476), and the rules regarding sanctions on health care practitioners and providers (42 CFR Part 1004 (formerly designated as Part 474)). Thus, any entity that enters into a contract to perform quality of care reviews of services furnished by risk-basis HMOs and CMPs under 42 CFR Part 417, Subpart C, will be considered to be a PRO for purposes of those reviews, and only for those reviews, and will have the same authorities, protections, and responsibilities as a PRO regarding that limited function. (While the PRO regulations do not address the provisions of section 1157 of the Act regarding limitations on liability of individuals involved in the peer review process, those provisions apply to all contracts made under title XI of the Act, including those with non-PRO entities.)

Without amendment, our regulations governing the review responsibilities of PROs will not apply to any other entities performing reviews. With the amendments, non-PROs that perform these reviews will be governed by requirements comparable to those that apply to PROs.

Technical Correction

Due to a technical oversight on our part, our current regulations at 42 CFR 476.133 and 476.137 require PROs to disclose confidential information only to State agencies responsible for the investigation of fraud and abuse of the Medicare program. Section 1160(b)(1)(A) of the Act provides for the release of confidential information "as may be necessary to assist Federal and State agencies . . . ." This section of the Act does not limit the release of this information to agencies investigating fraud and abuse of the Medicare program. The inclusion of language so limiting release in the current regulation has been confusing and has led to the impression among some parties that release of information to other agencies, such as those that investigate Medicaid fraud and abuse, is prohibited. Therefore, we are revising §§ 476.133 and 476.137 to refer to both the Medicare and Medicaid programs.

III. Regulatory Impact Statement

Executive Order 12291 (E.O.) requires us to prepare and publish a regulatory impact analysis for any regulation that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in: an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In additon, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that the regulation will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all PROs and other potential review entities as small entities.

The provisions on review of quality of care of risk-basis HMOs and CMPs merely will ensure that any non-PRO entity that contracts to review risk-basis HMO and CMP services must meet the same review responsibilities that a PRO must meet in performing the same reviews. We are not adding any review requirements beyond those explicit in the statute.

For these reasons, the Secretary has determined that a regulatory impact analysis is not required. Further, we have determined, and the Secretary certifies, that this final rule will not have a significant economic impact on a substantial number of small entities, and we have therefore not prepared a regulatory flexibility analysis.

IV. Waiver of Proposed Rulemaking and 30-Day Delay of Effective Date

A. Proposed Rulemaking Requirement

We generally publish notice of proposed rulemaking in the **Federal Register** and afford prior public comment on proposed rules. Such notice includes a statement of the time, place, and nature of rulemaking proceedings, reference to the legal authority under which the rule is proposed, and the terms or substance of the proposed rule or a description of the subjects and issues involved. However, this procedure can be waived when an agency finds good cause that such a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of finding and its reasons in the rules issued.

The final rule is necessary for the timely implementation of sections 9353(a)(2)(D) and 9353(d) of Pub. L. 99-509. The rule revises the relevant PRO regulations in order to largely reiterate the statutory requirements imposed by these amendments and clarifies which existing PRO statutory provisions and regulations apply to organizations other than PROs that will be conducting the review of HMO and CMP services. (While the PRO regulations do not address the provisions of section 1157 of the Act regarding limitations on liability of individuals involved in the peer review process, those provisions apply to all contracts made under title XI of the Act, including those with non-PRO entities). Peer review of the care provided to Medicare patients by HMOs and CMPs is an essential element in ensuring that the care given to these primarily elderly patients meets professionally recognized standards. Because Congress clearly intended, through the passage of these amendments, to authorize non-PRO organizations to conduct quality of care reviews in certain situations, it is in the public interest to ensure that current regulations are amended as quickly as possible to clarify that the authorities, protections, and responsibilities of those entities are comparable to those of PROs. Furthermore, section 9353(a)(2)(B) of Pub. L. 99-509 applies to contracts as of April 1, 1987, and section 9353(d)(1) is effective for requests for data and information made on or after April 21, 1987. As a result of these statutory deadlines, publising a proposed rule is impracticable. Therefore, we find good cause to waive proposed rulemaking for the implementation of these provisions.

Regarding the correction of our rule concerning disclosure to State Medicaid programs, we have determined that it is not in the public interest to delay publication of this clarification that PROs must disclose to State Medicaid agencies (or other State agencies with appropriate responsibilities concerning State Medicaid programs) peer review information germane to the investigation of fraud and abuse. We therefore find good cause to waive proposed rulemaking for the implementation of these provisions.

B. Requirement for 30-Day Delay of Effective Date

We usually publish our rules not less than 30 days before their effective dates unless we find good cause and publish that rationale with the rule. For the reasons discussed above with reference to waiving the proposed rulemaking requirement, we find that it is impracticable and not in the public interest to provide for a 30-day delay in the effective date of this final rule with comment period. Therefore, we find good cause to waive that delay.

V. Response to Comments

Because of the large number of comments we receive on proposed regulations, we cannot acknowledge or respond to them individually. However, we will consider all comments received timely and, if we decide to change the regulations, we will publish an additional **Federal Register** document and respond to the major issues raised by commenters in the preamble to the subsequent **Federal Register** document.

VI. Collection of Information Requirements

Section 466.71(a) of this final rule contains information collection requirements subject to review by the Office of Management and Budget (OMB) under authority of the Paperwork Reduction Act of 1980. The information collection requirements contained in this section have been previously approved under OMB control number 0938-0445. However, because these requirements now apply to the review of additional organizations, namely risk-basis HMOs and CMPs, we are interested in receiving further public comments. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency official designated for this purpose whose name appears in the preamble and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, Room 3208, Washington, DC 20503, ATTN: Allison Herron, Desk Officer for HCFA.

Also, it should be noted that in accordance with the Paperwork Reduction Act of 1980, we will be submitting for OMB review a new package of PRO reporting forms (HCFA Forms 567 through 575). These forms will be used for quality of care reviews of HMOs and CMPs. Notification of the submission of these revisions for OMB approval will be published in the **Federal Register.**

List of Subjects

42 CFR Part 466

Competitive medical plans (CMPs), Grant programs-health, Health care, Health facilities, Health maintenance organizations (HMOs), Health professions, Peer Review Organizations.

42 CFR Part 476

Health care, Health professions, Health records, Peer Review Organizations, Penalties, Privacy.

For the reasons set forth in the preamble, 42 CFR Chapter IV is amended as follows:

A. Part 466, Subpart C is amended to read as follows:

1. The table of contents for Part 466, Subpart C, is amended to read as follows:

PART—466 UTILIZATION AND QUALITY CONTROL REVIEW

* * * * *

Subpart C—Review Responsibilities of Utilization and Quality Control Peer Review Organizations (PROs)

General Provisions

Sec.
466.70 Statutory bases and applicability.
466.71 PRO review requirements.
466.72 Review of the quality of care of risk-basis HMOs and CMPs.
466.73 Notification of PRO designation and implementation of review.

* * * * *

1a. The authority citation for Part 466 continues to read as follows.

Authority: Sec. 1102, 1154, and 1871 of the Social Security Act (42 U.S.C. 1302, 1320c–3, and 1395hh).

2. Section 466.70 is amended by revising the section heading, paragraphs (a) and (b), and redesignating paragraphs (c), (d) and (e) as paragraphs (a), (b) and (c), respectively, of new § 466.71, which is added to read as follows:

§ 466.70 Statutory bases and applicability.

(a) *Statutory basis.* Sections 1154, 1866(a)(1)(F) and 1886(f)(2) of the Act require that a PRO review those services furnished by physicians, other health care professionals, providers and suppliers as specified in its contract with the Secretary. Section 1154(a)(4) of the Act requires PROs, or, in certain circumstances, non-PRO entities, to perform quality of care reviews of services furnished under risk-basis contracts by health maintenance organizations (HMOs) and competitive medical plans (CMPs) that are covered under Subpart C of Part 417 of this chapter.

(b) *Applicability.* The regulations in this subpart apply to review conducted by a PRO and its subcontractors. Section 466.72 of this part also applies, for purposes of quality of care reviews under section 1154(a)(4) of the Act, to non-PRO entities that enter into contracts to perform reviews of services furnished under risk-basis contracts by HMOs and CMPs under Subpart C of Part 417 of this chapter.

§ 466.71 PRO review requirements.

(a) *Scope of PRO review.* In its review, the PRO must determine (in accordance with the terms of its contract)—

(1) Whether the services are or were reasonable and medically necessary for the diagnosis and treatment of illness or injury or to improve functioning of a malformed body member, or (with respect to pneumococcal vaccine) for prevention of illness or (in the case of hospice care) for the palliation and management of terminal illness;

(2) Whether the quality of the services meets professionally recognized standards of health care;

(3) Whether those services furnished or proposed to be furnished on an inpatient basis could, consistent with the provisions of appropriate medical care, be effectively furnished more economically on an outpatient basis or in an inpatient health care facility of a different type;

(4) Through DRG validation, the validity of diagnostic and procedural information supplied by the hospital;

(5) The completeness, adequacy and quality of hospital care provided;

(6) The medical necessity, reasonableness and appropriateness of hospital admissions and discharges;

(7) The medical necessity, reasonableness and appropriateness of inpatient hospital care for which additional payment is sought under the outlier provisions of §§ 412.82 and 412.84 of this chapter; and

(8) Whether a hospital has misrepresented admission or discharge information or has taken an action that results in—

(i) The unnecessary admission of an individual entitled to benefits under Part A;

(ii) Unnecessary multiple admissions of an individual; or

(iii) Other inappropriate medical or other practices with respect to beneficiaries or billing for services furnished to beneficiaries.

(b) *Payment determinations.* On the basis of the review specified under paragraphs (c) (1), (3), (6), and (7), and (8) of this section, the PRO must determine whether payment may be made for these services. A PRO may grant a period of not more than two days (grace days) for the purpose of arranging post discharge care when the provider did not know or could not reasonably be expected to have known that payment for the service(s) would not be made under the Medicare program as specified in § 405.330(b).

(c) *Other duties and functions.* (1) The PRO must review at least a random sample of hospital discharges each quarter and submit new diagnostic and procedural information to the Medicare fiscal intermediary or carrier if it determines that the information submitted by the hospital was incorrect.

(2) The PRO must also perform other duties, functions, and responsibilities as required by HCFA.

§ 466.72 [Redesignated as § 466.73]

3. Section 466.72 is redesignated as § 466.73.

4. A new § 466.72 is added to read as follows:

§ 466.72 Review of the quality of care of risk-basis health maintenance organizations and competitive medical plans.

(a) (1) For purposes of a review under section 1154(a)(4) of the Act, a PRO must determine whether the quality of services (including both inpatient and outpatient services) provided by an HMO or CMP meets professionally recognized standards of health care, including whether appropriate health care services have not been provided or have been provided in inappropriate settings.

(2) Paragraph (a)(1) of this section will not apply with respect to a contract year if another entity has been awarded a contract to perform those reviews under section 1154(a)(4)(C) of the Act.

(b) For purposes of reviews under this section, non-PRO entities selected to perform these reviews under section 1154(a)(4)(C) of the Act are subject to the requirements of paragraph (a)(1) of this section and—

(1) Part 476 of this chapter regarding acquisition, protection, and disclosure of peer review information; and

(2) Part 1004 of Chapter V regarding a PRO's responsibilities, and sanctions on health care practitioners and providers.

B. Part 476, Subpart B is amended as follows:

1. The table of contents of Part 476 is amended by revising the title of § 476.137 to read as follows:

PART 476—ACQUISITION, PROTECTION, AND DISCLOSURE OF PEER REVIEW INFORMATION

* * * * *

Subpart B—Utilization and Quality Control Peer Review Organizations (PROs)

* * * * *

§ 476.137 Disclosure to Federal and State enforcement agencies responsible for the investigation or identification of fraud or abuse of the Medicare or Medicaid programs.

* * * * *

1a. The authority citation for Part 476 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302). Subpart A is also issued under sec. 150 of Pub. L. 97-248 (42 U.S.C. 1320c note). Subpart B is also issued under secs. 1154(a), 1156(a), and 1160 of the Social Security Act (42 U.S.C. 1320c-3(a), 1320c-5(a), and 1320c-9).

2. In § 476.133, the introductory text of paragraph (a) is republished and paragraph (a)(2)(ii) is revised to read as follows:

§ 476.133 Disclosure of information about practitioners, reviewers and institutions.

(a) *General requirements for disclosure.* Except as specified in paragraph (b) of this section, the following provisions are required of the PRO.

* * * * *

(2) * * *

(ii) *Disclosure to others.*

In accordance with section 1160 of the Act, a PRO must disclose information that displays practice or performance patterns of a practitioner or institution in accordance with the procedures for disclosures specified in §§ 476.137 and 476.138 to—

(A) Federal and State agencies that are responsible for the investigation of fraud and abuse of the Medicare and or Medicaid programs, and

(B) Federal and State agencies that are responsible for licensing and certification of practitioners and providers.

* * * * *

§ 476.137 [Amended]

3. In § 476.137, including the section heading, remove the phrase "Medicare program" and add, in its place, "Medicare or Medicaid programs."

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program; No. 13.773, Medicare—Hospital Insurance Program; and No. 13.774, Medicare—Supplemental Medical Insurance Program)

Dated: September 21, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: September 30, 1987.

Otis R. Bowen,

Secretary.

[FR Doc. 87-23092 Filed 10-6-87; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[Gen. Docket No. 86-225; FCC 87-303]

Ex Parte Communications and Presentations in Commission Proceedings

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: FCC adopts a Memorandum Opinion and Order to reconsider and revise certain aspects of Subpart H, Part 1 of the Commission's Rules and Regulations relating to ex parte communications and presentations governing Commission proceedings in order to serve the public interest better.

EFFECTIVE DATE: October 7, 1987.

FOR FURTHER INFORMATION CONTACT: Steve Bailey, Administrative Law Division, Office of General Counsel, Washington, DC 20554, (202) 254-6530.

SUPPLEMENTARY INFORMATION: In the matter of amendment of Subpart H, Part 1 of the Commission's rules and regulations concerning ex parte communications and presentations in Commission proceedings.

This is a summary of the Commission's Memorandum Opinion and Order in Gen. Docket No. 86-225, adopted September 17, 1987, and released October 7, 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 20037.

Summary of Memorandum Opinion and Order

1. On May 22, 1987, the Commission released a Report and Order adopting new ex parte rules to simplify and clarify its policies in this area. FCC 87-94, 2 FCC Rcd 3011, 52 FR 21051 (June 4, 1987). On July 2, 1987, it received a letter from Honorable Edward J. Markey, Chairman of the Subcommittee on Telecommunications and Finance, Committee on Commerce and Energy, House of Representatives, stating that the Commission-imposed Sunshine prohibition should not be applied to members of Congress. Attached to the letter was a memorandum from the General Counsel to the Clerk of the House of Representatives in support of the views expressed by Chairman Markey.

2. The Commission subsequently decided to treat this letter as a petition for reconsideration of the new ex parte rules and stated that it might possibly reconsider other aspects of the rules. Order, FCC 87-228, 2 FCC Rcd 4264 (July 14, 1987). "Comments on Petition for Reconsideration" were received from BellSouth Corporation, South Central Bell Telephone Company, and Southern Bell Telephone and Telegraph Company (BellSouth).

3. In its Report and Order, the Commission retained and clarified the regulatory prohibition against presentations during the "Sunshine Agenda period," which, as revised herein, is now defined as the period from the time that a matter is listed on a Commission meeting agenda until release of the text of a decision or order relating to the matter or release of a notice that the matter has been deleted from the agenda or returned to the staff. In reconsidering the applicability of the prohibition to Congress, the Commission noted that Congress has a special responsibility to ensure that the powers it has entrusted to it are exercised wisely in accordance with its statutory mandate and, therefore, the Commission has an obligation to craft its rules to avoid imposing handicaps that may needlessly interfere with or impede that congressional function. In light of this and other factors, it found that the benefits of the "period of repose" intended by this prohibition are outweighed by the greater overall public interest of flexibility in exchanging information among policy-makers. Hence, the Commission concluded that the Sunshine prohibition should be revised to exempt contacts from members of Congress in non-restricted proceedings and certain otherwise proceedings during the Sunshine period.

4. Similarly, it recognized that other agencies and branches of the Federal Government, even if they do not formally share jurisdiction with this agency, may have relevant information

concerning non-restricted or certain other proceedings otherwise exempt. Because they may not be aware of the pendency of a particular non-restricted or exempt proceeding prior to publication of the Sunshine Notice, they would be precluded from communicating such information to the Commission absent exemption from the Sunshine prohibition. As with Congressional contacts, it found that the need for flexibility conducive to the wide exchange of information at the federal level among policy-makers outweighs the benefits of the Sunshine prohibition. Similarly, it concluded that other federal governmental contacts should be exempted from the Sunshine prohibition in non-restricted and certain other proceedings that are otherwise exempt under the rules.

5. In permitting these exceptions from the Sunshine prohibition, the Commission stated that those presentations that are of substantial significance and clearly intended to affect the ultimate decision would be subject to disclosure by Commission staff or in accordance with the "permit but disclose" procedures set forth in § 1.1206(a). However, it stated that no responses to such statements will ordinarily be accepted during the Sunshine period.

6. In addition, the rules were amended to provide an exemption for information obtained on an ex parte basis in the course of an investigation in order to ensure that the Commission's ability to obtain such information during an investigation is not impaired. The Commission also clarified the rules to provide that waiver or special permission requests that are formally opposed would generally be treated as restricted proceedings unless the Commission specified otherwise. However, waiver requests raised in the context of an individual tariff filing that are part and parcel of the tariff review and screening process would continue to be exempt unless they implicated issues of broader significance and impact.

7. In addition, the rules were clarified to indicate that order to show cause proceedings would be treated as restricted adjudications and that non-restricted ex parte rules will generally be followed in Joint Board proceedings under section 410(c) of the Communications Act unless otherwise stated. The Commission also amended the rules to provide that where a very significant adjudicative decision is perceived by the public as a major statement of Commission policy, the Managing Director is not required to follow the procedures under § 1.1212 (a) through (g) of the Rules with respect to general correspondence received in the proceeding; instead, a public file of such correspondence will be maintained.

8. The Commission also amended the rules to clarify that Bureau staff involved in the routine handling of complaints should not be considered decision-making personnel in a restricted proceeding merely because the person against whom a complaint is filed is also a party to a restricted proceeding. It also declined to eliminate the Sunshine period prohibition as suggested by BellSouth. Other changes, essentially minor in nature, were also made. These changes to the rules are reflected in the Appendix.

9. The Commission adopts these changes to clarify points left ambiguous in its recent rulemaking, and to modify the new rules where warranted, upon further reflection, to best serve the public interest. Because they concern Commission practice and procedure and establish standards of fairness governing Commission proceedings, the Commission finds that good cause exists and, accordingly, the changes herein shall become immediately effective upon publication in the **Federal Register**. See 5 U.S.C. 553 (b) and (d)(3).

10. The rule changes adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose no new or modified requirements or burdens on the public and, accordingly, their implementation is not subject to approval by the Office of Management and Budget under that Act.

11. Accordingly, it is ordered that the Rules and Regulations of the Federal Communications Commission are amended in the manner indicated below.

12. It is further ordered that the amendments to the Commission's Rules shall become immediately effective upon publication in the **Federal Register**.

13. It is further ordered that this proceeding is terminated.

14. Authority for this action is contained in sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 154(j), and 303(r).

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Part 1 (Practice and Procedure) of Chapter I of title 47 of the Code of Federal Regulations is amended as follows:

PART 1—[AMENDED]

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

Authority: Sections 4, 303, 409, 48 Stat. 1066, 1082, 1096, as amended; 47 U.S.C. 66, 154, 303, 309.

2. The table of contents for Subpart H which was published at 52 FR 21052, June 4, 1987, is corrected by adding "Section 1.1214 Disclosure of Information Concerning Violations of this Subpart." and by changing the section number immediately following the undesignated center heading "SANCTIONS" to read "Section 1.1216".

3. Section 1.1202 is amended by adding a note to paragraph (c), removing the words "as between" in paragraph (d) and replacing them with the word "of"correctly designating paragraphs (f)(i), (ii), and (iii), as paragraphs (f)(1), (2), and (3), and revising paragraph (f)(1) to read as follows:

§ 1.1202 Definitions.

* * * * *

(c) * * *

Note to paragraph(c): The application of this definition under this subpart is not intended to preclude the routine handling by Commission staff of complaints that would otherwise be technically considered ex parte because the person against whom the complaint is directed is also a party in a restricted proceeding.

* * * * *

(f) * * *

(1) Releases the text of a decision or order relating to the matter, or

* * * * *

4. Section 1.1203 is amended by adding a new paragraph (c) with a note to read as follows:

§ 1.1203 Sunshine period prohibition.

* * * * *

(c) The prohibition in § 1.1203(a) above shall not apply to presentations (not otherwise exempted under § 1.1204(b)) made by members of Congress or their staff or by other agencies or branches of the Federal Government or their staff in non-restricted proceedings under § 1.1206(b), exempt proceedings under § 1.1204(a)(2) (not involving the allotment of a channel in the radio broadcast or television broadcast services, or exempt proceedings under § 1.1204(a) (4)–(6).

Note: to paragraph (c): Unless otherwise exempted under § 1.1204, presentations under § 1.1203(c) that are of substantial significance and clearly intended to affect the ultimate decision, shall be placed (if oral, a written summary of the presentation) in the record of the proceeding by Commission staff or in accordance with the procedures set forth in § 1.1206(a)(1)–(3).

5. Section 1.1204 is amended by removing in the note following paragraph (a)(3) the language "§ 1.1204 (a)(1)–(3)" and replacing it with the language § 1.1204(a)(1), (a)(2)(i), or (a)(3)".

6. Section 1.1204 is further amended by adding a new sentence in paragraph (a)(6) after the sentence ending with "unless it has been set for investigation, (*See* § 1.1206(b)(6))" to read as follows:

§ 1.1204 General exemptions.

* * * * *

(a) * * *

(6) * * * This exemption from the ex parte requirements shall also extend to requests for waiver or for special permission directly associated with a particular tariff filing made pursuant to these Sections of the the Act, unless the Commission states otherwise.

* * * * *

7. Section 1.1204 is further amended by adding in the note after paragraph (b)(7), a new sentence after the sentence ending with "record of the proceeding" and before the sentence beginning with "In a non-restricted proceeding," to read "Where the Commission determines that such service of public notice, prior to designation of a matter for hearing, would interfere with the effective conduct of an investigation, it may dispense with such service or public notice" and by adding the language "Except as otherwise provided above," before the word "Any" in the last sentence and changing the capital "A" in "Any" to a small "a".

8. Section 1.1206 is amended by adding a note after paragraph (a)(3) and by adding paragraphs (a)(5), and (b)(10), with a note to read as follows:

§ 1.1206 Non-restricted proceedings; ex parte presentations generally permissible but subject to disclosure.

(a) * * *

(3) * * *

Note: Unless otherwise exempted under § 1.1204, presentations from members of Congress or their staff or from other agencies or branches of the Federal Government or their staff that are of substantial significance and clearly intended to affect the ultimate decision, shall be placed (if oral, a written summary of the presentation) in the record of the proceeding by Commission staff or in accordance with the procedures set forth in § 1.1206(a)(1)–(3).

* * * * *

(5) The procedures outlined above continue in effect (except as otherwise provided under § 1.1204) until the proceeding has been decided by the Commission and is no longer subject to reconsideration by the Commission or review by any court.

(b) * * *

(10) A proceeding before a Joint Board or a proceeding before the Commission involving a recommendation from a Joint Board unless the proceeding is specifically classified as an adjudicative proceeding.

Note: Unless otherwise ordered by the Commission, Joint Boards shall have the authority to modify the *ex parte* rules as necessary in a particular proceeding to promote fair and efficient decisionmaking.

9. Section 1.1208 is amended by:

(a) Redesignating paragraphs (c)(1)(i), (ii) and (iii), as (c)(1)(ii) (A), (B), and (C);

(b) Redesignating paragraphs (c)(1)(iv) (A), (B), and (C), as (c)(1)(i) (A), (B), and (C);

(c) Revising paragraph (c)(1)(i) introductory text;

(d) Adding paragraph (c)(1)(ii) introductory text;

(e) Amending paragraph (c)(1)(ii)(A) by removing the language "special relief or waiver proceedings under the above sections; or cable television special relief or waiver proceedings";

(f) Redesignating paragraph (c)(4) as (c)(5); and

(g) Adding a new paragraph (c)(4).

9a. The revised and added portions of § 1.1208 read as follows:

§ 1.1208 Restricted proceedings.

* * * * *

(c) * * *

(1)(i) Any proceeding specified in paragraph (c)(1)(ii) of this section is restricted from the day on which any of the following has occurred:

* * * * *

(ii) A proceeding is restricted as provided in paragraph (c)(1)(i) of this section if it is:

* * * * *

(D) Any request for an order to show cause, any special relief or waiver proceeding conducted pursuant to or under any of the provisions listed in paragraphs (c)(1)(ii) (A), (B), or (C) of this section or any cable television special relief or waiver proceeding.

Note: See § 1.1204(a)(6) regarding the ex parte treatment of requests for waiver or for special permission made in the context of a particular tariff filing as part of the tariff review process.

* * * * *

(4) A proceeding in which an order to show cause has been released.

* * * * *

10. The undesignated center hearing before § 1.1210 is amended by removing "EX PARTE".

§ 1.1210 [Amended]

11. Section 1.1210 is amended by removing in the caption and in the sentence of that section the words "ex parte".

12. Section 1.1212 is amended by adding a new paragraph (h) as follows:

§ 1.1212 Procedures for handling of prohibited ex parte presentations.

* * * * *

(h) Where a restricted proceeding is perceived by the public as involving a major statement of Commission policy and precipitates a substantial amount of correspondence from the general public, the above procedures with respect to such correspondence will not be following; however, such correspondence and materials related thereto shall be placed in a public file and made available for inspection.

13. The note to § 1.415(d) of the Commission's Rules is revised by removing "1.1201 *et seq.*" and replacing it with "1.1200 *et seq.*".

[FR Doc. 87-23050 Filed 10-6-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-23; RMs-5289; 5458; 5863]

Radio Broadcasting Services; Cazenovia, Manlius, Rome, Schoharie, Voorheesville, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates: (1) Channel 247A to Schoharie, NY, as the commuunity' first local FM service, at the request of Harvest Broadcasting Services; (2) Channel 242A to Voorheesville, New York, as the community's first local FM service, at the request of Peter Morton; and (3) substitutes Channel 239B1 for Channel 237A at Manlius, New York, and substitutes Channel 241B1 for Channel 240A at Rome, New York, at the joint request of AGK Communications and WENY, Inc. This document also modifies the license of AGK Communications, Inc. for Station WAQX-FM at Manlius to specify operation on Channel 239B1 and modifies the license of WENY, Inc. for Station WKAL-FM at Rome to specify operation on Channel 241B1. In addition, the Table of Allotments is amended by deleting Channel 237A from Cazenovia to reflect its use at Manlius. Channel 247A can be allocated to Schoharie in compliance with the Commission's minimum distance separation requirements without a site restriction. Channel 242A at Voorheesville requires

a site restriction of 1.32 kilometers (.82 miles) south to avoid a short-spacing to the construction permit and application of Station WCSF, Channel 244A, Clifton Park, New York. The allotment of Channel 239B1 at Manlius and Channel 241B1 at Rome comply with the Commission's minimum distance separation requirements to all domestic allotments. The short-spacings to Canadian stations at Belleville, Ontario (Station CJBC-1) and Kingston, Ontario (CFMK-FM) have been approved as "specially negotiated" allotments by the Canadian government. With this action, this proceeding is terminated.

DATES: Effective November 13, 1987. The window period for filing applications for Channel 247A at Schoharie and Channel 242A at Voorheesville, will open on November 16, 1987, and close on December 16, 1987.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 8723, adopted September 9, 1987, and released September 30, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

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

§ 73. 202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for New York is amended by adding Schoharie, Channel 247A, Voorheesville, Channel 242A, and Manlius, Channel 238B1; removing Cazenovia, Channel 237A. The Table is also amended by adding Channel 241B1 to Rome, and removing Channel 240A from Rome.

Mark N. Lipp,

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

[FR Doc. 87-23064 Filed 10-6-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-513; RM-5568]

Radio Broadcasting Services; Mirando City, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 265A to Mirando City, Texas, as that community's first FM service, at the request of Alderete Communications. Mexican concurrence has been obtained. With this action, this proceeding is terminated.

DATES: Effective November 13, 1987. The window period for filing applications will open on November 16, 1987, and close on December 16, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-513, adopted August 25, 1987, and released September 29, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended by adding Channel 265A under Mirando City, Texas.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-23055 Filed 10-6-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 76

[MM Docket No. 84-1296; FCC 87-306]

Cable Television; Amendment of the Commission's Rules To Implement the Provisions of the Cable Communications Policy Act of 1984

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The U.S. Court of Appeals for the District of Columbia Circuit decision in *American Civil Liberties Union* v. *FCC* vacated certain sections of the Commission's rules implementing the Cable Communications Policy Act of 1984. This Memorandum Opinion and Order resolves the court's objections to our rules concerning the definition of basic cable service, the automatic pass through to subscribers of certain costs, and the requirement for providing lock boxes capable of blocking incoming channels.

EFFECTIVE DATE: November 9, 1987.

FOR FURTHER INFORMATION CONTACT: Judith Herman, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order in MM Docket No. 84-1296, adopted September 17, 1987, and released September 28, 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, Northwest, 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, Northwest, Suite 140, Washington, DC 20037.

Summary of the Memorandum Opinion and Order

1. The Cable Communications Policy Act of 1984 (Cable Act) instructs the Commission to establish the circumstances and manner in which a local franchising authority may regulate the basic cable service rates of a cable system. Upon review, the U.S. Court of Appeals for the District of Columbia Circuit concluded that, for the most part, the rules adopted by the Commission are reasonable and consistent with the Cable Act. The court did, however, vacate certain portions of the *Report and Order*. In this Memorandum Opinion and Order, the Commission resolves the court's objections to our rules concerning the definition of basic

cable service, the automatic pass through to subscribers of certain costs, and the requirement for providing lock boxes capable of blocking incoming channels.

2. The Cable Act defines basic cable service as "any service tier which includes the retransmission of local television broadcast signals." The Commission adopted a revised definition of basic cable service so as to permit only one service tier of a cable system to be regulated. The court determined that the Commission does not have the discretion to adopt a definition of basic cable service that is at odds with the definition of that term in the Cable Act. The Commission is revising the definition of basic cable service in its rules so that it conforms with the definition in the Cable Act.

3. The Cable Act also specifies that the Commission establish standards by which local franchising authorities may regulate basic cable service rates. In carrying out this mandate, the Commission stated that cable systems will be permitted to automatically pass through any readily identifiable increase in cost which is entirely attributable to the provision of basic service. The court ruled that the Commission exceeded its authority in establishing the cost pass through mechanism. The Commission is eliminating this provision from its rules.

4. The Cable Act also requires that cable operators provide to their subscribers upon request, by sale or lease, a lock box for restricting the viewing of programming which is obscene or indecent. The Commission interpreted this provision to require cable operators to provide lock boxes for only those channels over which they had editorial control. The court stated that the Commission had no basis in the statute or the legislative history upon which to limit the lock box requirement in this way. The Commission is deleting the suggestion that lock boxes need not be capable of blocking selected channels.

5. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, the Commission considered all the alternatives presented in the *Notice*, comments in this proceeding, and the ruling by the court in *ACLU*. After full consideration of all aspects of these issues, the Commission is adopting revised rules consistent with the mandate of the Cable Act as interpreted by the court.

6. The final rules contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified forms, information collection and/or recordkeeping, labeling, disclosure or record retention requirements; and will not increase or decrease burden hours on the public.

List of Subjects in 47 CFR Part 76

Cable Television.

Rule Changes

Part 76 of Chapter I of Title 47 of the Code of Federal Regulations is amended to read as follows:

PART 76—[AMENDED]

1. The authority citation for Part 76 continues to read as follows:

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

2. 47 CFR 76.5 is amended by revising paragraph (ii) introductory text to read as follows:

§ 76.5 Definitions.

* * * * *

(ii) *Basic cable service.* For purposes of regulating the rates for the provision of basic cable service in circumstances in which a cable system is not subject to effective competition, basic cable service is any service tier which includes the retransmission of any broadcast television signals in the following categories:

* * * * *

§ 76.33 [Amended]

3. 47 CFR 76.33(a)(4) is removed.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-23062 Filed 10-6-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 97

[PR Docket No. 86-207; FCC 87-298]

Amateur Radio Service; Emission F8E on Frequency Band 0.35 Meters (1240 MHz) and Above)

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The petitioner believed that the wording of the rule amendment adopted in the Report and Order in this proceeding, which specified the spectrum where emission F8E could be transmitted, might confuse amateur operators. The FCC agreed that the wording of the rule lacked precision and ordered that it be clarified.

EFFECTIVE DATE: December 7, 1987.

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.

SUPPLEMENTARY INFORMATION:

Memorandum Opinion and Order

Adopted: September 10, 1987.

Released: September 25, 1987.

By the Commission:

1. On January 28, 1987, we adopted a Report and Order (2 FCC Rcd 803 (1987)) authorizing the transmission of emission F8E on all amateur service frequencies "0.35 meters and above." On March 13, 1987, David B. Popkin filed a petition for reconsideration in this proceeding, requesting an editorial change in the rule amended, Section 97.61(c). Popkin is concerned that the wording of the last sentence of the rule, "Emission F8E may be transmitted on all amateur frequencies 0.35 meters and above" is ambiguous as to whether "and above" means longer wavelengths or higher frequencies.

2. The issue is whether the wording might result in confusion among the amateur operators subject to the amateur service rules. Amateur service rule section 97.7 utilizes the term "meter band", expressed in wavelengths, as a means to simplify references to particular frequency bands in other sections in Part 97. Since a higher frequency has a shorter wavelength,[1] it would be more precise to state, ". . . on the 0.35 meter and shorter wavelength amateur service bands."

3. In view of the foregoing, it is ordered, pursuant to the authority contained in 47 U.S.C. 303(r), that Part 97 is amended as set forth in the Appendix below.

4. It is further ordered, pursuant to the authority contained in 47 U.S.C. 154(i), That the petition for reconsideration of David B. Popkin is granted insofar as it is consistent with this Memorandum Opinion and Order and is denied in all other respects.

5. It is further ordered, that the rule amendment shall become effective December 7, 1987.

6. It is further ordered, that this proceeding is terminated.

7. Information in this matter may be obtained by contacting Maurice J. DePont, Private Radio Bureau, Federal Communications Commission (202) 632-4964.

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[1] Wavelength in meters is determined by dividing the approximate speed of light (300,000,000 meters per second) by the frequency in hertz.

List of Subjects in 47 CFR Part 97

Amateur radio, Emissions, Radio.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Part 97 of Chapter I of Title 47 of the Code of Federal Regulations is amended, as follows:

PART 97—[AMENDED]

1. The authority citation for Part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

2. The last sentence of § 97.61(c) is revised to read as follows:

§ 97.61 Authorized emissions.

* * * * *

(c) * * * Emission F8E may be transmitted on the 0.35 meter and shorter wavelength amateur service bands.

* * * * *

[FR Doc. 87-23000 Filed 10-6-87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 672

[Docket No. 61220-7033]

Foreign Fishing; Groundfish of the Gulf of Alaska

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

ACTION: Notice of inseason adjustment action.

SUMMARY: This action reapportions DAP (domestic annual processing) amounts to JVP (joint venture processing) based on an analysis of DAP needs for the remainder of 1987 by NMFS. This action is intended as a conservation and management measure that provides for full utilization of available groundfish resources off Alaska during 1987.

EFFECTIVE DATE: This notice is effective on October 2, 1987.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker, National Marine Fisheries Service, 907-586-7229.

SUPPLEMENTARY INFORMATION:

Background

The Regional Director has conducted several analysis of DAP needs during 1987 and has determined, based on these analyses and DAP catch to date, that certain DAP amounts are excess to DAP needs. The issue of how much pollock might be taken in DAP fisheries was reevaluated by the Council at its May 20–22, 1987, meeting and its September 1, 1987, conference call. The Council voted not to reapportion amounts of pollock in the Gulf of Alaska to JVP.

Reapportionment

To the GOA JVP

The Secretary of Commerce (Secretary) disagrees with the Council recommendation not to reapportion pollock to JVP in the Gulf of Alaska. The Secretary has considered the NMFS processor surveys, the DAP pollock catch as of September 19 (11,400 mt), and the likelihood that DAP fishermen would catch and sell 84,000 mt of pollock by the end of the year. He has determined that 16,500 mt of pollock is surplus to DAP needs and apportions that amount to JVP in the Western/Central Area. Should the Secretary's current assessment prove to overestimate the 1987 DAP fishery, he is authorized to reapportion to JVP later in the year any amounts of pollock he finds will not be harvested in the DAP fishery.

The Secretary also apportions amounts of other species unneeded by DAP for bycatch in the JVP pollock fisheries as indicated in Table 1.

TABLE 1.—1987 CURRENT AND REVISED TARGET QUOTA (TQ), DOMESTIC ANNUAL PROCESSING (DAP), JOINT VENTURE PROCESSING (JVP) AND RESERVE IN THE GULF OF ALASKA, IN METRIC TONS

Species	Area	TQ	DAH	DAP	JVP	Reserve
Pollock	Western/Central:					
	(Current)	84,000	84,000	83,700	300	0
	(Change)			−16,500	+16,500	
	(Revised)			67,200	16,800	
Pacific cod	Western:					
	(Current)	15,000	15,000	15,000	0	0
	(Change)			−300	+300	
	(Revised)			14,700	300	
Flounders	Western:					
	(Current)	3,000	3,000	3,000	300	0
	(Change)			−450	+450	
	(Revised)			2,550	450	
Pacific ocean perch	Western:					
	(Current)	1,500	1,500	1,500	0	0
	(Change)				20 [1]	
	(Revised)				20 [1]	
Sablefish	Western:					
	(Current)	3,000	3,000	3,000	0	0
	(Change)				30 [1]	
	(Revised)				30 [1]	
Atka mackerel	Western:					
	(Current)	100	100	100	0	0
	(Change)			−20	+20	0
	(Revised)			80	+20	0

[1] These numbers are prohibited species catch limits for JVP fisheries as indicated. However, these numbers are not to be added to DAP for calculating DAH totals.

Classification

This action is taken under the authority of 50 CFR 611.92, 611.93, and 672.20 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 groundfish species if those amounts remained indefinitely in categories in which these species could not be used and would suffer substantial financial loss if a hiatus occurred in their ongoing fisheries. 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

50 CFR Part 611

Fisheries, Foreign relations.

50 CFR Part 672

Fish, Fisheries, Reporting and recordkeeping requirements.

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

Dated: October 2, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 87-23222 Filed 10-2-87; 4:58 pm]

BILLING CODE 3510-22-M

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50 CFR Parts 611 and 675

[Docket No. 61113-7210]

Foreign Fishing; Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Final notice of 1987 initial specifications for groundfish and reapportionment of reserves and domestic annual harvest (DAH).

SUMMARY: NOAA announces 1987 initial specifications and initial apportionments of total allowable catches (TACs) for each category of groundfish in the Bering Sea and Aleutian Islands (BSAI) Areas. The interim initial apportionments and a reserve apportionment were made January 9, 1987 (52 FR 785). Several reapportionments have been made-to-date: See 52 FR 18367, May 15; 52 FR 21958, June 10; 52 FR 24297, June 30; and 52 FR 29021, August 5, 1987. This action also apportions reserves and reapportions DAP (domestic annual processing) amounts to JVP (joint venture processing) and TALFF (total allowable level of foreign fishing), based on recommendations of the North Pacific Fishery Management Council (Council) following its May 20-22, 1987, meeting and its September 1, 1987, conference call. This action is intended as a conservation and management measure that provides for full utilization of available groundfish resources off Alaska during 1987.

EFFECTIVE DATE: This notice is effective on October 2, 1987.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker Resources Management Specialist, NMFS, 907-586-7229.

SUPPLEMENTARY INFORMATION:

Background

This action establishes 1987 TACs for each groundfish category and apportions available TACs among DAP, JVP, TALFF, and reserves. Procedures for establishing these values were reviewed in an interim notice published in the **Federal Register** on January 9, 1987 (52 FR 785). The interim notice also apportioned part of the BSAI reserve to DAP, JVP, and TALFF. Comments on the interim apportionments of TAC and reserve apportionments among DAP, JVP, and TALFF were requested until January 18, 1987.

One letter of comment was received that pertained to the proposed notice of 1987 initial specifications published on December 2, 1986 (51 FR 43397). The comment on the proposed notice pertained to 70,000 metric tons (mt) of rock sole proposed for a DAP rock sole fishery in the BSAI. It is summarized and responded to below. No comments were received on the January interim notice.

After considering the recommendations of the Council and comments received during the comment periods, the Secretary has approved initial TACs and their apportionments as shown in Table 1. Initial amounts in Table 1 for the BSAI are the same as those shown in the interim notice of January 9, 1987 (52 FR 785).

Reapportionment

The issue of how much pollock, Pacific cod, Greenland turbot and "other flatfish" might be taken in DAP fisheries in the BSAI was reevaluated by the Council at its May 20-22, 1987, meeting and its September 1, 1987, conference call. At the latter, the Council found that certain DAP amounts were excess to DAP needs and recommended that amounts of DAP be reapportioned to JVP. In addition, the Council recommended that the Regional Director reallocate amounts of groundfish to TALFF, taking into account views expressed by the Council during the meeting. The Regional Director finds that certain amounts of groundfish are surplus to the needs of domestic fisheries and are therefore apportioned to TALFF as shown in Table 2.

To the BSAI JVP

The Bering Sea subarea was closed to JVP directed fishing for pollock on June 6 and reopened on September 8 to take the remaining pollock JVP. The BSAI was closed to JVP fishing for yellowfin sole on June 29. These are the two principal JVP fisheries in the Bering Sea area and in 1987 about one hundred U.S. catcher boats participated in them. Only about forty U.S. boats have participated in BSAI joint ventures since June. In order to provide for late summer and fall joint venture operations, the Council recommended that 4,000 mt of Bering Sea pollock which is excess to the needs of DAP fisheries be reapportioned to JVP. Similarly, in the Aleutian Islands area, 50,000 mt of DAP pollock is reapportioned to JVP.

In the Aleutian Islands area, JVP fisheries are continuing to take Atka mackerel and pollock, but the current JVP for Pacific ocean perch (POP) is insufficient to provide necessary by catch for continued fishing. To allow continued JVP fishing in the Aleutian Islands subarea without the wastage of resource which would occur if POP were made a prohibited species, 150 mt of POP is apportioned to JVP from the non-specific reserve.

To the BSAI TALFF

The Council found that the current DAH amounts for Pacific cod and "other flatfish" are in excess of DAH needs for the remainder of the year. It also recommended that in view of their cooperation in various activities beneficial to the U.S. fishing industry in 1987 the Japanese longliners should receive an additional directed fishery tonnage of 6,000 mt of Pacific cod. The Japanese industry has also requested additional amounts of "other flatfish" and Pacific cod for their trawl fisheries in view of their good performance under the "industry-to-industry" cooperative agreement.

The following amounts are apportioned to TALFF: from DAP, 20,000 mt of Pacific cod; and from DAP and JVP, 22,560 mt of "other flatfish". The remaining DAP amount of Pacific cod (91,767 mt) and DAP and JVP amounts of "other flatfish" (17,043 mt and 71,972 mt, respectively) are adequate for those fisheries for the remainder of 1987. To provide bycatch, 20 mt of squid, 2 mt of

Bering Sea area POP, 1,369 mt of arrowtooth flounder and 750 mt of "other species", all amounts excess to DAH needs, are transferred to TALFF from the non-specific reserve.

These apportionments do not result in overfishing of any of the stocks, as the resulting TACs for each species are equal to or less than the original TACs.

Comments and Responses

One letter of comment was received which pertained to the proposed notice; it is summarized and responded to as follows:

Comment: The commentator questioned the appropriateness of permitting the development of a potential 70,000 mt DAP bottom trawl fishery for rock sole in an area that is a known habitat area for king crab, Tanner crab, and halibut. The commentator supported the Council's December 1986 action to recommend that the Secretary use discretionary authority to provide for an additional bycatch of crabs.

Response: The Secretary has approved the Council's recommended DAP apportionment for "other flatfish" of 23,103 mt. This apportionment included the entire amount (14,000 mt) requested by domestic processors for a rock sole fishery. NOAA notes that the commentator's concern about potential effects of bottom trawling on crab and halibut habitat has been addressed by the Council Advisory Panel By catch Subcommittee through reaching an agreement between groundfish fishermen and crab fishermen to allow development of the rock sole fishery if bycatches of king and Tanner crab remain within specific guidelines. That agreement, which was endorsed by the Council, recommended that the Secretary use the discretionary authority contained in Amendment 10 to allow continued fishing after the prohibited species catch (PSC) limits for *C. bairdi* Tanner crab and red king crab in zone 1 are reached. Specifically, for DAP vessels participating in the newly developing fishery for rock sole in Zone 1, the Secretary would allow fishing to continue until an additional catch of 10,000 *C. bairdi* Tanner crabs or 10,000 red king crabs had been taken. Amendment 10 has been approved by the Secretary. Regulations implementing Amendment 10 are at 52 FR 8592 (March 19, 1987) from February 8 to March 3, NMFS monitored the fishery in Zone 1 with the objective of allowing its development consistent with the intent of the Council to conserve king and Tanner crabs. NMFS observers estimated that only 4,573 *C. bairdi* Tanner crabs and 794 red king crabs were taken in the fishery.

Classification

This action is taken under the authority of 50 CFR 611.93(b) and 675.20 and complies with Executive Order 12291.

For the reserve and DAP reapportionment part of this notice, the Assistant Administrator for Fisheries finds for good cause that it is impractical and contrary to the public interest to provided prior notice and comment. Immediate effectiveness of this notice is necessary to benefit fishermen who otherwise would have to forego substantial amounts of groundfish species if those amounts remained indefinitely in categories in which these species could not be used. 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

50 CFR Part 611

Fisheries, Foreign relations.

50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

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

Dated: October 2, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

TABLE 1.—1987 ORIGINAL TOTAL ALLOWABLE CATCH (TAC), DOMESTIC ANNUAL PROCESSING (DAP), JOINT VENTURE PROCESSING (JVP), RESERVE,[1] AND TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING (TALFF), IN THE BERING SEA (BS), AND ALEUTIAN ISLANDS AREA (AI), OR BOTH, ALL IN METRIC TONS. TAC RESERVE + DAP + JVP + TALFF; INITIAL TAC 0.85 TAC; DAH DAP + JVP

Species	Area	Original[2] TAC	DAH	DAP	JVP	TALFF
Pollock	BS	1,200,000	1,020,000	189,987	830,013	5,000
	AI	88,000	88,000	57,210	30,790	0
Pacific ocean perch	BS	2,850	2,543	2,423	120	12
	AI	8,175	6,949	6,786	163	0
Rockfish	BS	450	441	382	59	9
	AI	1,430	1,215	1,001	214	0
Sablefish	BS	3,700	3,495	3,145	350	40
	AI	4,000	3,400	3,317	83	0
Pacific cod	BS/AI	280,000	206,705	111,767	94,938	31,295
Yellowfin sole	BS/AI	187,000	158,950	100	158,850	5,000
Greenland turbot	BS/AI	20,000	15,250	15,213	37	1,750
Arrowtooth flounder	BS/AI	9,795	4,193	830	3,363	4,133
Other flatfish	BS/AI	148,300	111,575	23,103	88,472	14,480
Atka mackerel	BS/AI	30,800	30,790	250	30,540	10
Squid	BS/AI	500	52	4	48	373
Other	BS/AI	15,000	10,500	500	10,000	2,250

[1] Fifteen percent of the TAC, or 300,000 mt, is apportioned to the non-specific reserve; of this 28,410 mt was apportioned to JVP and TALFF, effective with the date of filing of the interim notice. The remaining reserve was 271,590 mt.

[2] Eighty-five percent of the original TAC is established as the initial TAC, which may be augmented from the reserve during the fishing year.

TABLE 2.—1987 CURRENT AND REVISED TOTAL ALLOWABLE CATCH (TAC), DOMESTIC ANNUAL PROCESSING (DAP), JOINT VENTURE PROCESSING (JVP) RESERVE [1], AND TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING (TALFF), IN THE BERING SEA (BS), and Aleutian Islands Area (AI), OR BOTH, ALL IN METRIC TONS. TAC RESERVE + DAP + JVP + TALFF

Species	Area	TAC	DAH	DAP	JVP	TALFF
Pollock	BS:					
	(Current)	1,200,000	1,195,000	189,987	1,005,013	5,000
	(Change)			−4,000	+4,000	
	(Revised)			185,987	1,009,013	
	AI:					
	(Current)	88,000	88,000	57,210	30,790	0
	(Change			−50,000	+50,000	
	(Revised)			7,210	80,790	
Pacific ocean perch	BS:					
	(Current)	2,850	2,543	2,423	120	15
	(Change)					+2
	(Revised)					17
	AI:					
	(Current)	8,175	7,199	6,786	413	0
	(Change)		+150		+150	
	(Revised)		7,349		563	
Rockfish	BS	450	441	382	59	9
	AI	1,430	1,305	1,001	304	0
Sablefish	BS	3,700	3,660	3,310	350	40
	AI	4,000	3,400	3,317	83	0
Pacific cod	BS/AI:					
	(Current)	280,000	206,705	111,767	94,938	53,295
	(Change)		−20,000	−20,000		+20,000
	(Revised)		186,705	91,767		73,295
Yellowfin sole	BS/AI	187,000	182,000	100	181,900	5,000
Greenland turbot	BS/AI	20,000	15,280	15,213	67	1,750
Arrowtooth flounder	BS/AI:					
	(Current)	9,795	4,193	830	3,363	4,233
	(Change)					+1,369
	(Revised)					5,602
Other flatfish	BS/AI;					
	(Current)	148,300	111,575	23,103	88,472	14,520
	(Change)		−22,560	−6,060	−16,500	+22,560
	(Revised)		89,015	17,043	71,972	37,080
Atka mackerel	BS/AI	30,800	30,790	250	30,540	10
Squid	BS/AI:					
	(Current)	500	52	4	48	373
	(Change)					+20
	(Revised)					393
Other species	BS/AI:					
	(Current)	15,000	10,500	500	10,000	3,750
	(Change)					+750
	(Revised)					4,500

[1] The remaining reserve prior to this action was 49,362 mt. This action reduces the reserve by 2,291 mt to 47,071 mt.

[FR Doc. 87-23221 Filed 10-2-87; 4:57 pm]
BILLING CODE 3510-22

50 CFR Part 663

[Docket No. 70101-7001]

Pacific Coast Groundfish Fishery

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

ACTION: Notice of fishing restrictions and request for comments.

SUMMARY: NOAA issues this notice modifying earlier restrictions to limit the levels of fishing for widow rockfish and trawl-caught sablefish taken in the groundfish fishery off the coasts of Washington, Oregon, and California in 1987, and seeks public comment on these actions. These actions are authorized under regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP) and are necessary because biological stress to these stocks has been identified or is expected to occur if landings are not restricted. These actions are intended to further lower fishing rates, reduce or prevent biological stress while allowing for unavoidable incidental catches in other fisheries, and avoid or reduce the probability of a fishery closure before the end of the year. This action modifies the fishing restrictions previously imposed for these species.

DATES: New restrictions for trawl-caught sablefish are effective 0001 hours Pacific Daylight Time (PDT), October 2, 1987, until modified, superseded, or rescinded. Comments will be accepted through October 19, 1987.

ADDRESSES: Submit comments on these actions to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way N.E., BIN C15700, Seattle, WA 98115; or E.C. Fullerton, Director, Southwest Region, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten at 206-526-6150, E.C. Fullerton at 213-514-6196, or the Pacific Fishery Management Council at 503-221-6352.

SUPPLEMENTARY INFORMATION: This action (1) modifies the fishing restrictions for trawl-caught sablefish imposed at the beginning of 1987 (52 FR 790, January 9, 1987; modified at 52 FR 11473, April 9, 1987); and (2) announces a change to the trip limit for widow rockfish that will be imposed when 95 percent of the optimum yield (OY) quota is reached.

The regulations implementing the FMP at 50 CFR Part 663 allow the Secretary of Commerce (Secretary) to reduce fishing levels if it is determined that continued fishing at current levels would cause biological stress to any species. The Pacific Fishery Management Council (Council) has endorsed the determination of its Groundfish Management Team that if landings of widow rockfish and sablefish are not further restricted, the likelihood of biological stress on those stocks is increased because current fishing mortality rates exceed the rates which would take the acceptable biological catch (ABC) of each species for the calendar year. The ABC for these species is equal to OY in 1987.

At its September 16–18, 1987, meeting, the Council reviewed the latest data presented by the Groundfish Management Team and developed management recommendations intended to further limit landings on trawl-caught sablefish and widow rockfish in 1987, thereby minimizing the likelihood and intensity of biological stress on these stocks, and reducing the probability of having to close fisheries for these species before the end of the year due to premature achievement of their OYs.

In its deliberations, the Council considered advice from its Groundfish Management Team, Scientific and Statistical Committee, the public, and a Groundfish Select Group created by the Council for the purpose of recommending methods of limiting landings with minimal disruption to the fishing industry. The Select Group included representatives from the fishing industry, the Council, and the Groundfish Management Team.

Widow Rockfish

Council Recommendation: In January 1987, a trip limit of 30,000 pounds of widow rockfish was imposed, limited to no more than one landing above 3,000 pounds per week. Landings of less than 3,000 pounds were not limited.

The most recent catch data indicate that 8,869 mt of widow rockfish have been landed through August 8, 1987. If landings are not curtailed further, the OY of 12,500 mt is expected to be reached in mid- to late November. Once the OY is reached, further landings of widow rockfish are prohibited. The Groundfish Management Team estimated that a 20 to 37 percent reduction in landings for the remainder of the year is needed to avoid reaching OY prematurely.

After considering the testimony of its advisory bodies and the public, the Council recommended that the fishery for widow rockfish be extended as long as possible during the year. The Council accepted the recommendation of its Groundfish Select Group that, when 95 percent of OY is reached, a trip limit of 5,000 pounds, limited to no more than one landing a week above 3,000 pounds, be imposed to reduce the probability of premature closure of the fishery. If this action does not sufficiently curtail landings, additional restrictions may be necessary, and if OY is reached, all further landings of widow rockfish will be prohibited until the end of the year. However, the 5,000-pound trip limit is intended to allow most incidental catches to be landed, while greatly reducing target fishing on this species.

Secretarial Action: The Secretary concurs with the Council's recommendation and announces that when 95 percent of the 12,500-mt OY for widow rockfish is projected to be reached, the weekly trip limit will be lowered from 30,000 pounds to 5,000 pounds per vessel per trip. All other provisions of the trip limit for widow rockfish announced at 52 FR 790 and modified at 52 FR 15727 (April 30, 1987), which changes the fishing week from Sunday-Saturday to Wednesday-Tuesday, will remain in effect. This reduction to the trip limit will be announced by a separate notice in the **Federal Register**.

Sablefish

Council Recommendation: In January 1987, the 12,000 mt OY for sablefish was allocated 52 percent (6,200 mt) for trawl gear and 48 percent (5,800 mt) for fixed (nontrawl) gear (52 FR 790, January 9, 1987). The purpose of the allocation provision was to slow the trawl catch of sablefish by minimizing targeted effort on sablefish, thus prolonging the trawl season and avoiding the waste of incidentally caught sablefish which must be discarded after the quota is reached. In contrast with the fixed gear (mostly pot and longline) fishery, which predominantly targets on sablefish with little bycatch, the trawl fishery catches much of its sablefish incidental to other operations.

The most recent catch data, provided by the Groundfish Management Team at the September Council meeting, projected that the trawl quota would be reached between November 2 and December 7 if landings were not lowered by 14 to 34 percent for the rest of the year. Thus, the Council recommended a trip limit on trawl-caught sablefish of 6,000 pounds, or 20 percent of all legal fish on board (including sablefish), whichever is greater, which is intended to lower trawl landings of sablefish by 15 to 20 percent.

In no event may more than 5,000 pounds (round weight) of trawl-caught sablefish smaller than 22 inches (total length) be on board.

Secretarial Action: The Secretary concurs with the Council's recommendation and announces the following restrictions for sablefish caught with trawl gear:

For trawl-caught sablefish no more than 6,000 pounds or 20 percent of all legal fish on board, including sablefish (round weights), whichever is greater, may be taken, retained, possessed or landed per vessel per fishing trip.

Note: Twenty percent of all legal fish on board including sablefish is equivalent to 25 percent of all legal fish on board other than sablefish, in round weights.

All other provisions set forth in the **Federal Register** that pertain to trawl-caught sablefish in 1987 (52 FR 790, January 9, 1987; 52 FR 11473, April 9, 1987), including the prohibition against landing more than 5,000 pounds of trawl-caught sablefish smaller than 22 inches, still apply as long as they are within this limit.

If necessary, the Council may recommend further adjustments to reduce sablefish landings in 1987 in order to avoid overfishing and to extend the landings of sablefish as long as possible throughout the year.

Other Fisheries

These limits apply to vessels of the United States, including those vessels delivering groundfish to foreign processors. Retention of these species by foreign fishing or processing vessels is limited by incidental percentage limits established under 50 CFR 611.70.

U.S. vessels operating under an experimental fishing permit issued under 50 CFR 663.10 also are subject to these restrictions unless otherwise provided in the permit.

Landings of groundfish in the pink shrimp, spot, and ridgeback prawn fisheries are governed by regulations at 50 CFR 663.28. If fishing for groundfish and pink shrimp, spot or ridgeback prawns in the same fishing trip, the groundfish restrictions in this notice apply.

Classification

The determination to impose these fishing restrictions is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the Office of the Director, Northwest Region (see **ADDRESSES**) during business hours until the end of the comment period.

These actions are taken under the authority of §§ 663.22 and 663.23, and are in compliance with Executive Order 12291. The actions are covered by the Regulatory Flexibility Analysis prepared for the authorizing regulations.

Section 663.23 states that the Secretary will publish a notice of any action reducing fishing levels in proposed form unless he determines that prior notice and public review are impracticable, unnecessary, or contrary to the public interest. If landings of trawl-caught sablefish are not immediately restricted, premature closure of the sablefish trawl fishery will result. Accordingly, further delay of these actions is impracticable and contrary to the public interest, and these actions are published in final form effective October 2, 1987.

The public has had the opportunity to comment on these management measures. The public participated in the Select Group, Groundfish Management Team, and Council meetings in August and September 1987 that generated the management actions endorsed by the Council and the Secretary. Further public comments will be accepted for 15 days after this notice is filed for publication in the **Federal Register**.

List of Subjects in 50 CFR Part 663

Fisheries.

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

Dated: October 2, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 87-23171 Filed 10-2-87; 2:49 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 52, No. 194
Wednesday, October 7, 1987

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

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 17

Financing of Commercial Sales of Agricultural Commodities

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations applicable to the financing of the sale and exportation of agricultural commodities pursuant to Title I of the Agricultural Trade Development and Assistance Act of 1954, as amended, "Pub. L. 480" (7 U.S.C. 1701 *et seq.*), appearing at Part 17 of Title 7 of the Code of Federal Regulations. The proposed rule would accommodate the financing of commodities moved under intermodal freight contracts. Financing of intermodal movements for Title I, Pub. L. 480 exports is deemed desirable because of the increased use of such movements for agricultural commodities and because such movements could result in lower overall program expenditures.

DATES: Comments on this proposed rule must be received by December 7, 1987, in order to be assured of consideration.

ADDRESS: Comments should be submitted to: Melvin E. Sims, General Sales Manager, Foreign Agricultural Service, Room 4073–South, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Robert S. Simpson, Director, P.L. 480 Operations Division, Export Credits, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, DC 20250, Telephone: (202) 447–3664.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified "not major." It has been determined that this rule will not result in an annual effect on the economy of $100 million or more; will not cause a major increase in costs to consumers, individual industries, Federal, State or local government agencies or geographic regions; and will not have an adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign based enterprises in domestic or export markets.

It has been determined that this rule will not have a significant economic impact on a substantial number of small entities. In accordance with the Regulatory Flexibility Act, a copy of this rule has been submitted to the Chief Counsel, Office of Advocacy, U.S. Small Business Administration.

Record keeping requirements and information collection requirements contained in 7 CFR Part 17 have been assigned OMB Control No. 0551–0005.

I. Background

Section 102 of the Agricultural Trade Development and Assistance Act of 1954, as amended ("the Act"), authorizes the Commodity Credit Corporation (CCC) to finance the sale and exportation of agricultural commodities purchased by friendly countries under the authority of Title I of the Act.

The Title I, Pub. L. 480 regulations (7 CFR Part 17) were originally adopted with traditional bulk and break bulk ocean shipping concepts in mind. As a consequence, the regulations have, as a practical matter, precluded the movement of Title I commodities to foreign destinations under intermodal freight contracts. For example, under current regulations, commodity suppliers must submit on-board vessel bills of lading before they are entitled to receive payment for the sales of commodities. This requirement effectively excludes any intermodal shipments because, with intermodal shipments, the commodities are delivered to the custody of an ocean carrier at a point other than the port of export. Such delivery may be at a commodity supplier's plant or bridge-port location. The commodities are then moved to the port of export and to final destination under a single intermodal through export bill of lading.

In recognition of the increased commercial use of intermodal shipments, the successful experience gained in the use of intermodal shipments in the Title II, P.L. 480 donation program, and the possibility that the availability of the intermodal option could result in lower program costs, this Department published in the **Federal Register** on September 13, 1978, 43 FR 40872, an advance notice of proposed rule-making requesting suggestions for changes in the Title I regulations to accommodate a certain type of intermodal movement—i.e., minibridge movements. Comments were received and evaluated, but no further action was taken. On May 29, 1985, a meeting was held in the Department to solicit views from representatives of U.S. flag carriers, associations of U.S. commodity producers and exporters, and U.S. government agencies concerning the desirability of utilizing intermodal movements. Copies of comments received from the advance notice of proposed rule-making and a tape transcript of the above meeting are available for inspection at the address indicated in this preamble.

After considerable review and analysis, it has been determined that the Title I regulations should be amended to accommodate the movement of commodities under intermodal freight contracts because of the increased use of such movements for agricultural commodities and because such movements could result in lower overall program expenditures.

If every provision in the Title I regulations which had to be changed to incorporate the use of intermodal shipments were to be amended, this rule change would be quite extensive. In order to avoid such a rule change, it has been determined that the definition of a number of terms related to the transportation of commodities and used throughout the regulations would be broadened to make them applicable to intermodal shipments. Therefore, it is proposed that the definition of a number of terms in the regulations would be amended to state that terms such as "ocean bill of lading", "delivery", "load port", "vessel approval", "ocean freight" etc. would have specified intermodal interpretations when commodities are moved on an intermodal basis.

II. Changes in Definitions of Terms

The key changes to the regulations involve revising the definitions of "delivery" of commodities and "ocean

bill of lading". The current definition of delivery relates specifically to the transfer of custody and right of possession of the commodity to the importer at U.S. ports or Canadian transshipment points. It is proposed that the definition of "delivery" be expanded to refer to "designated U.S. locations" which would include ports, a supplier's plant, a bridge-port or any location as delineated in the importer's commodity and freight invitation for bids (IFB). The new definition would also state that delivery to an intermodal carrier would be deemed to occur as of the issuance date of the intermodal through export bill of lading. The definition of "ocean bill of lading" would be expanded to include intermodal through export bills of lading. Thus, commodity suppliers would be entitled to receive financing, in the case of intermodal movements, upon receipt of an intermodal through export bill of lading from the ocean carrier.

The Department recognizes that, prior to implementation of this rule change, the Title I, Pub. L. 480 government-to-government agreement format must be changed to complement this new shipment option. Currently, these agreements define delivery as occurring on the on-board vessel date. This definition of delivery in country agreements is significant in that it determines the time period of an importing country's usual marketing, and export limitation obligations, and also determines the time at which interest begins to accrue on the importing country's repayment obligation.

III. IFB Provisions for Intermodal Offers

A. Requirement for Intermodal Offers

It is proposed to amend § 17.6(b)(3) of the regulations to provide that the General Sales Manager can require the importing country to solicit offers which would include intermodal shipments when a purchase authorization permits contracting on an intermodal basis. Without such a requirement, it is believed that some importing countries may be reluctant to utilize the option simply because of its unfamiliarity notwithstanding the potential for cost-savings. On the other hand, there may be valid reasons why an importing country opposes shipping on an intermodal basis, e.g., where container handling facilities are not available in the country of destination. In such circumstances, the importing country would be free to contract solely on traditional shipment terms.

B. Restricted Intermodal Offers

Given the large number of offers that may be received for different grades and types of commodities or products, different coastal ranges, delivery periods, and contract terms, there is concern that it would not be advisable to further complicate the Title I tendering process by permitting intermodal offers at unlimited number of locations. It has been suggested, for example, that intermodal offers could be restricted to railroad locations or bridge-ports thereby excluding deliveries at supplier's plants or elsewhere.

This issue does entail serious operational concerns. The degree to which it may be a problem must, however, await actual experience with the new procedure. Should it be necessary, limitations on intermodal delivery locations could be set forth in the applicable purchase authorization. IFB's must comply with any limitations established in a purchase authorization.

Also, for perishable commodities, the intermodal option may raise valid concerns on the part of importing countries relating to the degree of risk of infestation and timeliness of delivery for the relatively large tonnages normally shipped in the Title I program. Previous comments have indicated the need for re-inspection of intermodal shipments after the railcar or truck leg of shipment or even after containers are stuffed at a supplier's plant because of the extra time during which buyers have risk of loss. Further, under traditional f.a.s. exports, suppliers can spread deliveries of packaged commodities to dockside warehouses over a period of time to accumulate relatively large quantities, e.g. 20–30,000 tons at port. This results in the likelihood that all Title I cargo will be placed on the ocean vessel when it arrives, which is significant considering the large quantities of commodities moving under Title I. The risk of cargo being left behind would be appear to be greater in intermodal movements of this magnitude if a large number of ocean containers, each carrying a relatively small amount of cargo, are involved. Examples of the types of problems that this may entail are described below.

The Department is therefore proposing to authorize the use of intermodal movement in the Title I program but will control its actual use on a procurement-by-procurement basis through the purchase authorizations and the IFB's.

C. Special IFB Provisions for Intermodal Shipments

Although not a part of proposed regulations, it is believed that the following discussion of how the Title I commodity and freight tendering process could be affected by the intermodal option may aid interested parties in formulating comments.

In traditional break bulk shipments, the contract contains the delivery dates at port, and the arrival of the vessel usually creates the obligation of the commodity supplier to make bagged or drummed cargo available for loading at the vessel's call, or at a minimum amount per day per available, workable hatch. For intermodal deliveries, a commodity supplier would be required to deliver the commodities at the intermodal point during a specified period. To prevent commodity suppliers from delaying deliveries until the end of such a delivery period, or bunching deliveries in such a way that the intermodal carrier cannot efficiently deliver the cargo to port, special IFB provisions may be approved which contain a financial disincentive for such actions.

Also, IFB's may contain provisions that specify the carrier's responsibility for detention, demurrage, or carrying charges if the carrier is unable to promptly accept for shipment all cargo arriving at U.S. ports.

Finally, given past problems in the Title II, Pub. L. 480 program with ocean container deliveries being spread over extended periods of time—a practice that could be exacerbated by the increasing practice of relaying containers through foreign transshipment points—the buyer of relatively large quantities of Title I commodities may be protected, for example, by stipulating in the freight contract specific delivery periods that carriers must meet for all containers shipped intermodally.

Further comments focusing on these specific concerns would be welcome.

IV. Release of Bill of Lading

Another proposed change would affect when the supplier of ocean transportation must release the bill of lading to the commodity supplier. A revision of § 17.14(a)(3) would state that through export bills of lading would be issued at the time of delivery of the commodity to the locations designated in the Form 359, "Declaration of Sale", which constitutes the Department's written approval of the sale.

V. Ocean Freight Differential

With respect to ocean freight differential on intermodal shipments, the Department would compute and pay ocean freight differential on the same basis as under current procedures, without distinguishing the type of

movement, i.e., the entire intermodal rate will be deemed to be an ocean freight rate. (It is the Department's intention to separately designate ocean freight differentials paid on intermodal movements when reporting cargo preference information to the Maritime Administration.)

Computing OFD on this basis could have the effect of transferring some internal transport costs from commodity prices to ocean freight rates. Since the Department extends credit to the importing country for commodities, but pays OFD without an obligation from the importing country to reimburse the Department, it may appear that payment of OFD on the basis of an intermodal rate would be disadvantageous to the Department. However, the Department believes that the potential reduction in U.S. flag rates that can be realized by permitting increased competition will reduce overall OFD expenditures substantially. Thus, both commodity financing and OFD expenditures should decline per ton of commodity shipped.

List of Subjects in 7 CFR Part 17

Agricultural commodities, Exports, Finance, Maritime carriers.

Proposed Rule

Accordingly, it is proposed that 7 CFR Part 17, Subpart A, be amended as follows:

PART 17—SALES OF AGRICULTURAL COMMODITIES MADE AVAILABLE UNDER TITLE I OF THE AGRICULTURAL TRADE DEVELOPMENT AND ASSISTANCE ACT OF 1954 AS AMENDED

1. The authority citation for Part 17 reads as follows:

Authority: Secs. 101–115, Pub. L. 480, 83rd Cong., as amended, 68 Stat. 455 (7 U.S.C. 1701, *et seq.*): E.O. 12220, 45 FR 44245.

2. Section 17.1(a) is amended by adding a new sentence at the end thereof to read as follows:

§ 17.1 General.

(a) * * * Participants and potential suppliers are cautioned to carefully read the definitional section of this subpart since certain terms have special meanings applicable to intermodal shipments.

* * * * *

3. In § 17.2(b), the definition of "Ocean bill of lading" and "Ocean transportation" are revised, and new definitional terms "Intermodal shipment," "Load port," "Ocean freight rate," "Through export bill of lading" and "Vessel approval" are added, in appropriate alphabetical order, and in paragraph (c), the definition of "Delivery" is revised as follows:

§ 17.2 Definition of terms.

* * * * *

(b) *Terms relating to ocean transportation.*

* * * * *

Intermodal shipment means a shipment whereby commodities are delivered into the care and custody of the ocean carrier at a location other than the port at which such commodities are loaded into the carrier's ocean going vessel.

Load port or *Loading port* shall mean the location, including inland point, designated for delivery of the commodities to an ocean carrier in the Declaration of Sale Form 359.

* * * * *

Ocean bill of lading means

(1) *In the case of cargo carried on a vessel in other than LASH or Seabee barge:* An "on-board" bill of lading, or a bill of lading with an "on-board" endorsement, which is dated and signed or initialed on behalf of the carrier; or an intermodal through export bill of lading; or

(2) *In the case of cargo carried in a LASH or Seabee barge:* (i) For the purpose of financing the commodity price, an "on-board" barge bill of lading showing the date the commodity was loaded on board barges, which is dated and signed or initialed on behalf of the carrier, or a bill of lading or a LASH or Seabee barge bill of lading with an "on-board barge" endorsement which is dated and signed or initialed on behalf of the carrier.

(ii) For the purpose of financing ocean freight or ocean freight differential or any portion thereof:

(A) an "on-board" bill of lading which is dated and signed or initialed on behalf of the carrier indicating that the barge containing the cargo was placed aboard the vessel named in the Form CCC–106 not later than eight (8) running days after the latest LASH or Seabee barge loading date (contract layday) specified in the Form CCC–106, or

(B) A bill of lading or a LASH or Seabee barge bill of lading with an "on-board ocean vessel" endorsement which is dated and signed or initialed on behalf of the carrier indicating that the barge containing the cargo was placed aboard the vessel named in the Form CCC–106 not later than eight (8) running days after the latest LASH or Seabee barge loading date (contract layday) specified in the Form CCC–106.

(3) Documentary requirements for a copy of an "ocean bill of lading" refer to a non-negotiable copy thereof.

Ocean freight rate is the freight rate charged by an ocean carrier for the carriage of commodities and shall be deemed to include the rate charged for an intermodal shipment.

Ocean transportation means and is interchangeable with the term "ocean freight", and shall be deemed to include transportation from intermodal delivery point to a foreign destination.

* * * * *

Through export bill of lading means an intermodal or other bill of lading that constitutes an ocean carrier's obligation to deliver cargo from a designated point in the United States to a designated foreign destination.

Vessel approval is the approval by CCC of the vessel or vessels to carry the commodities and shall be deemed to include approval of intermodal shipments.

(c) *Other terms.*

* * * * *

Delivery means the transfer to or, for the account of, an importer of custody and right of possession of the commodity at U.S. ports or other designated U.S. locations, or at Canadian transshipment points, in accordance with the delivery terms of the contract and purchase authorization. For purposes of financing, delivery shall be deemed to occur as of the on-board date shown on the ocean bill of lading, or in the case of an intermodal shipment, as of the issuance date on the intermodal through export bill of lading.

* * * * *

4. Section 17.6(b)(3)(vii) is added to read as follows:

§ 17.6 Contracts between commodity suppliers and importers.

* * * * *

(b) * * *

(3) * * *

(vii) Whenever the purchase authorization specifies that commodities may be delivered on an intermodal hasis, the General Sales Manager may require that the IFB invite offers for intermodal shipments in addition to any other terms of delivery.

* * * * *

5. In § 17.14, paragraph (a)(3) is revised to read as follows:

§ 17.14 Ocean transportation.

(a) * * *

(3) The supplier of ocean transportation shall release copies of the ocean bills of lading to the supplier of the commodity promptly upon completion of loading of the vessel, or in the case of intermodal shipments, upon receipt of the commodity at the location

designated in the Declaration of Sale Form CCC–359 or Form FAS–359 and completion of any inspection required by these regulations or the Purchase Authorization.

* * * * *

Signed at Washington, DC, on June 10, 1987.

Melvin E. Sims,

General Sales Manager.

[FR Doc. 87–23017 Filed 10–6–87; 8:45 am]

BILLING CODE 3410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-ACE-11]

Proposed Designation of Transition Area; Grinnell, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to designate a 700-foot transition area at Grinnell, Iowa, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Grinnell, Iowa Airport, utilizing the Newton, Iowa VORTAC as a navigational aid. This proposed action will change the airport status from VFR to IFR.

DATES: Comments must be received on or before November 9, 1987.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Manager, Traffic Management and Airspace Branch, Air Traffic Division, ACE–540, 601 East 12th Street, Kansas City, Missouri 64106. Telephone (816) 374–3408.

The official docket may be examined at the Office of the Regional Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Manager, Traffic Management and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE–540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374–3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Traffic Management and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before the closing date for comments will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Traffic Management and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106, or by calling (816) 374–3408.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMS should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

Discussion

The FAA is considering an amendment to Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181), by designating a 700-foot transition area at Grinnell, Iowa. To enhance airport usage, a new instrument approach procedure is being developed for the Grinnell, Iowa Airport, utilizing the Newton VORTAC as a navigational aid. This navigational aid will provide new navigational guidance for aircraft utilizing the airport. The establishment of a new instrument approach procedure, based on this navigational aid, entails designation of a transition area at Grinnell, Iowa, at and above 700 feet above ground level within which aircraft are provided air traffic control service. Transition areas are designed to contain IFR operations and controlled airspace during portions of the terminal operation and while transiting between the terminal and enroute environment. The intended effect of this action is to ensure segregation of aircraft using the approach procedure under Instrument Flight Rules (IFR), and other aircraft operating under Visual Flight Rules (VFR). This action will change the airport status from VFR to IFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C, dated January 2, 1987.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

2. By amending § 71.181 as follows:

Grinnell, IA [New]

That airspace extending upward from 700 ft. above the surface within a 5-mile radius of the Grinnell Airport (Lat. 41°42'18" N., Long. 92°43'45" W°); and within 2.5 miles each side of the 105° radial from the Newton VORTAC, extending from the 5-mile radius area to 26 miles east of the VORTAC.

Issued in Kansas City, Missouri on September 23, 1987.

Clarence E. Newbern,

Assistant Manager, Air Traffic Division.

[FR Doc. 87–23124 Filed 10–6–87; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-24976; File No. S7-33-87]

Acquisitions of Substantial Amounts of Securities and Related Activities Undertaken During and Following a Tender Offer for Those Securities.

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Securities and Exchange Commission (the "Commission") is publishing for comment proposed rules that would govern certain acquisitions

of securities undertaken during and shortly after a conventional tender offer for securities of the same class and related activities. The proposed rules would require that all purchases, offers to purchase, arrangements or understandings to purchase and solicitations of offers to sell securities undertaken during and shortly after a tender offer that would increase any person's ownership of the class of securities subject to the tender offer by 10 percent or more of the class be made in compliance with the statutory provisions and rules applicable to tender offers. Exceptions would be provided for purchases of blocks which had been reported to the Commission for one year; purchases from the issuer; purchases pursuant to a preexisting written agreement; issuer transactions approved by securityholder vote, including recapitalizations and reorganizations; and purchases in connection with mergers approved by the issuer's securityholders. The provisions would apply to all persons from the formal commencement of a tender offer until 10 business days after the scheduled expiration date. A proposed rule also would subject a bidder to the same requirements from the time it commenced a tender offer by public announcement until it either formally commenced a tender offer by some other means or 30 business days after it made a subsequent public announcement stating that it had determined not to continue with the tender offer.

DATE: Comments should be received on or before December 7, 1987.

ADDRESS: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comment letters should refer to File No. S7-33-87. All comment letters received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: David A. Sirignano (202) 272-3097, Jonathan E. Gottlieb (202) 272-2607, Office of Tender Offers, Division of Corporation Finance, or Larry E. Bergmann (202) 272-2874, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is publishing for comment proposed Rules 13e-2 and 14d-11.

I. Executive Summary

The Commission is proposing rules that expressly would include within the scope of its tender offer regulations acquisitions of substantial amounts of securities and related activity undertaken during and for a limited period following the scheduled expiration of a tender offer for that class of securities. The proposal follows a July 31, 1986 Concept Release in which the Commission sought public comment on whether the Williams Act amendments to the Securities Exchange Act of 1934 ("Exchange Act"),[1] Governing corporate tender offers and other major acquisitions of securities, should apply to acquisitions of a substantial percentage of a target's securities during and immediately after a tender offer for those securities.[2] The Commission sought comment on the need to amend the tender offer rules to ensure that the Williams Act protections apply in those circumstances.

As noted in the Concept Release, commencement of a tender offer often results in a concentration of blocks of stock among market professionals and others. Issuers, bidders and others have acquired control or substantial amounts of securities by purchasing stock from such block holders without complying with the Williams Act and rules applicable to tender offers. Securityholders of the target company have thereby been deprived of adequate information deemed necessary under such circumstances and the minimum time needed to act upon such information, and denied withdrawal and proration rights and even the opportunity to participate in the acquisition program. In the absence of Commission rulemaking, the courts that have addressed the issue have been unwilling to apply the procedural and substantive protections of the Williams Act and rules to such acquisition programs.[3]

The Commission solicited comment on a variety of issues relating to this topic, including: (1) Whether securityholders have adequate time and information upon which to act during these acquisition programs; (2) whether some groups of securityholders are unfairly disadvantaged in these transactions because of the speed with which the transactions occur, the lack of adequate information concerning the transaction, or the inability to participate on the same basis as other securityholders; and (3) whether the possibility of an unregulated competing acquisition by the target or a third party deters or disadvantages the initial bidder or encourages initial takeover attempts to proceed other than by way of conventional tender offers.

In the Concept Release, the Commission also outlined one possible approach to applying the protections of the Williams Act to substantial acquisitions undertaken during or shortly after tender offers. Under that approach, the tender offer rules would be amended to provide that substantial acquisitions of a target company's securities by any person after commencement of a tender offer for such securities, and until the expiration of a specified period after termination of the tender offer, would be deemed a "tender offer" required to be made in compliance with the tender offer rules.[4]

Many of the commentators responding to the Concept Release on this issue favored applying Williams Act protections to accumulations of substantial amounts of securities during or shortly after a tender offer.[5] Members

[1] Pub. L. No. 91-567, 84 Stat. 1497, 15 U.S.C. 78m(d) and 78m(e), 78n(d)-78n(f).

[2] *See* Release No. 34-23486 (July 31, 1986) [51 FR 28096]. The Concept Release also sought comment as to whether the federal government should regulate "poison pill" plans and whether the Commission should adopt a self-governance exception to tender offer rules. The Commission does not believe that federal regulation of poison pills is appropriate at this time. *See* Testimony of David S. Ruder, Chairman of the Securities and Exchange Commission, Before the Subscommittee on Telecommunications and Finance of the House Committee on Energy and Commerce (September 17, 1987). With regard to the self governance exception to tender offer rules, the Commission is seeking comment on a self-governance approach to the rules proposed herein.

[3] *See Hanson Trust plc* v. *SCM Corp.*, 774 F.2d 47 (2d Cir. 1985) and *SEC* v. *Carter Hawley Hale Stores, Inc.*, 760 F.2d 945 (9th Cir. 1985).

[4] The Commission suggested 10 percent as a possible acquisition threshold under this approach.

[5] Twenty-three commentators responding to the Concept Release addressed this topic. Of the 23, 13 favored application of the Williams Act to substantial acquisitions of securities during or shortly after a tender offer for the class of securities. Two commentators, including the American Bar Association, Section of Corporation, Banking and Business Law, Subcommittee on Proxy Solicitations and Tender Offers, expressed concern regarding the impact of such acquisitions on shareholders, but suggested approaches different from that suggested by the Commission. Two other commentators expressed concern but did not take a specific position. The remaining six commentators, including the United States Department of Justice, Antitrust Division, opposed application of the Williams Act to such acquisitions.

Suggestions regarding the length of a "cooling off" period following termination of a tender offer, during which substantial acquisitions could only take place by tender offer, ranged from 10 days to six months. Suggestions regarding the appropriate level of purchases during the restricted period to which such a rule would apply ranged from a low of two percent of the outstanding class of securities once a purchaser owns 10 percent, to a high of 20 percent regardless of the purchaser's previous

Continued

of Congress also have found a need for Williams Act protections in such situations. Bills have been introduced in Congress that would amend the Exchange Act to prohibit a bidder from terminating a tender offer and immediately acquiring securities of the same class.[6] Since the Concept Release was issued, there have been additional incidents in which parties to a takeover contest and other persons have taken advantage of the market dynamics put into play when a conventional tender offer is commenced, by "sweeping the street" during and immediately after such a tender offer.[7] The Commission believes that such practices will continue and may become more common.

Since market sweeps pose the same investor protection concerns that Congress sought to curb when it enacted the Williams Act, the Commission has viewed such activity as a form of unconventional tender offer subject to the same strictures as other tender offers under the Williams Act and the regulations promulgated thereunder. Yet, two courts have found that the Commission's rules, as currently promulgated,[8] did not afford securityholders the protections of the Williams Act regulatory scheme in the context of substantial acquisitions that occurred during or immediately after termination of a tender offer. Accordingly, the Commission is proposing Rules 13e–2 and 14d–11 to subject these acquisitions and related market activity during or shortly after a tender offer for the same class of securities to the statutory provisions and regulations applicable to all tender offers.

Proposed Rules 13e–2 and 14d–11(a) would require, with certain exceptions compliance with the Williams Act and rules applicable to tender offers from dissemination and publication of a tender offer until the expiration of 10 business days following its scheduled expiration (including any extensions), by any person that seeks to increase its beneficial ownership of the class of securities subject to the tender offer by 10 percent or more of the class or who solicits offers to sell those securities that would increase any person's beneficial ownership by 10 percent of the class or more. Proposed Rule 14d–11(b) would further require, with certain exceptions, that a bidder's acquisition activities with respect to 10 percent or more of the class be conducted in compliance with the Williams Act and rules thereunder from commencement of a tender offer by public announcement until dissemination and publication of the offer or the expiration of 30 business days following withdrawal of the announcement. The proposed rules would provide exceptions for a purchase of a block of securities where the beneficial ownership of the securities had been reported for at least one year; purchases from the issuer; purchases pursuant to a preexisting and binding written agreement; purchases by the issuer pursuant to specific securityholder approval; and purchases in connection with a merger or consolidation of the issuer that had previously been approved by the issuer's securityholders.

II. Discussion

A. Background

When a tender offer is pending, has just expired or has just been terminated, purchases of substantial amounts of securities can have the same effect and present the same investor protection issues as the initial tender offer itself. Accordingly proposed Rules 13e–2 and 14d–11 are intended to insure that investors confronted with the same pressured investment decision engendered by a conventional tender offer are afforded the same protections.

After the bidder or the issuer commences a tender offer, the market reaction is swift and profound. The price of the stock usually jumps to reflect the value of the bid and may rise above that price in anticipation of a possible increase in the bid or a higher competing offer. While many securityholder tender their shares, others sell their holdings to take immediate advantage of the increase in the stock price and to avoid the risks of proration or failure of the bid. Speed is essential since an effective defensive measure or other development may prevent successful completion of the tender offer; in that event, the stock price usually drops immediately and in many cases dramatically.

While some securityholders may sell to realize an immediate profit, others—usually market professionals—buy large amounts of stock in order to secure the higher premium. Once a substantial portion of the class of securities becomes concentrated among a relatively small number of market professionals and others, a person can dramatically increase its ownership with extraordinary speed and ease by acquiring the securities from such holders. The practice of purchasing a sizeable position in a security during or shortly after a tender offer through a series of coordinated, often simultaneous, purchases from holders of recently-acquired blocks of stock is known as a "market sweep." Through a market sweep, a person can quickly obtain control, or at least a blocking position to deter competing bids, while avoiding the competitive risks and financial costs of a formal tender offer.

Bidders, targets and third parties alike can engage in market sweeps. In some instances, bidders have terminated their tender offers prior to the scheduled expiration data and purchased substantial amounts of the same class of securities within hours or even minutes of such termination.[9] Such purchases are made from a relatively small number of securityholders without any of the safeguards of the Williams Act. In such cases, the tender offer process is a vehicle for consolidation of stock distribution, which enables a bidder to purchase the securities eventually without compliance with the Williams Act. The bidder buys securities from a few persons, avoiding the all holders

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holdings. The letters of comment, as well as a copy of the summary of the comment letters prepared by the staff, are available for public inspection and copying at the Commission's Public Reference Room (see File No. S7–18–86).

[6] *See* S. 1324, Corporate Takeover and Insider Abuse Reform Act, section 9(a); H.R. 2172, Tender Offer Reform Act of 1987, Section 11; H.R. 2668, Securities Trading Reform Act of 1987, section 105. The proposed statutory amendments are narrower in scope than the rule proposed today, as they apply only to a bidder's termination of its bid. These bills as well as others contain additional provisions that would require all acquisitions above a certain threshold of ownership to proceed by way of conventional tender offer. While these provisions would address the concerns of the proposed rules, they would go far beyond regulating these unconventional tender offers. These bills essentially would alter the thrust of the Williams Act to regulation of transfers of control, regardless of whether a tender offer, conventional or unconventional, is involved. *See, e.g.*, S. 1323, Tender Offer Disclosure and Fairness Act of 1987, section 7(b); S. 1324, *supra*, section 9(a); H.R. 2102, *supra*, section 13. *See also* S. 227, Tender Offer Reform Act of 1987, section 4(a).

[7] For example, in 1986 Campeau Corporation purchased 48 percent of Allied Stores Corporation's stock within minutes after terminating its tender offer for that company, thereby defeating a friendly bid for the company by a third party. In early 1987, Dixons Group plc purchased 60 percent of the subject securities in a single transaction on the day following the expiration of its tender offer for Cyclops Corporation, thereby defeating a competing bid.

[8] *See Hanson Trust, supra*, 774 F.2d at 60 ("Neither the Act nor any SEC rule promulgated thereunder prohibits a former tender offeror from purchasing stock of a target through privately negotiated transactions immediately after a tender offer has been terminated. * * * We believe it would be unwise for courts judicially to usurp that is a legislative or regulatory function by substituting our judgment for that of Congress or the SEC."); *Carter Hawley Hale Stores, supra*, 760 F.2d at 949 ("The regulations do not specify when a repurchase by an issuer amounts to a tender offer governed by Rule 13e–4 rather than 13–1.").

[9] See, e.g., *Hanson Trust*, supra. 770 F.2d 47.

rule (thus alleviating the proration risk of those who sell). The bidder is able to buy immediately, without holding its offer open for the minimum offering period. Securityholders outside this small group of smellers (including securityholders who have tendered into the bid) are denied their proration right and the right to participate assured by the all holders rule. Those whose securities are purchased likewise are compelled to forego informational, best price and withdrawal rights.

In other instances, bidders have made purchases shortly after the scheduled expiration of the offer.[10] Even where tendered shares are purchased, this device deprives tendering securityholders of the right to the best price paid to other securityholders and the right to withdraw their shares in order to sell at the better price.

The potential for abuse may be even greater. Certain securityholders may withhold tendering to avoid prorationing risks and to obtain a higher price outside the offer; where these securityholders hold an amount of stock material to the success of the bid and can count on immediate acquisition by the bidder following expiration of the offer, they can compel an acquiror to buy outside the terms of the conventional bid. If the bidder fails to meet the minimum share condition because of the withholding of shares, the subsequent purchase could be effected without any of the tendering securityholders' shares being bought at all.

Targets of tender offers also have engaged in market sweeps to defeat hostile bids. In one case, while a bidder's tender offer was pending, the target publicly announced a defensive program that included its intention to purchase significant amounts of securities.[11] The terms of the announcement placed the same pressure on securityholders to sell as the tender offer, since securityholders recognized that the defensive program could defeat the bid; that the market price, which had been raised to reflect the premium offered in the tender offer, could fall to prebid levels; and that to obtain a higher price, they had to sell immediately into the market while it was still supported by the target's massive purchases. The pressure was all the greater because the target, avoiding the proration requirements of the Williams Act, could buy on a first-come, first-serve basis and could buy immediately without complying with the minimum offering period. Those selling shares to the target did so without the information required by the Williams Act and without best price protection or withdrawal rights.

The potential for a market sweep is particularly high in the case of competing tender offers. The bidders, target and securityholders must constantly be wary that one of the bidders will abruptly terminate its offer and quickly obtain control in the market, thereby circumventing the tender offer process. A bidder may be prompted to commence a preemptive market sweep in order to prevent competing bidders or the issuer from doing so. Under such circumstances, securityholders who have tendered into one of the offers, rather than selling into the market, lose an opportunity to obtain the premium.

Market sweeps also can be conducted by third parties who have not commenced a tender offer or even disclosed their interest in the target.[12] Such an acquisition has the same effect and poses the same investor protection concerns as market sweeps conducted by issuers and bidders.

Market sweeps are fostered by brokers, dealers and other market professionals assembling blocks of stock, which they then market to bidders, targets and third parties. By soliciting a number of clients or substantial shareholders they can assemble a sufficiently large block of stock which could frustrate a minimum share condition of a tender offer or otherwise affect the success of an offer. Accordingly, they may leave the bidder with no choice but to deal with them.[13] This practice can create tremendous pressure on bidders to terminate their offers in order to purchase the block from the brokers or dealers before the block is sold to the target or another party.

These rapid accumulations or attempts to accumulate a substantial percentage of securities during, or shortly after termination of, a tender offer, but outside the tender offer process, create the same pressures on, and unfair treatment of, shareholders that the Williams Act was adopted to prevent. These acquisition programs differ from a conventional tender offer in purpose and effect only by the absence of the procedures—the dissemination of required information, a minimum offering period to consider the information, and equal treatment of shareholders under the proration, best price and all holders rules—that the Williams Act and related rules mandate for the protection of investors.

The term "tender offer" is not defined by the Williams Act or Commission rules; Congress left to the Commission and the courts the flexibility to define the term in light of ever-evolving tender offer practices.[14] The Commission consistently has interpreted the term to go beyond the conventional tender offer to include acquisition programs that present the type of abuses that Congress intended to eliminate.[15]

To assist in the determination whether certain substantial purchases constitute tender offers, the Commission has suggested, and the Courts have employed, an eight-factor test.[16] The

[10] For example, in 1987, Dixons Group plc acquired control of Cyclops Corporation by making purchases within two days after the scheduled expiration of its tender offer. In 1986, Amalgamated Sugar Company acquired sufficient additional shares to give it control of NL Industries, Inc. by making purchases the day after the scheduled expiration of its tender offer.

[11] *See Carter Hawley Hale Stores, supra,* 760 F.2d 945.

[12] For example, on September 8, 1987, a group led by T. Boone Pickens commenced a tender offer for 28 million shares of Newmont Mining Corporation ("Newmont") for $95 per share in cash. On September 21, 1987, Newmont announced a restructuring plan that would result in shareholders receiving a dividend of $33 per share. On the same date, Consolidated Gold Fields PLC ("CGF") announced that it intended to increase its holdings of Newmont stock from 26 percent to just under 50 percent through negotiated and open market purchases. CGF purchased 191,000 shares on September 21, and 15.6 million shares on September 22 mostly through open market purchases at prices ranging from $93 to $99 per share. As of September 22, CGF held 49.67 percent of the outstanding shares of Newmont. As of the date of this release, however, the purchases are the subject of litigation.

In July 1987, Paul Bilzerian attempted to purchase 41 percent of the shares of Pay 'N' Pak Stores, Inc. in one day during a tender offer by a group that included company management. Bilzerian's purchases were cancelled by Morgan Stanley & Company, Inc., however, because it believed that 'the trade raised significant legal questions under the tender offer rules." *The Wall Street Journal,* July 10, 1987, at 2 (Eastern ed.).

[13] *See The Wall Street Journal,* Campeau's Takeover Victory Signals Change in Tactics, Nov. 4, 1986, at 2 (Eastern ed.).

[14] *Smallwood v. Pearl Brewing Co.,* 489 F.2d. 579, 598 (5th Cir.), *cert. denied,* 419 U.S. 873 (1974).

[15] Exchange Act Release No. 16385 (Nov. 29, 1979) [44 FR 70349. *See also* SEC briefs filed in *Carter Hawley Hale Stores, supra,* 760 F.2d 945; *Brascan Ltd., v. Edper Equities, Ltd,* 477 F. Supp. 773 (S.D.N.Y. 1979), *Wellman v. Dickinson,* 475 F. Supp. 783 (S.D.N.Y. 1979) *aff'd on other grounds,* 682 F.2d 355 (2d Cir. 1982); *cert. denied,* 460 U.S. 1069 (1983).

[16] *See Wellman, supra,* 475 F. Supp. 783. *See also Carter Hawley Hale Stores, supra,* 760 F.2d at 950–52. Those eight factors are: (1) Active and widespread solicitation of shareholders for the shares of an issuer; (2) solicitation made for a substantial percentage of the issuer's stock; (3) offer to purchase made at a premium over the prevailing market price; (4) terms of the offer are firm rather than negotiable; (5) offer contingent on the tender of a fixed number of shares, often subject to a fixed maximum number to be purchased; (6) offer open only for a limited period of time; (7) offeree subjected to pressure to sell his stock; and (8) public announcement of a purchasing program concerning the target company precedes or accompanies rapid accumulation of a large amount of target company's securities. *Wellman, supra,* 475 F. Supp. at 823–24.

Commission repeatedly has cautioned that not all eight factors are entitled to equal weight and that neither all, nor even a majority, of the eight factors need be present. As noted in the Commission's brief in *SEC v. Carter Hawley Hale Stores, Inc.* (brief at 39):

> The various factors really serve one ultimate purpose—to identify whether a purchase program places pressure on shareholders to respond hastily before having a chance to consider material information.

Market sweep programs, often for less than all of the target's shares, require securityholders to react immediately without the benefit of information about the bidder and its plans for the target. Securityholders must assess the likelihood of the tender offer's success, an auction developing, or a successful target company defense. Withdrawal rights, which protect the securityholder's ability to react to new information throughout the pendency of a tender offer, are not available. A market sweep defeats all the intended benefits of Williams Act protections; a sweep can change control or defeat a bid without notice, information to the market, time to react, and the opportunity to participate.

In applying the eight-factor test to market sweeps, courts have been troubled by the fact that the pressure on securityholders and other indicia of a tender offer were as much the result of the market forces accompanying the conventional tender offer as any conduct by the purchaser.[17] The charged environment of a tender offer heightens the pressure on securityholders to make rapid investment decisions; the market price of the securities after the conventional bid is made includes a premium; that premium will exist so long as the market perceives that the bid or other acquisition effort is ongoing. The public announcement and offer of a premium provided by the conventional bid serves not only the initial bidder but each person seeking to acquire a substantial block in a short period of time. Securityholders face the same pressures and are in equal need of the Williams Act protections regardless of who initially sets these market forces in motion.[18]

A bidder, target or third party should not be permitted to use the market dynamics resulting from commencement of a tender offer in this manner. Once the dynamic market conditions resulting from a tender offer are in play, persons engaged in contests for corporate control should not be able to treat the Williams Act as an optional set of procedures to be followed only when it is to their advantage to do so. Rather, they should be requried to provide securityholders and the market with the type of information and substantive protections mandated by the Williams Act for tender offers. The rules proposed today are intended to ensure that result.

B. Persons Subject to the Proposed Rules

As noted above, the proposed rules would require acquisition programs involving an increase in beneficial ownership of 10 percent or more of the class during and shortly after a tender offer for securities of the class to proceed in compliance with the Williams Act and rules applicable to tender offers. Under proposed Rules 13e–2 and 14d–11(a), these requirements would apply to all persons once a conventional tender offer has formally commenced.[19] The proposed rules would apply to target, bidder and third party acquisitions because they have the same effect on securityholders.[20]

There is, however, one exception to this uniform application. When a bidder commences a tender offer through a public announcement under Rule 14d–2(b),[21] proposed Rule 14d–11(b) would restrict the activities of that bidder, but not those of the issuer or any other person. However, once a bidder commences a tender offer by any means other than a Rule 14d–2(b) announcement, all persons would be subject to proposed Rules 13e–2 or 14d–11(a).

While a public announcement can have an immediate and significant effect on the market for the subject securities and the target's shareholders, restricting the activities of all persons following the announcement of a tender offer could increase, rather than reduce, the potential for abuse and market disruption. An across-the-board application of the tender offer rules to acquisition activity by any person following a Rule 14d–2(b) announcement could create confusion and make it difficult to administer the proposed rules. Certain announcements may not be immediately identified as a Rule 14d–2(b) announcement. Moreover, since such an announcement can be made by press release, newspaper advertisement or public statement, notice of such an announcement may not be universally available.

Since Rule 13e–4 does not contain a parallel to Rule 14d–2(b), proposed Rule 13e–2 does not include a provision comparable to proposed Rule 14d–11(b). In the past, public announcements by issuers prior to the commencement of a conventional third-party bid have not proven to be a problem.[22] The Commission solicits comment on whether this differential treatment continues to be appropriate.

C. Nature of Activity Affected

The proposed rules would cover offers to purchase, arrangements or understandings to purchase or solicitations of offers to sell, as well as purchases of securities which are the subject of a tender offer. The Commission believes that each of these

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[17] *See Carter Hawley Hale Stores, supra*, 760 F.2d at 952 ("The shareholder pressure in this case did not result from any untoward action on the part of CHH. Rather, it resulted from market forces, the third-party offer, and the fear that at the expiration of the offer the price of CHH shares would decrease").

[18] *See Carter Hawley Hale Stores, supra*, 760 F.2d at 950; *In re Paine Webber Jackson & Curtis, Inc.*, [1982–83] Fed. Sec. L. Rep. (CCH) para. 83,310 at 85,714 (Dec. 30, 1982) ("[T]he circumstance that the Paine Webber offer occurred in the context of the outstanding (conventional) Cavenham tender offer presents an additional and separate reason for concluding that the Paine Webber offer was a tender offer subject to section 14(d) of the Exchange Act").

[19] Tender offers by affiliates for the issuer's equity securities registered under section 12 of the Exchange Act [15 U.S.C. 781] or otherwise included within Section 14(d) of the Exchange Act [15 U.S.C. 78m(d)], which if successful would result in the affiliate becoming the beneficial owner of more than five percent of the class of such securities, are governed by Regulation 14D [17 CFR 240.14d–1–240.14d–101]. Purchases of those securities by affiliates would therefore be restricted by proposed Rule 14d–11. All other tender offers by affiliates for an issuer's equity securities are governed by Rule 13e–4 [17 CFR 240.13e–4] and purchases of those securities would be subject to proposed Rule 13e–2.

[20] The broad applicability of these proposed rules to all persons also is consistent with the Williams Act principle of neutrality among bidders, target companies and third parties. Senator Williams, in introducing the bill which became the Williams Act, stated: "I have taken extreme care with this legislation to balance the scales to protect the legitimate interests of the corporation, management and shareholders without unduly impeding cash takeover bids." 113 Cong. Rec. 354–55 (1967). *See also* S. Rep. No. 550, 90th Cong., 1st Sess. 3 (1967) and H.R. Rep. No. 1711, 90th Cong., 2d Sess. 4 (1968).

[21] 17 CFR 240.14d–2(b). Under Rule 14d–2(b), a public announcement that includes information on the identity of the bidder and subject company, the amount and class of securities sought and the price or price range, and in which the consideration is cash or securities exempt from registration under the Securities Act of 1933, 15 U.S.C. 77a *et seq.*, is deemed to constitute the commencement of a tender offer.

[22] In any event, an issuer announcing an intention to make a tender offer would be subject to Rule 10b–13 [17 CFR 240.10b–13], and thus prohibited from making any purchases otherwise than through the tender offer until the offer terminates.

activities poses the same investor protection concerns, and failure to include them in the rule would allow easy evasion of the purpose of the proposed rules. When undertaken during or shortly after a tender offer, these activities enable a person to acquire securities, whether such acquisitions are consummated immediately or are delayed until after the proposed rules would cease to apply. The Commission solicits comment as to whether the proposed rules should apply to each of the aforementioned activities, in particular, to solicitations of offers to sell, and whether the proposed rules should apply to any other activities.

With respect to bidders, affiliates and third parties, the proposed rules would apply only to the extent that a person's activity results or would result in an increase in any person's beneficial ownership or securities of the same class which is or was the subject of the tender offer by 10 percent or more of the class. The proposed rules would not turn on the extent of a person's total beneficial ownership of such securities; only the extent to which such beneficial ownership is increased or would be increased during the applicable period is relevant. The proposed rules also would cover solicitations of offers to sell, whether the buyer would be the person conducting the solicitation or another person. Accordingly, the threshold would apply to an increase in anyone's beneficial ownership, not just the person engaged in the solicitation.

Focusing on the increase in ownership avoids interfering with normal brokerage activity during a tender offer. Given the high volume of trading in securities subject to a tender offer, a broker could be considered to have engaged in solicitations of offers to sell more than an aggregate of 10 percent or more of the subject securities during that period.[23] Similarly, dealers and market-makers might otherwise cross the acquisition threshold during the restrictive period. Accordingly, the rule will prohibit only activity that results or would result in any person achieving a net 10 percent or greater increase in its beneficial ownership of the subject class. The Commission solicits comment on whether the ability to offset sales of securities against purchases in determining the net increase in beneficial ownership should be limited to registered broker-dealer firms, or should extend to all bidders, affiliates and third parties as presently proposed.

Rule 131d-3(a)[24] defines "beneficial owner" of a security to include any person who has voting power and/or investment power with respect to the security. Under Rule 13d-3(b),[25] a person is deemed to be a beneficial owner of a security if he has the right to acquire beneficial ownership within 60 days. Thus, the proposed rules would encompass acquisition of the right to acquire beneficial ownership of a security, including options, warrants, rights, exchange or conversion privileges that enable the holder to acquire such securities within 60 days. Comment is requested on whether this 60 day period is too limited and whether the proposed rules should encompass all such related securities.

Proposed Rule 13e-2 does not use the concept of beneficial ownership with respect to issuers. The concept does not lend itself to issuer purchases; for example, an issuer cannot vote treasury shares. Rule 13e-2 therefore focuses instead solely on the amount of securities of the subject class acquired by the issuer during the restricted period.

The 10 percent threshold for application of the proposed rules is intended to minimize their impact on normal arbitrage activity. In the ordinary course of business, an arbitrageur normally does not acquire beneficical ownership of 10 percent or more of a class of securities. For instance, a 10 percent position could require compliance with the reporting requirements of the Hart Scott Rodino Antitrust Improvements Act of 1976.[26] Commentators are requested to address whether 10 percent is an appropriate threshold for permitting normal arbitrage activity to continue. Would the purpose of the rules be equally well served by a threshold of 15 or 20 percent; would a 5 percent level be unduly restrictive?

D. Period of Applicability

As noted above, proposed Rules 13e-2 and 14d-11(a) would apply as soon as an issuer or bidder commences a tender offer, other than by public announcement pursuant to Rule 14d-2(b).[27]

Proposed Rules 13e-2 and 14d-11(a) would apply while the tender offer is pending and until 10 business days after the tender offer is scheduled to expire as set forth by the issuer or bidder in the applicable schedule and any amendments to that schedule filed with the Commission.[28] Thus, upon any voluntary or mandatory extension, a new expiration date would be scheduled and the proposed rules would apply until 10 business days after the extended expiration date. Because the applicable time periods are calculated from the scheduled expiration date, terminating a tender offer prior to the scheduled expiration date would not reduce the applicable time period of Rules 13e-2 or 14d-11(a) to the advantage of the bidder. The proposed Rules thus would apply a uniform period of time regardless of whether a tender offer is terminated prematurely or expires by its terms.

Proposed Rules 13e-2 and 14d-11 would continue to apply for 10 business days after the scheduled expiration date, because the market dynamics created by a tender offer continue for a period of time following the expiration of a tender offer. The proposed rules incorporate the period currently applicable to issuers after the termination of issuer tender offers.[29] The Commission invites comment as to whether 10 business days after the scheduled expiration date is an appropriate cooling off period.[30] Comment is also requested as to whether the cooling off period should be the later of (i) ten business days after the actual termination date; or (ii) the scheduled expiration date. Commentators are requested to provide empirical evidence of the market

[23] In agency transactions where the broker does not have discretionary authority, the broker's principal, not the broker, purchases or offers to purchase securities.

[24] 17 CFR 240.13d-3(a).

[25] 17 CFR 240.13d-3(b).

[26] *See* 15 U.S.C. 18a; 16 CFR 802.9.

[27] Since application of the proposed Rule would be triggered by commencement of an tender offer within the meaning of Rule 14d-2 [17 CFR 240.14d-2] or, in the case of issuer tender offers, Rule 13e-4(a)(4) [17 CFR 240.13e-4(a)(4)], other parties, including the target, would not be subject to Rule 13e-2 or 14d-11 as a result of a on-complying unconventional tender offer. The proposed rules do not, however, exempt these tender offers from Section 14(d) of the Exchange Act and Rule 13e-4. *See, e.g., Hoover Co.* v. *Fuqua Industries, Inc.*, [1979-80] Fed. Sec. L. Rep. (CCH) 97,107 (N.D. Ohio 1979); *S.G. Securities, Inc.* v. *Fugua Industries, Inc.*, 466 F. Supp. 1114 (D. Mass. 1978). Persons engaging in unconventional tender offers without complying with the Williams Act tender offer rules would continue to violate Section 14(d) of the Exchange Act, Regulations 14D and E, or Rule 13e-4.

[28] Rules 13e-4(d) [17 CFR 240.13e-4(d)] and 14d-6(e) [17 CFR 240.14d-6(e)] require that upon commencement, an issuer or a bidder disclose the scheduled date on which the tender offer will expire. The rules require an amendment upon any change in that information. Rule 13e-4(d)(2) and (e)(2) [17 CFR 240.13e-4(d)(2) and (e)(2)]; Rule 14d-4(a) and 14d-6(d) [17 CFR 240.14d4(a) and 14d-6(d)].

[29] Under Rule 13e-4(f)(6) [17 CFR 240.13e-4(f)(6)], the cooling off period runs from the termination date, which may be earlier than the scheduled expiration date.

[30] Commentators responding to the Concept Release suggested cooling off periods ranging from 10 days to six months after termination.

dynamics following termination of a tender offer, including the amount of time necessary for stock distribution to return to normal, and the length of time a person holding a sizeable block would be willing to maintain its position following an expiration of a tender offer in anticipation of an acquisition once the restrictions on purchases cease to apply.

Proposed Rule 14d-11(b) would apply from the time a person makes a public announcement of a tender offer either until that person commences a tender offer by means other than announcement, thereby triggering application of proposed Rule 14d-11(a), or until 30 business days after it withdraws the announcement. Accordingly, the activities of a person who first announces a tender offer and subsequently commences a tender offer by other means, would be restricted from the time the public announcement is made. A person who elects to discontinue a tender offer after a public announcement, and makes a subsequent announcement with-drawing the offer within the five business day period prescribed by Rule 14d-2(b), would be restricted until the expiration of 30 business days after the withdrawal announcement.[31] The person's acquisition activity thus would be affected for a period equal to the 20 business day minimum offering period applicable to tender offers plus the 10 business day cooling off period imposed by proposed Rule 14d-11(a).

E. Exceptions to the Proposed Rules

Proposed Rules 13e-2, 14d-11(a) and 14d-11(b) have three similar exceptions. To the extent that, during the applicable period, any person purchases, offers to purchase, makes any arrangement to purchase or solicits any offer to sell securities subject to the proposed rules under circumstances which fall under any of the exceptions, those securities would be excluded from the calculations as to whether the person exceeded the ten percent threshold during the period. First, for purposes of each of the proposed rules, purchases of, offers to purchase, arrangements or understandings to purchase, or solicitations of offers to sell blocks of more than five percent of the subject class of securities would be excluded from any determination of a person's increase in beneficial ownership, if the seller had reported beneficial ownership of the securities pursuant to section 13(d) or 13(g) of the Exchange Act[32] for at least one year prior to such purchase, offer, arrangement, understanding, or solicitation. Under these circumstances, the block was not assembled as a reaction to or in anticipation of a tender offer, and the transaction would not pose the same investor protection concerns as transactions which are made possible by the reaction of many shareholders to a tender offer. The Commission solicits comments as to whether the requisite reporting period for these exceptions should be one year or whether a shorter period (e.g. nine, six or three months) would be appropriate.

This exception, as well as the others provided by the proposed rules, is relevant only to the operation of Rule 13e-2 and 14d-11, and would not exempt from the Williams Act and other tender offer rules purchases made in a conventional tender offer or an unconventional tender offer. Similarly, purchases subject to an exception from the proposed rules must be conducted in compliance with Rule 10b-13, if applicable.[33]

Second, the proposed rules would not apply to purchases pursuant to a binding contract between the purchaser and owner of the securities entered into prior to the announcement of a tender offer.[34] A contract to purchase securities that was not executed in reaction to a tender offer likewise does not pose the investor protection concerns the proposed rules are intended to address. Significant limitations on the availability of this exception are that the seller must own the subject securities at the time the agreement is entered into and that the terms of the agreement be fixed at that time.

Finally, proposed Rules 14d-11 and 13e-2 would not apply to issuer purchases and related activity where securityholders of the issuer have specifically approved the particular action. This exception would cover, among other transactions, issuer repurchase plans, reorganizations, and recapitalizations not constituting a tender offer. A similar exception is provided in Rules 13e-2 and 14d-11 for third parties and affiliates with respect to mergers and consolidations of the issuer. The process of securing securityholders' approval for a particular purchase affords securityholders many of the same protections that the proposed rules seek to provide. Moreover, the commencement of a tender offer should not interfere with the execution of existing plans which have been duly authorized by securityholders.

Proposed Rule 14d-11 also excludes from its provisions purchases of the subject securities from the issuer. Purchases from an issuer do not have the effect on the market and securityholders caused by a rapid accumulation of a substantial amount of securities in response to a tender offer.

The Commission seeks comment as the appropriateness, adequacy, and scope of the exceptions to the proposed rules.

F. Interaction of the Proposed Rules with Current Rules 10b-13 and 13e-4(f)(6)

Rule 10b-13[35] prohibits an issuer or bidder that has made a tender offer from purchasing or making any arrangement to purchase subject securities except pursuant to the offer during the term of the offer. The rule is intended to prevent transactions which would disadvantage securityholders tendering into the offer. The rule thereby helps to ensure that all tendering securityholders will be treated equally.

Proposed Rules 13e-2 and 14d-11 would supplement Rule 10b-13, by applying similar restrictions on purchases outside the tender offer to persons other than the person making the conventional tender offer. In effect, the proposed rules would extend the proscriptions of Rule 10b-13 to persons who have reached the acquisition threshold level during the restrictive period. Comment is requested as to the advisability of integrating Rule 10b-13 with proposed Rules 13e-2 and 14d-11.

Rule 13e-4(f)(6) currently prohibits an issuer from purchasing the securities subject to its issuer tender offer for 10 business days following termination of the offer. The Commission plans to repeal Rule 13e-4(f)(6), if the proposed rules are adopted. Issuers would thus receive the same treatment as bidders; only substantial acquisitions during the 10 business day period following expiration of the tender offer would be prohibited. Comment is requested on the

[31] If a person neither makes a subsequent announcement discontinuing its tender offer nor formally commences within the five day period, that person would violate section 14(d) and the rules thereunder and would continue to be subject to the restrictions of proposed Rule 14d-11(b) until the expiration of the applicable time periods following an announcement withdrawing the offer or a formal commencement.

[32] 15 U.S.C. 78m(d), 78m(g).

[33] 17 CFR 240.10b-13.

[34] 17 Rule 14d-2(b) would provide interpretive guidance in determining what type of statements constitute an "announcement" for the purposes of this exception. Once an announcement of a tender offer is made by an issuer or third party that indicates the bidder, target, shares sought and price, the exception would not be available for subsequent purchase agreements.

[35] 17 CFR 240.10b-13.

desirability of repealing Rule 13e-4(f)(6).[36]

G. Self Governance Approach [37]

The Commission seeks public comment on the consequences of the proposed rules to shareholders. The effect of the proposed rules on shareholders of an individual corporation may depend on a wide range of legal and economic considerations. These considerations include, but are not limited to, the existence of a fair price provision in the corporate charter, the presence of a poison pill, state law provisions regulating takeover activity, and management's anticipated response to future acquisition proposals. They may also depend on the corporation's historic stock price performance, the expected time lag between a street sweep and a "clean up" acquisition, if any, and the price difference, if any, between the street sweep price and the price paid in the clean up transaction. Accordingly, the effect of the proposed rules on shareholders may vary across corporations and over time as the surrounding legal environment evolves and economic conditions change.

The Commission therefore seeks comment on approaches to the street sweep rule that would increase the probability that the rule is applied only in those instances, if any, where it is most likely to have a beneficial effect. A rule with the ability to distinguish among issuers subject to different legal regimes and economic forces may generate greater benefits than a rule of general application that indiscriminately applies with equal force to all corporations in all circumstances.

One approach that may lead to such an outcome, and on which the Commission specifically seeks comment, relies on the use of an enabling provision similar to those commonly found in state corporation law.[38] Under an enabling approach, proposed Rules 13e-2 and 14d-11 would apply to purchase of a company's securities and related activity if and when those rules are adopted by the affirmative vote of shareholders holding a majority of the outstanding shares (weighted by the number of votes they carry), generally entitled to vote on matters submitted to the company's shareholders for a vote. To be effective, the vote would have to be taken pursuant to the Commission's rules governing solicitation of proxies or written consents, if applicable, and in accordance with state law and the company's charter and bylaws. The vote could be taken pursuant to either a recommendation of the company's board of directors or a shareholder initiative proposed under Rule 14a-8.[39] Once adopted by a company's shareholders, the proposed rules could be retracted in a similar manner. A company would be permitted to adopt both proposed Rules 13e-2 and 14d-11 but would not be permitted to adopt only one.

Variations on this approach, on which comment is also solicited, include: (i) Instead of applying only if adopted through an enabling provision, the proposed rules could take effect immediately upon their adoption by the Commission, and remain in force until retracted by an appropriate vote; (ii) instead of a majority of the outstanding shares being required for approval, a majority of a quorum or the vote required for a charter amendment under state corporate law could be the threshold for adopting or retracting the proposed rules; (iii) shareholder adoption or retraction of the proposed rules could require board concurrence; (iv) shareholder adoption or retraction or the proposed rules could be by class of security, thereby allowing the holders of individual classes to determine the operation of the street sweep rule with respect to their individual class; and (v) a company could adopt some but not all of the provisions of the proposed rules, within parameters to be set forth in the rules.

H. Economic Analysis

Since the stated rationale of the Williams Act is protection of target shareholders, the Commission's economics staff (the Office of the Chief Economist and the Directorate of Economic and Policy Analysis) empirically examined the effect of market sweeps on nonprofessional shareholders who did not sell into the sweep. OCE and DEPA determined that during the past few years there have been only a few cases of market sweeps that might have violated the proposed rules. The table below lists these cases, along with the stock price of the target company 20 business days prior to the first announcement of the offer, the price received by the arbitrageurs or others who sold into the sweep, and the "back-end" price received by other shareholders. In the four cases (SCM, NL Inds., Allied Stores, and Cyclops) where the market sweep was initiated by a hostile bidder, OCE and DEPA found that the back-end price was at least as great as the price received by the arbitrageurs. In addition they found that the back-end price in these four transactions represented premiums of 55% (SCM), 11% (NL Inds.), 41% (Allied Stores), and 43% (Cyclops) over the pre-announcement stock price of the target company. They determined that these premiums compare favorably with average tender offer premiums during the corresponding period; an earlier OCE analysis revealed that average tender offer premiums were 37% in 1985 and 33.6% in 1986. The only case they found in which a market sweep was accompanied by harm to target shareholders was the Carter Hawley Hale case, where target management adopted a series of defensive tactics, including a large repurchase program, in order to defeat a hostile bid. However, OCE and DEPA concluded that even in this case it is not clear whether it was the market sweep, or the other defensive tactics, which caused harm to target shareholders. In short, OCE and DEPA concluded that the evidence indicates that nonprofessional shareholders generally have not been harmed in the few market sweeps that have been initiated by hostile bidders during the past three years. The Commission invites the submission of any additional empirical data on the effects of market

[36] Rule 13e-1 [17 CFR 240.13e-1] prohibits an issuer whose equity securities are the subject of a tender offer by another person, from repurchasing any of its equity securities until it has filed with the Commission a statement disclosing the amount of securities to be repurchased, the purpose for the acquisition, and the source of funds. Rule 13e-1 would not be affected by the proposed rules, since the rule applies regardless of whether the repurchases are conducted through privately negotiated transactions, open market purchases, or an issuer tender offer.

[37] This section seeks comments on the concept of an enabling approach to the proposed rules. The Commission does not intend that any request for comments on such an approach be deemed to give notice of a proposed rule using such an enabling approach. Before seeking to adopt such a rule, the Commission would publish the proposal for notice and comment.

[38] In its Concept Release of July 31, 1986, the Commission sought public comment on a rule that would permit stockholders and directors to determine whether certain protections of the Williams Act would apply to their corporation. In particular, the Commission sought comment on a self-governance exemption to the "all holders" rule and to the tender offer rules generally. The comments in response were mixed. Of the 26 commentators that addressed this issue, 20, including the American Bar Association, Section of Corporation, Banking and Business Law, Subcommittee on Proxy Solicitations and Tender Offers, expressed opposition to, or criticism of, the concept of adopting self-governance exemptions to tender offer rules. Four commentators, inlcuding the United States Department of Justice, Antitrust Division, expressed support for the concept. In addition, The Business Roundtable expressed support for the concept of self-governance generally but expressed reservations regarding self-governance exemptions from disclosure provisions of the Williams Act. The National Association of Manufacturers, while failing to express a position on the concept, expressed support for further consideration.

[39] 17 CFR 240.14a-8.

sweeps and solicits comments on the interpretation of the data presented herein.

TABLE 1.—STOCK PRICE 20DAYS BEFORE TENDER OFFER, STOCK PRICE PAID IN OPEN MARKET TRANSACTIONS, AND BACK-END PRICE

[premiums in parentheses]

Target firm	Stock price 20 days before tender offer	Stock price paid in open market	Backend price
SCM	$48.50	$73.50	$75.000 (55%)
NL Inds.	14.25	15.50	[1]15.875 (11%)
Allied stores	49.00	67.00	69.00 (41%)
Cyclops	66.375	95.00	95.00 (43%)
Carter Hawley Hale	21.50	25.88	21.625 (0.63)

[1] Value at the time Simmons took control of NL board of directors.

III. Cost Benefit Analysis

To fully evaluate the costs and benefits that would result from the proposed rules, the Commission invites commentators to provide views and data as to the costs and benefits associated with the proposed rules. One effect of the proposed rules is to require persons to comply with the rules and procedures mandated by sections 13(e) and 14(d) of the Exchange Act. Such compliance may incrase the expenses incurred by a person in making a tender offer. Moreover, as a result of the operation of the proposed rules, persons may find it difficult to sell significant amounts of stock a class during the period that the proposed rules apply. It is anticipated, however, that the proposed rules will provide significant benefits to securityholders and the marketplace by requiring full disclosure by persons involved in activity relating to 10 percent or more of a class of equity securities and by providing procedural and substantive protections for securityholders. The Commission requests comment on how the costs and benefits of the proposed rule would be expected to increase or decrease if the "enabling" approach described above were adopted.

IV. Regulatory Flexibility Analysis

This initial regulatory flexibility analysis concerns proposed Rules 13e–2 and 14d–11 and has been prepared in accordance with the Regulatory Flexibility Act ("FRA").[40]

A. Objectives of the Proposal

The proposed rules would require certain substantial acquisitions of a target company's securities that are the subject of a tender offer to proceed in compliance with the statute and rules governing tender offers to ensure that shareholders receive the protections of those provisions regardless of whether their shares are purchased by a person conducting the initial tender offer, the issuer or another party.

B. Statutory Authority

The Commission is proposing to adopt proposed Rules 13e–2 and 14d–11 pursuant to sections 3(b), 13(e), 14(d), 14(e), 15(c), 20(b) and 23(a) of the Exchange Act.

Small Entities Subject to the Rules

If the proposed rules were adopted, certain small entities would become subject to their requirements. When used with reference to an "issuer" or a "person" other than an investment company, the term "small business" or "small organization" is defined by Rule 0–10(a) under the Exchange Act [41] to mean an issuer or person that on the last day of its most recent fiscal year had total assets of $5 million or less. When used with reference to an "issuer" or a "person" that is an investment company, the term "small business" is defined by Rule 0–10(b) under the Exchange Act[42] to mean an investment company with net assets of $50 million or less as of the end of its most recent fiscal year.

When used with reference to a broker or dealer, the term "small business" is defined by Rule 0–10(c) of the Exchange Act [43] to mean a broker or dealer that had total capital of less than $500,000 on the last business day of the preceding fiscal year and is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined by Rule 0–10. As many as 5,000 brokers and dealers may be considered small entities under this definition.

Proposed Rule 13e–2 would require, subject to certain exceptions, all issuers with a class of securities registered under Section 12 of the Exchange Act or which are required to file reports with the Commission pursuant to section 15(d), to conduct any purchases of 10 percent or more of its equity securities during the shortly after a tender offer for those securities, in compliance with Rule 13e–4 governing issuer tender offers. These issuers include companies who have publicly traded securities not registered with the Commission as well as issuers whose securities are not publicly traded. An unknow portion of these classes of issuers are small entities.

Proposed Rule 14d–11 would require, subject to certain exceptions, all persons who seek to engage in conduct which would increase any person's beneficial ownership of equity securities subject to a tender offer during that period by 10 percent or more of the class, to comply with the tender offer rules, if those securities are registered under section 12 of the Act, are issued by an insurance company which wuld have been required to be registered but for the section 12(g)(2)(G) exception, or are issued by a closed-end registered investment company. An unknown portion of these persons could be small entities.

At this time the Commission is unable to determine the costs to small entities of compliance with the proposed rules. The Commission estimates, however, that because the proposed rules are limited in application to transactions occurring during and shortly after a tender offer for the subject securities, and because the rules only apply to extraordinary transactions which would increase a person's beneficial ownership by 10 percent or more of the class, the rules would not affect a significant number of small entities.

C. Reporting, Recordkeeping and other Compliance Requirements

Persons engaging in activities subject to the rules would be required to comply with existing Commission rules governing tender offers. These rules require filing and dissemination of information, a minimum offering period, and other procedural requirements.

D. Overlapping or Conflicting Federal Rules

If adopted, Proposed Rule 13e-2 would overlap with Rule 13e-4(f)(6) in that both would restrict purchases of securities by an issuer during ten business days following termination of an issuer tender offer for the securities. The Commission plans to repeal Rule 13e-4(f)(6) if the Proposed rules are adopted. The Commission does not believe that the proposed rules duplicate, overlap or

[40] 5 U.S.C. 601 *et seq.*

[41] 17 CFR 240.0–10(a).

[42] 17 CFR 240.0–10(b).

[43] 17 CFR 240.0–10(c).

conflict with any other existing rule provisions.

E. Significant Alternatives

Alternatives to the rule proposals under consideration by the Commission include the use of different threshold levels and different periods of applicability. The proposed rule also could be limited in applicability to securities registered under section 12 of the Act. The Commission is soliciting comment on these alternatives. The proposals as formulated are presently considered to be the least intrusive means of serving the Commission's mandate of investor protection with respect to market sweeps.

F. Solicitation of Comments

The Commission encourages the submission of written comments with respect to any aspect of this initial regulatory flexibility analysis. Such written comments will be considered in the preparation of the final regulatory flexibility analysis if the proposal is adopted. Persons wishing to submit written comments should file them with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. All submissions should refer to File No. S7-33-87 and will be available for public inspection and copying at the Commission's Public Reference Room.

V. Requests for Comments

Any interested person wishing to submit written comments on the proposed revisions to the tender offer rules, as well as on other matters that might have an impact on the proposals contained herein are requested to do so. The Commission also encourages the submission of written comments with respect to any aspect of the initial regulatory flexibility analysis. Such written comments will be considered in the preparation of the final regulatory flexibility analysis, if the proposed rules are adopted.

The Commission also requests comments on whether the proposals and alternatives, if adopted, would have an adverse effect on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under section 23(a) of the Exchange Act.[44]

VI. Statutory Basis

The rules are being proposed pursuant to section 3(b), 13(e), 14(d), 14(e), 15(c), 20(b) and 23(a) of the Securities Exchange Act of 1934.[45]

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

VII. Test of Proposals

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 420—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 is amended by adding the following citations: [Citations before * * * indicate general rulemaking authority].

Authority: Sec. 23, 48 Stat. 901, as amended (15 U.S.C. 78W) * * * Section 240.13e-2 and 240.14d-11 also issued under sec. 15 U.S.C. 78c(b), 78m(e), 78n(d), 78n(e), 78o)c), 78t(b) and 78w(a).

2. By adding § 240.13e-2 to read as follows:

§ 240.13e-2 Acquisitions and related activities by an issuer involving substantial amounts of securities during or following a tender offer.

(a) Acquisitions and related activities by the issuer after commencement of a tender offer. Upon commencement of an issuer tender offer pursuant to Rule 13e-4(a)(4) [§ 240.13e-4(a)(4)] or tender offer by a bidder pursuant to Rule 14d-2 [§ 240.14d-2] (other than commencement solely by public announcement pursuant to Rule 14d-2(b) [§ 240.14d-2(b)]) until the expiration of ten business days after the scheduled expiration date of such tender offer, including any extensions thereof, the issuer shall not, directly or indirectly, purchase, offer to purchase, make any arrangement or understanding to purchase, or solicit any offer to sell either an aggregate of ten percent or more of securities of a class that is or was subject to such tender offer or securities of a class which are convertible into, exchangable for, or otherwise give any right or privilege to, an aggregate of ten percent or more of securities of a class that is or was subject to such tender offer unless the purchase, offer to purchase, arrangement or understanding to purchase or solicitation of any offer to sell is made pursuant to Rule 13e-4 [§ 240.13e-4].

(b) *Acquisitions and related activities by any affiliate of the issuer after commencement of a tender offer.* Upon commencement of an issuer tender offer pursuant to Rule 13e-4(a)(4) [§ 240.13e-4(a)(4)] or tender offer by a bidder pursuant to Rule 14d-2 [§ 240.14d-2] (other than commencement solely by public announcement pursuant to Rule 14d-2(b) [§ 240.14d-2(b)]) until the expiration of ten business days after the scheduled expiration date of such tender offer, including any extensions thereof, no affiliate of the issuer shall, directly or indirectly, purchase, offer to purchase, make any arrangement or understanding to purchase, or solicit any offer to sell any security that would increase any person's beneficial ownership of securities of a class that is or was subject to the tender offer by an aggregate of ten percent or more of that class, unless the purchase, offer to purchase, arrangement or understanding to purchase or solicitation of any offer to sell is made pursuant to Rule 13e-4 [§ 240.13e-4].

(c) *Acquisitions and related activities not subject to this section.* This section shall not apply to any purchase, offer to purchase, arrangement or understanding to purchase or solicitation of any offer to sell that:

(1) Is undertaken by the issuer and is specifically approved in advance by the holders of the requisite number of securities of the issuer entitled to vote for such action under the bylaws of the issuer and in accordance with the applicable laws of the state or other jurisdiction in which the issuer is incorporated;

(2) Is undertaken by an affiliate and relates to a merger or consolidation of the issuer with or into the affiliate that has been approved by the holders of the requisite number of securities of the issuer entitled to vote for such action under the bylaws of the issuer and in accordance with the applicable laws of the state or other jurisdiction in which the issuer is incorporated;

(3) Relates to more than five percent of such class of securities held by a person who has reported beneficial ownership thereof pursuant to sections 13(d) or 13(g) of the Act for at least one year preceding any such purchase, offer to purchase, arrangement or understanding to purchase or solicitation of offer to sell such securities; or

(4) Is undertaken pursuant to a written agreement to purchase such securities entered into before the earlier of either the public announcement of information specified in Rule 14d-2(c) [§ 240.14d-2(c)] or the occurrence of any of the events specified in Rule 14d-2(a) [§ 240.14d-2(a)] which agreement is with a person or persons who, at the time, own the securities to be sold, provided

[44] 15 U.S.C. 78w(a)

[45] 15 U.S.C. 78c(b), 78m(e), 78n(d), 78n(d), 78o(c), 78t(b) and 78w(a).

that the agreement, at the time entered into, constituted a binding obligation of all parties and specified the exact price and amount of securities to be sold.

3. By adding § 240.14d–11 to read as follows:

§ 240.14d–11 Acquisitions and related activities involving substantial amounts of securities during or following a tender offer.

(a) *Acquisitions and related activities by any person after commencement of a tender offer.* Upon commencement of an issuer tender offer pursuant to Rule 13e–4(a)(4) [§ 240.13e–4(a)(4)] or tender offer by a bidder pursuant to Rule 14d–2 [§ 240.14d–2] (other than commencement solely by public announcement pursuant to Rule 14d–2(b) [§ 240.14d–2(b)]) until the expiration of ten business days after the scheduled expiration date of such tender offer, including any extension thereof, no person shall, directly or indirectly, purchase, offer to purchase, make any arrangement or understanding to purchase, or solicit any offer to sell any security that would increase any person's beneficial ownership of securities of a class that is or was subject to the tender offer by an aggregate of ten percent or more of that class, unless the purchase, offer to purchase, arrangement or understanding to purchase or solicitation of any offer to sell is made pursuant to section 14(d) of the Act and the rules promulgated thereunder.

(b) *Acquisitions and related activities by the bidder after commencement of a tender offer by public announcement.* Upon commencement of a tender offer by public announcement pursuant to Rule 14d–2(b) [§ 240.14d–2(b)] and until either—

(1) The bidder commences the tender offer by means other than such public announcement or

(2) The expiration of 30 business days after the date that the bidder makes a public announcement pursuant to Rule 14d–2(b)(1) [§ 240.14d–2(b)(1)] that it will not continue with such tender offer, whichever occurs first, the bidder shall not, directly or indirectly, purchase, offer to purchase, make any arrangement or understanding to purchase, or solicit any offer to sell any security that would increase any person's beneficial ownership of securities of a class that is or was subject to the tender offer by an aggregate of ten percent or more of that class, unless the purchase, offer to purchase, arrangement or understanding to purchase or solicitation of any offer to sell is made pursuant to section 14(d) of the Act and the rules promulgated thereunder.

(c) *Acquisitions and related activities not subject to this section.* This section shall not apply to any purchase, offer to purchase, arrangement or understanding to purchase or solicitation of any offer to sell that:

(1) Relates to a purchase or potential purchase from the issuer;

(2) Relates to a merger or consolidation of the issuer with or into such person or an affiliate of such person that has been approved by the holders of the requisite number of securities entitled to vote for such action under the bylaws of the issuer and in accordance with the applicable laws of the state or other jurisdiction in which the issuer is incorporated;

(3) Relates to more than five percent of such class of securities held by a person who has reported beneficial ownership thereof pursuant to sections 13(d) or 13(g) of the Act for at least one year preceding any such purchase, offer to purchase, arrangement or understanding to purchase or solicitation of offer to sell such securities; or

(4) Is undertaken pursuant to a written agreement to purchase such securities entered into before the earlier of either the public announcement of information specified in Rule 14d–2(c) [§ 240.14d–2(c)] or the occurrence of any of the events specified in Rule 14d–2(a) [§ 240.14d–2(a)] which agreement is with a person or persons who, at the time, own the securities to be sold, provided that the agreement, at the time entered into, constituted a binding obligation of all parties and specified the exact price and amount of securities to be sold.

By the Commission.
October 1, 1987.

Shirley E. Hollis,
Assistant Secretary.

Separate Statement of Commissioner Grundfest

I write separately to describe specific rule language that would implement the enabling approach described in the Commission's release.[1] To implement the enabling approach described in the Commission's release, a new subsection (d) could be added to proposed Rules 13e–2 and 14d–11, to read as set forth below. In the interest of brevity, I set forth language for Rule 13e–2 only. The changes necessary for application of this proposal in Rule 14d–11 parallel the changes to 13e–2 and are apparent from the context. An amendment to Form 8–K to require prompt reporting of shareholder action may also be appropriate. Persons who respond to the Commission's request for comments regarding an enabling approach may further wish to address the specific rule language of this proposal.

"(d) *Adoption by shareholder vote.* (1) This section shall be effective with respect to any purchase of securities of an issuer, and/or offer to purchase, arrangement or understanding to purchase or solicitation of any offer to sell such securities, that takes place on or after the first business day after the following steps have been completed:

(i) The holders of voting securities representing a majority of the votes entitled to be cast by the holders of all outstanding voting securities of the issuer entitled to vote generally on matters submitted to holders of the issuer's voting securities for a vote, voting together as a single class, shall have approved a proposal to adopt this section and Rule 14d–11;

(ii) Such approval shall have been solicited or otherwise obtained in compliance with Regulation 14A or 14C, if applicable, and with any procedures for shareholder action prescribed by the law of the issuer's jurisdiction of incorporation, and the issuer's certificate of incorporation, bylaws, or other governing documents; and

(iii) The issuer shall have reported such action to the Commission on Form 8–K or any other appropriate form.

(2) Notwithstanding subsection (d)(1), this section shall cease to be effective with respect to any purchase of securities of an issuer, and/or offer to purchase, arrangement or understanding to purchase or solicitation of any offer to sell such securities, that takes place on or after the first business day after the following steps have been completed:

(i) The holders of voting securities representing a majority of the votes entitled to be cast by the holders of all outstanding voting securities of the issuer entitled to vote generally on matters submitted to holders of the issuer's voting securities for a vote, voting together as a single class, shall have approved a proposal to rescind the adoption of this section and Rule 14d–11;

(ii) Such approval shall have been solicited or otherwise obtained in compliance with Regulation 14A or 14C, if applicable, and with any procedures for shareholder action prescribed by the law of the issuer's jurisdiction of incorporation and the issuer's certificate of incorporation, bylaws or other governing documents; and

[1] The Commission seeks comment on an enabling approach in section II.G of the accompanying release.

(iii) The issuer shall have reported such action to the Commission on Form 8-K or any other appropriate form."

[FR Doc. 87-23144 Filed 10-6-87; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 222

Grazing Fees on National Forests in the 16 Western States

AGENCY: Forest Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule outlines the formula for annually determining fees for livestock grazing and use on National Forest and Land Utilization Project lands in the 16 Western States after 1987. The proposal would adopt the fee formula prescribed in Executive Order No. 12548 of February 14, 1986, and, in most respects, is the same grazing fee formula as that enacted by Congress in 1978 under the Public Rangelands Improvement Act. Under the proposed rule, grazing fees would be based on a rate per head month starting in 1988.

DATES: Public comment on adoption of the proposed formula is encouraged. Comments must be received in writing November 23, 1987.

ADDRESSES: Send written comments to F. Dale Robertson, Chief, (2200) Forest Service, USDA. P.O. Box 96090, Washington, DC 20090-6090.

The public may inspect comments received on this proposed rule in the office of the Director, Range Management Staff, Room 601, Rosslyn Plaza East, 1621 North Kent Street, Arlington, Virginia, between the hours of 8:30 a.m. and 4:30 p.m. Copies of the environmental assessment accompanying the rule may also be obtained from this office.

In addition, the public may review the environmental assessment on this rulemaking at the following Forest Service Regional Offices:

Northern Region, Federal Building, Missoula, MT 59807
Southwestern Region, Federal Building, 517 Gold Avenue, Albuquerque, NM 87102
Pacific Southwest Region, 630 Sansome Street, San Francisco, CA 94111
Southern Region, 1720 Peachtree Road NW., Atlanta, GA 30367
Rocky Mountain Region, 11177 West Eight Avenue, Lakewood, CO 80225
Intermountain Region, Federal Building, 324 25th Street, Ogden, UT 84401
Pacific Northwest Region, 319 SW Pine Street, Portland, OR 97208
Eastern Region, 310 West Wisconsin Avenue, Milwaukee, WI 53203.

FOR FURTHER INFORMATION CONTACT: Robert M. Williamson, Director, (703) 235-8139, or Edward R. Frandsen, Range Economist (703) 235-8139.

SUPPLEMENTARY INFORMATION:

Background

Except in limited circumstances, fees are charged for all livestock grazing use or occupancy of National Forest System lands, or other lands under the control of the Forest Service. In 1978, with enactment of the Public Rangelands Improvement Act (PRIA), 43 U.S.C. 1752—1753, 1901, 1908; U.S.C. 1333(b), Congress created a new grazing fee formula to be used on a trial basis. The formula sought to base public land grazing fees on the cost of livestock production and the public land grazer's ability to pay. The objective was to prevent crippling economic impacts on the public land grazer and dependent rural communities in the Western States. The Act required the Secretaries of Agriculture and the Interior to present to Congress an evaluation of the trial formula as well as an analysis of alternative grazing fee systems.

Pursuant to the sunset provisions in the Act, the trial grazing fee formula expired on December 31, 1985. Shortly before expiration of the formula, Congressional delegations from many of the Western states appealed to the President to extend the PRIA fee formula. On February 14, 1986, in the absence of Congressional action to establish a grazing fee system for 1986 and subsequent grazing years, the President, through Executive Order No. 12548, extended the PRIA fee formula indefinitely. The Executive Order also directed how the formula indexes would be calculated by specifying that: (1) The Forage Value Index shall be based on 11 Western States data, and use "the weighted average estimate of the annual rental charge per head per month", rather than "animal unit month"; (2) the Beef Cattle Price Index "means the weighted average annual selling price for beef cattle (excluding calves) in the 11 Western States", and (3) the Prices Paid Index would reflect selected livestock production costs in 13 Western States. In addition, the Executive Order specified that the fee "shall not be less than $1.35 per Animal Unit Month." The Executive Order retained the PRIA formula provision that annual adjustments would not exceed plus or minus 25 percent of the previous year's grazing fee. Accordingly, the Secretaries of the Interior and Agriculture calculated the 1986 and 1987 grazing fee, using 11 Western States data, for application to the public lands in the 16 Western States using the formula prescribed in the Executive Order.

In 1986, in *Natural Resources Defense Council, et.al.*, v. *Lyng, Hodel*, plaintiffs filed suit in the United States District Court for the Eastern District of California, Civil No. 86-0548, alleging that the Secretaries of Agriculture and the Interior lacked statutory and regulatory authority to implement the prescribed fee formula, and, further, they had failed to engage in the formal rulemaking requirements of the Administrative Procedures Act (APA) (5 U.S.C. 553) and, in the case of the Secretary of Agriculture, the public participation requirements of the National Forest Management Act (NFMA) (16 U.S.C. 1621(A)). On August 13, 1987, the Court issued a bench opinion. It determined, first, that both Secretaries had discretion under their respective governing statutes to consider factors other than market value in determining a grazing fee. Second, it determined that the affected Departments had not complied with the APA and the public participation requirements of NFMA and other applicable statutes in establishing the grazing fee formula. The Court ordered the agencies to follow formal APA rulemaking procedures to establish a fee formula with full opportunity for public participation.

Proposed Rule

In compliance with the District Court ruling, the Department of Agriculture proposes to amend its rules governing grazing fees at 36 CFR 222.50 and .51 to establish the fee formula prescribed by Executive Order No. 12548. Under the proposed rule, the fee for grazing livestock on National Forest and Land Utilization Project lands in the 16 Western States would be calculated annually for 1988 and subsequent grazing years. The formula would apply to designated lands in the 16 contiguous Western States of Arizona, California, Colorado. Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming. National Grasslands are excluded.

The proposed rule is consistent with Congressional policy for grazing fees on Federal rangelands established in the Public Rangelands Improvement Act. This policy was designed to prevent economic disruption and harm to the public lands sector of the western

livestock industry. Toward that end, Congress deemed it in the public interest to charge a fee for livestock grazing permits on National Forest lands in the 16 Western States based on a formula reflecting annual changes in the costs of production and livestock prices.

Under the proposed rule, the annual grazing fee represents the economic value of the use of the land to the user rather than market value or value in exchange. The annual calculated fee equals the $1.23 base value established by the 1966 Western Livestock Grazing Survey, multiplied by the result of the Forage Value Index (FVI), added to the Beef Cattle Price Index (BCPI), less the Prices Paid Index (PPI) or the cost of livestock production index, and divided by 100. However, the proposed rule provides that the annual increase or decrease in such fee for any given year shall be limited to not more than plus or minus 25 percent of the previous year's fee, and that the fee shall not be less than $1.35 per Head Month.

In equation format the formula would be:

$$\text{Economic value per head month} = \$1.23 \times \frac{FVI + BCPI - PPI}{100}$$

The $1.23 in the formula is the base fair market value in 1966. This value is based on the principle that the value of public range forage used for grazing is equal to the rental value of private rangelands leased for grazing after adjusting for differences in the costs of services routinely provided on private lands that are not provided on public rangelands.

"Forage Value Index" means the weighted average estimate of the annual rental charge per head per month for pasturing cattle on private rangelands in the 11 Western States (Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Washington, Oregon, and California) (computed by the Statistical Reporting Service (now National Agricultural Statistics Service) from the June Enumerative Survey) divided by $3.65 per Head Month and multiplied by 100;

"Beef Cattle Price Index" means the weighted average annual selling price for beef cattle (excluding calves) in the 11 Western States (Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Washington, Oregon, and California) for November through October (computed by the Statistical Reporting Service (now National Agricultural Statistics Service) divided by $22.04 per hundred weight and multiplied by 100;

"Prices Paid Index" means the following selected components from the Statistical Reporting Service's (now National Agricultural Statistics Service) Annual National Index of Prices Paid by Farmers for Goods and Services adjusted by the weights indicated in parentheses to reflect livestock production costs in the Western States: 1. Fuels and Energy (14.5), 2. Farm and Motor Supplies (12.0), 3. Autos and Trucks (4.5), 4. Tractors and Self-Propelled Machinery (4.5); 5. Other Machinery (12.0), 6. Building and Fencing Materials (14.5), 7. Interest (6.0), 8. Farm Wage Rates (14.0), 9. Farm Services (18.0).

As set forth at § 222.50, the Forest Service shall charge a monthly grazing fee for each head of livestock grazing use, or occupancy by one adult animal. The grazing fee, then, is equal to the use fee per Head Month multiplied by the number of months the grazing animal will be on National Forest or Land Utilization Project (LUP) ranges during the grazing fee year.

Regulatory Impact

This proposed rule has been reviewed under USDA procedures and Executive Order 12291 and has been determined not to be a major rule. While there will be a monetary difference between the market value of public land grazing and the rate per head under the concept of the economic value in use or value to the user, the actual monetary difference will be available for direct expenditure by the grazing permittee in local, rural communities throughout the Western States. Thus, little or no effect on the National economy will result from this regulation. The Department of Agriculture has further determined that this proposed rulemaking will not have a negative impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The provisions of this proposed rulemaking are applicable to all persons or entities who possess a grazing permit on National Forest or LUP lands in the 16 Western States, without regard to the size of the operation.

An environmental analysis has been conducted on this proposed rulemaking. The analysis addresses issues discussed in the Grazing Fee Review and Evaluation: A Report From the Secretary of Agriculture and the Secretary of the Interior, February, 1986, Washington, DC, 99 pp., and specifically addresses the following:

1. Questions concerning the formula's methodology;
2. Effects on government revenues for range improvements;
3. Cost of the grazing program;
4. Equitability between permittees and nonpermittees; and
5. Potential environmental effects.

Based on the environmental assessment, it has been determined that the proposed rule will not have a significant effect on the human environment; therefore, an environmental impact statement will not be prepared. Copies of the environmental assessment ("Environmental Assessment, Grazing Fee Formula for Livestock Grazing, National Forests in the 16 Western States"), and Finding of No Significant Impact are available as indicated at the addresses listed.

Information Collection Requirements

There are no additional information collection requirements because of the proposed rulemaking.

List of Subjects in 36 CFR Part 222

Grazing lands, Livestock, National forests, Range management, Wildlife.

Therefore, for the reasons set forth above, it is proposed to amend Title 36 of the Code of Federal Regulations, Part 222, Subpart C—Grazing Fees, as follows:

1. Revise the authority citation for Subpart C to read as follows:

Authority: 16 U.S.C. 551; 31 U.S.C. 483A; 43 U.S.C. 1901; E.O. 12548, 51 FR 1986 Comp., p. 188.

2. Revise paragraph (c) of § 222.50 to read as follows:

§ 222.50 General procedures.

* * * * *

(c) A grazing fee shall be charged for each head month of livestock grazing or use. A head month is a month's use and

occupancy of range by one animal, except for sheep or goats. A full head month's fee is charged for a month of grazing by adult animals; if the grazing animal is weaned or 6 months of age or older at the time of entering National Forest System lands; or will become 12 months of age during the permitted period of use. For fee purposes 5 sheep or goats, weaned or adult, are equivalent to one cow, bull, steer, heifer, horse, or mule.

3. Amend § 222.51 by removing paragraph (c) and revising paragraph (b) to read as follows:

§ 222.51 National Forests in 16 Western States.

* * * * *

(b) Notwithstanding the provisions of § 222.50, paragraph (b), the calculated grazing fee represents the economic value of the use of the land to the user and is the product of multiplying $1.23 by the result of the annual Forage Value Index, added to the sum of the Beef Cattle Price Index minus the Prices Paid Index and divided by 100; provided, that the annual increase or decrease in such fee for any given year shall be limited to not more than plus or minus 25 percent of the previous year's fee, and provided further, that the fee shall not be less than $1.35 per head per month. The indexes used in this formula are as follows:

(1) Forage Value Index means the weighted average estimate of the annual rental charge per head per month for pasturing cattle on private rangelands in the 11 Western States (Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Washington, Oregon, and California) (computed by the National Agricultural Statistics Service) from the June Enumerative Survey) divided by $3.65 per head month and multiplied by 100;

(2) Beef Cattle Price Index means the weighted average annual selling price for beef cattle (excluding calves) in the 11 Western States (Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Washington, Oregon, and California) for November through October (computed by the National Agricultural Statistics Service) divided by $22.04 per hundred weight and multiplied by 100; and

(3) Prices Paid Index means the following selected components from the National Agricultural Statistics Service "Annual National Index of Prices Paid by Farmers for Goods and Services" adjusted by the weights indicated in parentheses to reflect livestock production costs in the Western States: 1. Fuels and Energy (14.5), 2. Farm and Motor Supplies (12.0), 3. Autos and Trucks (4.5), 4. Tractors and Self-Propelled Machinery (4.5); 5. Other Machinery (12.0), 6. Building and Fencing Materials (14.5), 7. Interest (6.0), 8. Farm Wage Rates (14.0), 9. Farm Services (18.0).

* * * * *

Date: September 30, 1987.

George S. Dunlop,

Assistant Secretary, Natural Resources and Environment.

[FR Doc. 87-23125 Filed 10-6-87; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4100

[AA-220-87-4322-02]

Grazing Administration—Exclusive of Alaska; Grazing Fees

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would amend the existing regulations in 43 CFR Part 4100 Subpart 4130.7 by providing that fees for grazing domestic livestock on public land administered by the Bureau of Land Management (BLM) for 1988 and subsequent years would be determined by a formula that consists of a base value of grazing on public land adjusted by indexes reflecting current year land lease rates, cost of production, and beef cattle prices. Because the formula for establishing grazing fees is being incorporated into the regulations, fees established under the formula for years after 1988 will be published as a **Federal Register** notice.

Publication of the proposed rulemaking with an opportunity for public comment meets the requirement for public participation in the establishment of grazing fees required by the decision of the United States Court for the Eastern District of California in the case of *Natural Resources Defense Council, Inc. (NRDC)* v. *Lyng, Hodel.* Prior to preparation of the proposed rulemaking, an environmental analysis was prepared which determined that the rulemaking would not have a significant impact on the environment.

DATE: The public is invited to comment on the proposed rulemaking. Comments should be submitted by November 23, 1987. Comments postmarked or received after the above date may not be considered in the decisionmaking process for the development of a final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, Room 5555, Main Interior Bldg., 1800 C Street NW., Washington, DC. 20240.

Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Billy R. Templeton or Donald Waite. (202) 653-9193.

SUPPLEMENTARY INFORMATION: Fees to graze domestic livestock on public land administered by the BLM are paid by an animal unit month (AUM) measure. For billing purposes, an AUM is the forage consumed by one adult cow or horse or five adult sheep or goats for 1 month. Any animal over 6 months of age is considered an adult animal for billing purposes. The grazing fee, therefore, is equal to the value as computed by the formula described herein per AUM times the number of months the animals will be on public land during the grazing fee year. The Bureau of Land Management determines grazing fees under the authorities granted by the Taylor Grazing Act (TGA) of 1934 (43 U.S.C. 315 *et seq.*), the Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. 1701 *et seq.*), and the Public Rangelands Improvement Act (PRIA) of 1978 (43 U.S.C. 1901 *et seq.*). The Taylor Grazing Act provided for "use of the range, upon the payment annually of reasonable fees in each case to be fixed or determined from time to time" by the Secretary of the Interior. The Federal Land Policy and Management Act amended the Taylor Grazing Act to state that fees should be established "in accordance with governing law." Finally, the Public Rangelands Improvement Act set forth the policy that the grazing fee should be based on a formula which prevents economic disruption and harm to the western livestock industry, reflects annual changes in the costs of production and is equitable.

From 1979 to 1986, the fee, per AUM, was computed by a formula adopted in the Public Rangelands Improvement Act (PRIA) of 1978 (43 U.S.C. 1901 *et seq.*). The provision in PRIA setting forth the formula terminated in 1985.

The Congress, in the Public Rangelands Improvement Act, called for a study to evaluate the performance of the formula and to explore alternative fee systems by the end of 1985. The study was produced too late for

deliberation by the Congress in 1985. Therefore, to establish a fee for the 1986 grazing season and to give the Congress adequate time to consider the fee issue, the President of the United States, acting on advice from the affected Federal agencies and a number of Members of Congress, issued Executive Order 12548 on February 14, 1986.

The Executive Order (12548) directed the Secretaries of Agriculture and the Interior to exercise their authority, to the extent permitted by law under the various statues they administer, to estabish a fee for domestic livestock grazing on the public rangelands which annually equals the $1.23 base established by the 1966 Western Livestock Grazing Survey multiplied by the result of the Forage Value Index (computed annually from data supplied by the National Agricultural Statistics Service) added to the Combined Index (Beef Cattle Price Index minus the Prices Paid Index) and divided by 100; and provided that the annual increase or decrease in such fee for any given year shall be limited to not more than plus or minus 25 percent of the previous year's fee, and provided further, that the fee shall not be less than $1.35 per animal unit month.

The Executive Order defined the terms used in this manner:

(a) "Public rangelands" has the same meaning as in the Public Rangelands Improvement Act of 1978 (Pub. L. 95–514);

(b) "Forage Value Index" means the weighted average estimate of the annual rental charge per head per month for pasturing cattle on private rangelands in the 11 Western States (Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Washington, Oregon, and California) (compared by the Statistical Reporting Service from the June Enumerative Survey) divided by $3.65 and multiplied by 100;

(c) "Beef Cattle Price Index" means the weighted average annual selling price for beef cattle (excluding calves) in the 11 Western States (Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Washington, Oregon, and California) for November through October (computed by the Statistical Reporting Service) divided by $22.04 per hundred weight and multiplied by 100; and "(d) "Prices Paid Index" means the following selected components from the Statistical Reporting Service's Annual National Index of Prices Paid by Farmers for Goods and Services adjusted by the weights indicated in parentheses to reflect livestock production costs in the Western States: 1. Fuels and Energy (14.5); 2. Farm and Motor Supplies (12.0) 3. Autos and Trucks (4.5); 4. Tractors and Self-Propelled Machinery (4.5); 5. Other Machinery (12.0); 6. Building and Fencing Materials (14.5); 7. Interest (6.0); 8. Farm Wage Rates (14.0); 9. Farm Services (18.0).

The calculation of fees under the Executive Order differs from the procedure that has been followed in recent years in that it provides that the Forage Value Index shall be based on the weighted average estimate of the annual rental charge per head per month for pasturing animals on private rangeland in the 11 western states, rather than on the AUM's.

In 1986, the Natural Resources Defense Council (NRDC) in the case *NRDC* v. *Lyng, Hodel,* sued in the United States Court for the Eastern District of California, challenging the authority of the Secretaries of the Interior and Agriculture to use the formula and the procedures followed to establish the 1986 grazing fee. On August 13, 1987, the court issued a ruling from the bench on motions for summary judgment. The court held that the fee formula was within the scope of discretion accorded to the Secretary of the Interior under the Public Rangelands Improvement Act, Federal Land Policy and Management Act and Taylor Grazing Act, noting that these authorities contemplated the consideration of factors other than market value in the establishment of fees. However, the court decided that the agencies had not complied with rulemaking provisions of the Administrative Procedures Act (APA) (5 U.S.C. 553) and other pertinent public participation statutes. The court also stated that implementation of Executive Order 12548 through a rulemaking process, with the opportunity for public participation, would constitute compliance with the APA and the other pertinent statutes.

An environmental analysis (EA) has been prepared on the effects of the rulemaking. The issues discussed include: the methodology of the formula as compared to other fee alternatives; the impact of the fee on revenue to the government and associated appropriations for range improvements; the effect of the fee on public land grazing levels; the equity of the fee to ranchers who graze on public rangelands and those grazing only on private land; the impacts of fee changes on permittee asset values; the effects of fee changes on state and county payments; and the impact of the fee on state personal income and employment. These issues have been analyzed previously in the Grazing Fee Review and Evaluation Study issued in 1986. It was determined in the EA that there were no adverse socio-economic impacts. BLM also determined that the grazing fee has little effect on grazing levels on public land and a negligible effect on the public rangelands. Grazing fees determine the cost of resource use, but not the amount of resources used. Levels of resource use are established by BLM on the basis of resource conditions and mangement objectives. Copies of this EA and the Grazing Fee Review and Evaluation Study may be reviewed by the public in the BLM Division of Rangeland Resources, Room 909—Premier Building, 1725 I Street NW., Washington, DC.

The purpose of this proposed rulemaking is to meet the policy objectives set forth in the Taylor Grazing Act, the Federal Land Policy and Management Act, and the Public Rangelands Improvement Act, which remain vital. The objectives include achieving a fee level that is reasonable and promotes stability in the western livestock industry. The fee is intended to reflect annual changes in costs of production and to be equitable to both grazing permit holders and to the government. Finally, the fee formula is intended to have no negative environmental impacts.

This proposed rulemaking would provide that the fee for grazing livestock on public rangeland would be calculated for the grazing fee year 1988, and subsequent years, by the formula set out by the President of the United States in Executive Order 12548 of February 14, 1986. Unless the formula established by the rulemaking is changed, no additional rulemaking will be needed or published to establish the grazing fee for years subsequent to 1988 because this rulemaking addresses that matter. However, the amount of the fee will be announced each year in a **Federal Register** notice published in advance of the grazing fee year.

The principal author of this proposed rulemaking is Billy R. Templeton, Chief, Division of Rangeland Resources, Bureau of Land Management, assisted by staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

Based upon an environmental assessment and a finding of no significant impact, it is hereby determined that the publication of this proposed rulemaking is not a major Federal action significantly affecting the quality of the human environment and that a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4322(2)(C)) is not required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and no Regulatory Impact Analysis is required. The Department of the Interior has further determined that this

proposed rulemaking will not have a negative impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 60 *et seq.*). The provisions of this proposed rulemaking are applicable to anyone who possesses a grazing permit or lease on the public lands, without regard to the size of the operation.

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

Under the authority of the Taylor Grazing Act of 1934, as amended (43 U.S.C. 315 *et seq.)*, the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 *et seq.*), the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 *et seq.)*, and Executive Order 12548 of February 1986, it is proposed to amend Section 4130.7, Part 4100, Group 4100, Subchapter D, Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

List of Subjects in 43 CFR Part 4100

Administrative practice and procedure, Livestock, Penalties, Range management.

PART 4100—[AMENDED]

1. The authority citation for 43 CFR Part 4100 continues to read as follows:

Authority: 43 U.S.C. 315, 315a–315r, 1701 *et seq.*, 1181d, and 98 Stat. 1837.

2. Section 4130.7–1 is amended by adding paragraphs (a)(1), (a)(2) and (a)(3) to read as follows:

§ 4130.7–1 Payment of fees.

(a) * * *

(1) Except as provided in paragraphs (a)(2 and (a)(3) of this section, the calculated fee or grazing fee shall be equal to the $1.23 base established by the 1966 Western Livestock Grazing Survey multiplied by the result of the Forage Value Index (computed annually from data supplied by the National Agricultural Statistics Service) added to the Combined Index (Beef Cattle Price Index minus the Prices Paid Index) and divided by 100; as follows:

$$CF = \$1.23 \times \frac{FVI + BCPI - PPI}{100}$$

CF = Calculated Fee (grazing fee) is the estimated economic value of livestock grazing, defined by the Congress as fair market value (FMV) of the forage.

$1.23 = The base economic value of grazing on public rangeland established by the 1966 Western Livestock Grazing Survey.

FVI = "Forage Value Index" means the weighted average estimate of the annual rental charge per head per month for pasturing cattle on private rangelands in the 11 Western States (Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Washington, Oregon, and California) (computed by the Statistical Reporting Service from the June Enumerative Survey) divided by $3.65 and multiplied by 100;

BCPI = "Beef Cattle Price Index" means the weighted average annual selling price for beef cattle (excluding calves) in the 11 Western States (Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Washington, Oregon, and California) for November through October (computed by the Statistical Reporting Service) divided by $22.04 per hundred weight and multiplied by 100; and

PPI = "Prices Paid Index" means the following selected components from the Statistical Reporting Service's Annual National Index of Prices Paid by Farmers for Goods and Services adjusted by the weights indicated in parentheses to reflect livestock production costs in the Western States: 1. Fuels and Energy (14.5); 2. Farm and Motor Supplies (12.0); 3. Autos and Trucks (4.5); 4. Tractors and Self-Propelled Machinery (4.5); 5. Other Machinery (12.0); 6. Building and Fencing Materials (14.5); 7. Interest (6.0); 8. Farm Wage Rates (14.0); 9. Farm Services (18.0).

(2) Any annual increase or decrease in the grazing fee for any given year shall be limited to not more than plus or minus 25 percent of the previous year's fee.

(3) The grazing fee for any year shall not be less than $1.35 per animal unit month.

* * * * *

October 1, 1987.

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 87–23149 Filed 10–6–87; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 650

Atlantic Sea Scallop Fishery

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

ACTION: Modification of notice of availability of an amendment to the fishery management plan.

SUMMARY: NOAA announces that Amendment 2 to the Fishery Management Plan for Atlantic Sea Scallops (FMP) has been returned by the Secretary of Commerce to the New England Fishery Management Council, because it did not meet all legal requirements of the Magnuson Fishery Conservation and Management Act, as amended. If the Council resubmits the amendment, another notice of availability will be published and the public will be given 30 days to comment.

DATE: Amendment 2 was returned on September 29, 1987. The Council may resubmit this amendment at any time.

ADDRESS: A copy of Amendment 2 and its proposed regulations may be requested from Douglas G. Marshall, Executive Director, New England Fishery Management Council, Sontaug Office Park, 5 Broadway (Route 1), Saugus, MA 01906. Comments should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Peter Colosi, Atlantic Sea Scallop FMP Coordinator, 617–281–3600.

SUPPLEMENTARY INFORMATION: The Council submitted Amendment 2 to the Secretary on September 15, 1987. It was returned on September 29, 1987, because it did not meet all legal requirements of the Magnuson Act. The Council may revise and resubmit this amendment at any time.

NOAA published a notice of availability (52 FR 35464, September 21, 1987) which outlined the purpose of the amendment, i.e., to provide for adjusting the meat count standard for Atlantic sea scallops during October through January to allow for weight loss during their spawning period. The public is invited to comment to the Council while it is revising Amendment 2. When the amendment is resubmitted, another notice of availability of the amendment will be published (followed within two weeks by its proposed implementing regulations). Under section 304(b)(3)(B)(ii) of the Magnuson Act, the public will have only 30 days to obtain and comment on the resubmitted amendment.

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

Dated: October 2, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 87–23173 Filed 10–6–87; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 52, No. 194
Wednesday, October 7, 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 AGRICULTURE

Forms Under Review by Office of Management and Budget

October 2, 1987.

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

(1) Agency proposing the information collection; (2) title of the information collection; (3) form number(s), if applicable; (4) how often the information is requested; (5) who will be required or asked to report; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to provide the information; (8) an indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) name and telephone number of the agency contact person.

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

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

EXTENSION

- Animal Plant and Health Inspection Service

Record of Acquisition, Disposition, or Transport of Animals and Continuation Sheet
VS 18–20 and VS 18–20A
Recordkeeping
Businesses or other for-profit; Small business or organizations; 4,800 recordkeepers; 8,160 hours; not applicable under 3504(h)
Dr. W.C. Stewart, (301) 436–7833.

REVISION

- Food and Nutrition Service

Special Supplemental Food Program for Women, Infants and Children—Reporting Participation and Priority Data
FNS-654
Quarterly
State or local governments; 560 responses; 5,776 hours; not applicable under 3504(h)
Chris Lipsey, ((703) 756–3710.

Jane A. Benoit,
Departmental Clearance Officer.

[FR Doc. 87–23209 Filed 10–6–87; 8:45 am]
BILLING CODE 3410-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Articles of Quota Cheese; Quarterly Determination and Listing of Foreign Government Subsidies

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Publication of quarterly update of foreign government subsidies on articles of quota cheese.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared a quarterly update to its annual list of foreign government subsidies on articles of quota cheese. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: October 1, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Paul J. McGarr, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Section 702(a) of the Trade Agreements Act of 1979 ("the TAA") require the Department of Commerce ("the Department") to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of quota cheese, as defined in section 701(c)(1) of the TAA, and to publish an annual list and quarterly updates of the type and amount of those subsidies.

The Department has developed, in consultation with the Department of Agriculture, information on subsidies (as defined in section 702(h)(2) of the TAA) being provided either directly or indirectly by foreign governments on articles of quota cheese.

In the current quarter the Department has determined that the subsidy amounts have changed for each of the countries for which subsidies were identified in our July 1, 1987 quarterly update to our annual subsidy list. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amount of each subsidy on which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of quota cheese to submit such information in writing to the Deputy Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the TAA (19 U.S.C. 1202 note).

Gilbert B. Kaplan,
Deputy Assistant Secretary, Import Administration.

Date: October 1, 1987.

APPENDIX.—QUOTA CHEESE SUBSIDY PROGRAMS

Country	Program(s)	Gross [1] subsidy (cents per pound)	Net [2] subsidy (cents per pound)
Belgium	European Community (EC) Restitution Payments	21.4	21.4
Canada	Export Assistance on Certain Types of Cheese	26.3	26.3
Denmark	EC Restitution Payments	25.0	25.0
Finland	Export Subsidy	103.9	103.9
	Indirect Subsides	18.9	18.9
France	EC Restitution Payments	122.8	122.8
Ireland	EC Restitution Payments	20.1	20.1
Italy	EC Restitution Payments	17.1	17.1
Netherlands	EC Restitution Payments	43.4	43.4
Luxembourg	EC Restitution Payments	14.8	14.8
Norway	Indirect (Milk) Subsidy	21.4	21.4
	Consumer Subsidy	18.2.3	18.2
		40.3	40.3
Spain	EC Restitution Payments	58.5	58.5
Switzerland	Deficiency Payments	17.3	17.3
U.K.	EC Restitution Payments	96.1	96.1
W. Germany	EC Restitution Payments	17.7	17.7
		17.0	17.0

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6)

[FR Doc. 87-23211 Filed 10-6-87; 8:45 am]
BILLING CODE 3510-DS-M

[C-475-702 and C-469-702]

Postponement of Preliminary Countervailing Duty Determinations; Certain Granite Products From Italy and Spain

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: Based upon the request of petitioner, the Ad Hoc Granite Trade Group, the Department of Commerce is postponing its preliminary determinations in the countervailing duty investigations of certain granite products from Italy and Spain. The preliminary determinations will be made on or before November 12, 1987.

EFFECTIVE DATE: October 7, 1987.

FOR FURTHER INFORMATION CONTACT: Loc Nguyen, Lori Cooper or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-0167, 377-8320 or 377-2438.

SUPPLEMENTARY INFORMATION: On August 17, 1987, the Department initiated countervailing duty investigations on certain granite products from Italy and Spain. In our notices of initiation we stated that we would issue our preliminary determinations on or before October 21, 1987 (52 FR 31651-31653, August 21, 1987).

On September 23, 1987, the petitioner filed a request that the preliminary determinations in these investigations be postponed for 21 days.

Section 703(c)(1)(A) of the Tariff Act of 1930, as amended (the Act), provides that the preliminary determination in a countervailing duty investigation may be postponed where the petitioner has made a timely request for such a postponement. Pursuant to this provision, and the timely request by petitioner in these investigations, the Department is postponing its preliminary determinations to no later than November 12, 1987.

This notice is published pursuant to section 703(c)(2) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

October 1, 1987.

[FR Doc. 87-23212 Filed 10-6-87; 8:45 am]
BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council; Atlantic Billfish Public Hearings

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

ACTION: Notice of public hearings and request for comments.

SUMMARY: The Caribbean Fishery Management Council (Council) will hold public hearings and provide a comment period to solicit public input into the development of a Fishery Management Plan for Billfish. This plan is being developed jointly between the South Atlantic, New England, Gulf of Mexico, Mid-Atlantic and the Caribbean Fishery Management Councils. Interested persons are invited to attend the hearings and participate. Copies of documents pertaining to the hearings will be available from the Council upon request.

DATE: Written comments on the proposed plan must be received on or before November 2, 1987. The hearings are scheduled as follows:

U.S. Virgin Islands

1. Wednesday, October 14, 1987, 7:30 p.m., Christiansted, St. Croix.

2. Thursday, October 15, 1987, 7:30 p.m., Charlotte Amalie, St. Thomas.

Puerto Rico

3. Tuesday, October 20, 1987, 7:30 p.m., Hato Rey, Puerto Rico.
4. Wednesday, October 21, 1987, 2:00 p.m., Lajas, Puerto Rico.

ADDRESSES: Written comments should be mailed or delivered to the Caribbean Fishery Management Council, Suite 1108, Banco de Ponce Building, Hato Rey, Puerto Rico 00918. The hearings will be held at the following locations:

U.S. Virgin Islands

1. Christiansted—Conference Room, Legislature Building, Christiansted, St. Croix.
2. Charlotte Amalie—Conference Room, Legislature Building, Charlotte Amalie, St. Thomas.

Puerto Rico

3. Hato Rey—Colegio de Ingenieros y Agrimensores, Roosevelt Development, Hato Rey, Puerto Rico.
4. Lajas—La Parguera Hotel, La Parguera, Lajas, Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Omar Munoz-Roure, Executive Director, Caribbean Fishery Management Council, 809-753-4926.

Dated: October 2, 1987.

Richard H. Schaefer,

Acting Director for Fisheries, National Marine Fisheries Service.

[FR Doc. 87-23174 Filed 10-6-87; 8:45 am]

BILLING CODE 3510-22-M

Deep Seabed Mining; Proposed Revisions to Mine Site Areas

AGENCY: National Oceanic and Atmospheric Administration; Commerce.

ACTION: Notice of proposed amendments to Deep Seabed Mining Exploration Licenses and request for comments.

SUMMARY: Pursuant to the Deep Seabed Hard Mineral Resources Act (Pub. L. 96-283) and 15 CFR Part 970, the National Oceanic and Atmospheric Administration (NOAA) published notice on September 13, 1984, at 49 FR 35973, of issuance of licenses to Ocean Minerals Company (OMCO), Ocean Management, Inc. (OMI), and Ocean Mining Associates (OMA), to engage in deep seabed mining exploration activities, subject to terms, conditions, and restrictions. These license sites, designated USA-1, USA-2 and USA-3, respectively, are located in the Clarion-Clipperton Fracture Zone of the North-eastern Equatorial Pacific Ocean. At the request of the deep seabed mining consortia, and pursuant to 15 CFR 970.902(d)(5), NOAA published the precise locations of the licensed areas on November 13 and 30, 1984, at 49 FR 44938 and 49 FR 47081, December 11, 1984, at 49 FR 48205, and January 8, 1985 at 50 FR 994.

The above U.S. licensees have sgreed recently to several small adjustments to their respective boundaries in order to resole conflicts with foreign mining interests. Each of these licensees has requested that NOAA approve proposed modifications to its exploration are and otherwise revise its license in order to carry out the conflict resolution. Under the provisions of 15 CFR 970.512 through 970.514, NOAA has determined, as to each license, that the proposed modifications are not significant changes and that the procedures in 15 CFR 970.514(b) apply. Accordingly, NOAA gives notice of its intention to accommodate these area adjustments by means of modifications of license terms, conditions and restrictions (TCRs), as well as relinquishment and revision as appropriate.

Each proposed exploration plan revision conists of boundary changes. Exploration strategies, the proposed schedule of activities, and other basic plan elements generally are not affected. The revision to license USA-1 includes the addition of new area to compensate for agreed-to adjustments in the original area. The revision to license USA-2 includes relinquishment of a small area which is proposed to be added to the area covered by the license designated USA-1. NOAA proposes to accomplish other area adjustments by means of modification of license TCRs to restrict exploration actiities in area to be used by another operator, and to establish measures to oversee, and to provide for contingencies relating to, implementation of conflict resolution. All existing license TCRs would remain in effect.

USA-1, Issued to Ocean Minearals Company

The license would be amended, resulting in a change in operating area from approximately 165,533 square kilometers to approximately 168.841 square kilometers; an addition of approximately 3,308 square kilometers.

USA-2, Issued to Ocean Management, Inc.

The license would be amended, resulting in a change in operating area from approximately 135,100 square kilometers to aproximately 112,500 squate kilometers; a reduction of approximately 22,600 square kilometers.

USA-3 Issued to Ocean Mining Associates.

The license would be amended, resulting in a change in operating area from approximately 156,060 square kilometers to approximately 150,310 square kilometers; a reduction of approximately 5,750 square kilometers.

Subject to 15 CFR 970.902, which excludes confidential information from public disclosure, interested persons are permitted to examine the materials relevant to these revisions. Comments on this notice should be received on or before December 7, 1987.

FOR FURTHER INFORMATION CONTACT: John W. Padan, Ocean Minerals and Energy Division, Ofice of Ocean and Coastal Resource Management, National Ocean Servcie, NOAA, 1825 Connecticut Avenue, NW., Suite 710, Washington, DC. 20235. (202) 673-5117.

Dated: October 1, 1987.

James P. Lawless,

Acting Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 87-23152 Filed 10-6-87; 8:45 am]

BILLING CODE 3510-12-M

Public Meeting on Final Management Plan For the Proposed Waquoit Bay National Estuarine Research Reserve

AGENCY: Marine and Estuarine Management Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Public meeting notice.

SUMMARY: Notice is hereby given that the Department of Environmental Management, Executive Office of Environmental Affairs of the Commonwealth of Massachusetts, will hold a public meeting to present and discuss the proposed final management plan for the proposed Waquoit Bay National Estuarine Research Reserve. The purpose of the meeting is to receive the views of interested parties on the final management plan.

As part of the procedures leading to the designation of the reserve, the State of Massachusetts must submit the proposed final management plan to NOAA for its review and approval. Copies of the plan will be made

available for review before the meeting by Friday, October 2, 1987 at the East Falmouth Library, the Mashpee Library, and the Mashpee and Falmouth Town Halls.

The meeting will be held on Thursday, October 8, 1987 at 8:00 p.m. in the Falmouth High School Auditorium, Gifford Street, Falmouth, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Art Jeffers, Marine and Estuarine Management Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1825 Connecticut Avenue NW., Washington, DC, 202/673-5126.

(Federal Domestic Assistance Catalog Number 11.420 National Estuarine Reserve Research System)

Date: September 30, 1987.

James P. Blizzard,

Acting Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 87-23151 Filed 10-6-87; 8:45 am]

BILLING CODE 3510-08-M

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council's Crustacean Plan Monitoring Team will convene a public meeting, October 9, 1987, at 10:30 a.m., at 1164 Bishop Street, Room 602, Honolulu, HI. The public meeting will focus on the fishery management plan for spiny lobsters in the Western Pacific Region. Topics of discussion are: (1) Preliminary results of this year's stock assessment cruise, (2) reports 3 and 4 from Phase I research of the Northwestern Hawaiian Islands (NWHI) lobster fishery, (3) how different management measures affect the NWHI lobster fishery, (4) year-to-date catch, effort, and activity data, (5) the status of Amendment 5, and (6) an informational workshop for fishermen on how different management measures will affect the NWHI lobster fishery.

For further information contact Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813; telephone: (808) 523-1368.

Date: October 2, 1987.

Richard H. Schaefer,

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

[FR Doc. 87-23175 Filed 10-6-87; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of the Final Supplemental Environmental Impact Statement for Binary Chemical Munitions Project, QL and DC Production Facilities

AGENCY: Department of the Army, DOD.

ACTION: Notice of Availability of the Final Supplemental Environmental Impact Statement for the Binary Chemical Munitions Project, QL and DC Production Facilities. QL is a nonlethal chemical component used in the VX2 family of binary munitions. DC is a feedstock chemical used to manufacture DF. DF is a nonlethal chemical component used in the G-agent family of binary munitions.

1. Summary: The Original Notice of Intent (51 FR 26291-26292, July 17, 1986) provided notice that the Army, pursuant to the National Environmental Policy Act (NEPA), and its implementing regulations, was to prepare a Supplemental Environmental Impact Statement (SEIS) tiered to the Final Programmatic Environmental Impact Statement, Binary Chemical Munitions Program (47 FR 6318). The SEIS analyzes the potential environmental impacts associated with alternatives for providing production facilities to manufacture phosphorus chemical precursors for binary chemical munitions. A combined acquisition strategy is being pursued in support of the Department of Defense's Binary Munitions Project. This includes production of QL, a nonlethal binary precursor chemical, and DC, a feedstock intermediate chemical used to manufacture DF, another nonlethal binary precursor chemical.

2. The draft SEIS covered five sites under consideration as production alternatives for the intermediate chemical DC. The draft SEIS was published in 52 FR 15366. The sites are the U.S. Army Newport Army Ammunition Plant, Newport, Indiana; U.S. Army Pine Bluff Arsenal, Pine Bluff, Arkansas; U.S. Army Phosphate Development Works, Muscle Shoals, Alabama; a commercial site in West Helena, Arkansas; and a commercial site in Lake Charles, Louisiana. Three of the sites, Newport Army Ammunition Plant, Pine Bluff Arsenal, and West Helena, are also under consideration as production alternatives for the precursor chemical, QL, and as candidates for dual QL and DC production.

3. The Draft SEIS combined the analysis for QL and DC in one document and supersedes prior notices 50 FR 12853 (QL) and 50 FR 21916 (DC) which announced separate analyses for the production of these chemicals.

4. The FSEIS designates Pine Bluff Arsenal as the preferred alternative for the production of DC and QL.

5. The Final SEIS for the Binary Munitions Project, QL and DC Production Facilities, is available for public review and comment. A copy of the document may be obtained from the Office of the Program Manager by contacting Ms. Marilyn Tischbin at commercial telephone (301) 671-3629, or by writing to the following address: Office of the Program Manager for Binary Munitions, ATTN: AMCPM, Aberdeen Proving Ground, MD 21010-5410. Written comments and any request for a public meeting should be submitted to the same address.

6. The time period for providing written comments on preparing the final SEIS will end 30 days from the date the Environmental Protection Agency publishes this Notice of Availability in the **Federal Register.**

Lewis D. Walker,

Deputy for Environment, Safety and Occupational Health OASA (I&L).

[FR Doc. 87-23197 Filed 10-6-87; 8:45 am]

BILLING CODE 3710-08-M

Availability of the Draft Supplemental Environmental Impact Statement for the Johnston Atoll Chemical Agent Disposal System (JACADS)

October 2, 1987.

AGENCY: Department of the Army, DOD.

ACTION: Notice of Availability of the Draft Supplemental Environmental Impact Statement (DSEIS) covering the disposal of process wastes generated from the operation of the Johnston Atoll Chemical Agent Disposal System (JACADS).

1. In 1983, the Army issued a Final EIS for the JACADS project. The Final EIS identified the process (incineration) and the location on Johnston Island for the JACADS facility, which will demilitarize obsolete/unserviceable chemical munitions containing the chemical agents VX, GB, and HD, beginning in 1989. The ultimate disposition of JACADS process wastes was not determined in 1983, pending further study. These process wastes contain no chemical agent.

2. The DEIS explores alternatives for final disposition of JACADS process wastes. This DSEIS does not indicate a Preferred Alternative for waste disposal. The analysis of public comments will

aid in selecting the preferred disposal alternative.

3. Waste disposition alternatives that are considered in the DSEIS for JACADS process wastes include the following:

(a) Liquid scrubber waste disposal—

(1) Ocean discharge of brine by surface vessel
(2) Ocean discharge of brine through an outfall
(3) Dry the brine to salts, drum, store temporarily at Johnston Atoll (JA) and ship to US landfill
(4) Dry the brine to salts and store at JA (no action)

(b) Solid waste disposal—

(1) Off-island shipment and/or sale of scrap metal
(2) Ocean disposal of scrap metal
(3) Land filling of scrap metal
(4) On-island use of encapsulated waste
(5) Ocean disposal of encapsulated waste
(6) Shipment of ash, fiberglass, and non-saleable metal/mixed waste to a US landfill
(7) On-site storage of ash, fiberglass, and non-saleable metal/mixed waste (no action)

4. The DSEIS is now available for comment. Copies can be obtained by writing (1) Program Executive Officer-Program Manager for Chemical Demilitarization, ATTN: SAPEO-CDT-A/Mr. Richard Rife, Building E4585, Aberdeen Proving Ground, MD 21010-5401, or (2) Commander, U.S. Army Engineer Division, Pacific Ocean, ATTN: PODED-PV, Ft. Shafter, HI 96858-5440. Comments for consideration by the Army in the final document should be provided in writing to Mr. Richard Rife, at the first address given above. The DSEIS will have a 60 day comment period.

5. The Environmental Protection Agency (EPA) will also publish a Notice of Availability for this Draft Supplemental Environmental Impact Statement in the **Federal Register.**

Lewis D. Walker,

Deputy for Environment, Safety and Occupational Health OASA (I&L).

[FR Doc. 87-23198 Filed 10-6-87; 8:45 am]

BILLING CODE 3710-08-M

Defense Logistics Agency

Privacy Act of 1974; New System of Records Established for Computer Matching Purposes to Implement Debt Collection Actions Under the Debt Collection Act of 1982; Republication

[**Editorial Note**: The following document was originaly published at page 36606 in the issue of Wednesday, September 30, 1987. The document is being republished in its entirety to correct footnotes 1 and 2.]

AGENCY: Defense Manpower Data Center (DMDC), Defense Logistics Agency, DoD.

ACTION: This action constitutes notice for public comment of a new system of records established for computer matching purposes by interagency agreement to assist Federal creditor agencies implement debt collection actions under the Debt Collection Act of 1982.

SUMMARY: The Defense Manpower Data Center, Defense Logistics Agency, Department of Defense, is proposing a new record system established under an interagency agreement, devoted exclusively for debt collection efforts under the Debt Collection Act of 1982, in order to conduct computer matching with Federal creditor agencies for the purpose of identifying and locating individuals receiving Federal salaries or other Federal benefit payments and indebted to the U.S. Government. This new record system will identify delinquent debtors and allow Federal creditor agencies to initiate prompt collection action by contacting the debtors for voluntary repayment or pursue involuntary offset procedures against the employees' wages.

DATES: This proposed action shall be effective on or before October 30, 1987, unless comments are received that would result in a contrary determination.

ADDRESS: Send any comments to Mr. Aurelio Nepa, Jr., Staff Director, Defense Privacy Office, Room 205, 400 Army Navy Drive, Arlington, VA 22202. Telephone: (202) 694-3027, Autovon: 224-3027.

SUPPLEMENTARY INFORMATION: The establishment of this new system of records was accomplished after study, planning and coordination of an interagency working group and resulted in an interagency agreement for the Federal Salary Offset Initiative to improve and implement debt collection efforts by Federal agencies. The interagency agreement, with attachments, is published in full text below and proposes a central location for records to be matched. This central focus on the use of computer matching techniques as a tool will permit any Federal creditor agency that may wish to avail itself of this opportunity in its efforts on collection of delinquent debts. Federal creditor agencies interested in participating should contact the record system manager reflected in the system notice and should strictly follow the guidelines set forth in the attachments of the interagency agreement.

The Defense Logistics Agency systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a) have been published in the **Federal Register** as follows:

FR Doc. 85-10237 (50 FR 22897) May 29, 1985 (Compilation)
FR Doc. 85-30123 (50 FR 51898) December 20, 1985
FR Doc. 86-17259 (51 FR 27443) July 31, 1986
FR Doc. 86-19035 (51 FR 30104) August 22, 1986
FR Doc. 87-21654 (52 FR 35304) September 18, 1987

A new system report, as required by 5 U.S.C. 552a(o) of the Privacy Act of 1974 was submitted on September 18, 1987 to the Administrator, Office of Information and Regulatory Affairs, OMB, the President of the Senate, and the Speaker of the House of Representatives, pursuant to paragraph 4b of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985 (50 FR 52730, December 24, 1985) and paragraph 5.f.(1) of the OMB "Revised Supplemental Guidance for Conducting Matching Programs," dated May 11, 1982 (47 FR 21656, May 19, 1982).

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

September 24, 1987.

Interagency Agreement for Federal Salary Offset Initiative Implementation of the Debt Collection Act of 1982

The Office of Management and Budget (OMB) has established an Interagency Working Group for the Federal Employee Salary Offset Initiative. It is to assist Federal agencies in identifying Federal employees and others receiving Federal compensation who are delinquent debtors to such agencies. It has been established as a mechanism to enforce the provisions of the Debt Collection Act of 1982.

The Interagency Working Group shall consist of the following agencies: The Financial Management Service, the Office of Management and Budget, the Department of Defense (DoD), and the Office of Personnel Management (OPM). The Department of the Treasury shall serve as lead agency.

The OPM shall provide the DoD with current automated files on all personnel employed or compensated by the Federal Government. The Department of Transportation and the U.S. Postal Service may in the near future provide DoD with similar files of all employed

personnel at the U.S. Coast Guard and the Postal Service.

The DoD, Defense Manpower Data Center (DMDC) shall use the above separate data bases on Federal employment and Federally compensated persons. They shall establish and maintain the capability to respond to inquiries from Federal creditor agencies about identifying data about persons who are delinquent in a debt to the Federal Government.

The agencies who are members of the Group in coordination with OMB, shall develop and publish operating procedures. These procedures will include strict compliance with the Debt Collection Act of 1982 and the Privacy Act of 1974.

When the Working Group becomes operational, all creditor agencies will be requested to submit to the Group names of persons against whom they have determined to have a clear valid claim.

Interagency Agreement for Federal Salary Offset Initiative

Background

The Debt Collection Act of 1982, (Pub. L. 97-365), provided an administrative mechanism for Federal Agencies to collect delinquent debts owed by individuals receiving salary or similar compensation from the Federal Government. Delinquent debts can be collected via an involuntary offset to salaries and pensions of fifteen percent disposable income. It is clearly the policy of the Administration that Federal employees should honor their just debts and that the provisions of the Debt Collection Act be used where voluntary compliance is not forthcoming. The utilization of computer matching programs is key to the ability of various Federal agencies to identify and locate delinquent debtors receiving offsetable payments from various Federal sources. Efforts to date under the Debt Collection Act have for the most part been bilateral between selected agencies having delinquent debtors and other agencies having records on large numbers of individals receiving various forms of Federal compensation.

Purpose

The purpose of this agreement is to bring a central focus on the use of computer matching techniques as a tool for the collection of delinquent debts. While it is clearly preferable to receive voluntary repayment of such debts from individuals who may be identified through computer matching, it is recognized that involuntary offset procedures under the provisions of the Debt Collection Act will be utilized when voluntary repayment is not forthcoming. The Office of Management and Budget (OMB) has designated the Department of the Treasury, Financial Management Service, as the Lead Agency to coordinate and monitor the implementation of the government's Federal Salary Offset program.

This agreement, restricted exclusively to the implementation of the Debt Collection Act, is intended to establish an Interagency Working Group to facilitate computer matching and subsequent salary offset throughout the Federal government under the auspices and oversight of the Office of Management and Budget (OMB). The Interagency Working Group will be chaired by Treasury and will consist of those agencies having records on individuals receiving Federal compensation offsetable under the Debt Collection Act. At the outset, the members of the Interagency Working Group will consist of the Department of Treasury, Office of Personnel Management (OMB), and the Department of Defense (DoD).

Objectives

It is recognized at the outset that computer matching can be conducted most efficiently if there is central location for records to be matched. Such centralization will eliminate duplication in data processing, in the negotiation of required Memoranda of Understanding between agencies, and in the publication of various announcements in the **Federal Register** which are required by the Privacy Act of 1974, as amended, and by the OMB Guidelines on Computer Matching. It is further recognized and agreed upon that no data base will be used for any other purposes other than that authorized by the Debt Collection Act. No single agency (e.g. DoD) maintaining the data bases as the matching agency shall have sole responsibility for determining what other uses shall be made of records in its custody received from another source agency. These activities shall be controlled as a policy matter by the Interagency Working Group, with each of the member agencies retaining control of the uses made of its own records.

An additional objective of this agreement is to establish procedures for sharing the work load and financial burden associated with computer matching subsequent salary offset among those members of the Interagency Working Group as well as among those other Federal creditor agencies who will utilize the resources of the Interagency Working Group to recover funds owed them. Attachment A, Roles and Responsibilities, and Attachment B, Example of Interagency Memorandum of Understanding (MOU) to Perform a Debt Collection Computer Matching Program, establish the procedures to be utilized to ensure a sharing of this burden.

It is a basic tenant of this effort that all matching activities, access to and disclosure of records, and efforts to recover funds owed will be undertaken in strict compliance with the Privacy Act, the OMB publications "Revised Supplemental Guidance for Conducting Matching Programs" and "Guidelines on the Relationship Between the Privacy Act of 1974 and the Debt Collection Act of 1982," and the due process and other provisions of the Debt Collection Act and applicable regulations.

Reporting Relationships

In its role as both the designated Lead Agency and the Chair of the Interagency Working Group, the Department of the Treasury will be responsible for establishing reporting requirements for the Interagency Working Group, for those Federal agencies which utilize the services of the group, and also, for reporting periodically to OMB on progress made and problems encountered in administering this program.

For Department of the Treasury,

W.E. Douglas,

Commissioner, Financial Management Service.

Dated: April 10, 1987.

For Office of Management and Budget,

Gerald R. Riso,

Associate Director for Management.

Dated: April 14, 1987.

For Department of Defense,

H.H. Kraft, Jr.,

Deputy Assistant Secretary of Defense (Management Systems).

Dated: April 24, 1987.

For Defense Manpower Data Center,

Kenneth C. Scheflen,

Director, DMDC.

Dated: April 16, 1987.

For the U.S. Office of Personnel Management.

Central Personnel Data File,

Phillip A.D. Schneider,

Assistant Director for Work Force Information.

Dated: April 23, 1987.

Civil Service Retired File,

Jerome D. Julius,

Deputy Associate Retirement & Insurance.

Dated: April 15, 1987.

Attachment A—Roles and Responsibilities

Agency roles and responsibilities are as follows:

Treasury Financial Management Service (FMS), lead agency, will

coordinate and monitor the implementation of the government's Federal Salary Offset program. FMS will:

• Chair the Interagency Working Group.

• Establish reporting requirements for the Interagency Working Group, agencies submitting delinquent debtor files for matching, and employing agencies.

• Report periodically to OMB and Treasury management regarding the progress of this initiative.

• Coordinate with participating agencies processing for all phases of the matching and offset procedures to ensure timely completion.

• Assist OMB in monitoring compliance with Privacy Act requirements and OMB published guidance.

• Assure agency compliance with reporting requirements on collection activity.

• Assist agencies in resolving any problems which might otherwise impede implementation of this initiative.

The Department of Defense (DoD) will:

• Negotiate the Memoranda of Understanding (example shown as Attachment B) for the matches with each agency providing the delinquent debtor file. DOD will receive and approve a Memorandum of Understanding from each creditor agency for the conduct of the match. It is in these agreements that specifics for reimbursement of DoD for costs related to the match will be contained.

• Publish a notice to match in the **Federal Register** on or about the time of the match in conformance with OMB matching guidelines.

• Perform the computer matching runs as matching agency, utilizing delinquent debtor files provided by, but not limited to, the Departments of Agriculture, Education, Housing and Urban Development, and by the Veterans Administration and Small Business Administration. DoD will match these files against civilian and retired employment files provided by the Office of Personnel Management, as well as, DoD civilian and active, retired and reserve military personnel files.

• Report the volume and dollar total of raw hits for each creditor agency match by employing agency of record to the Financial Management Service, Department of the Treasury.

• Provide a quarterly schedule of when creditor agencies are to be matched to the agencies providing the employment files.

The Office of Personnel Management will provide updated active and retired employment files on a recurring basis for matching in accordance with its agreed upon schedule with DoD.

The Office of Management and Budget will monitor privacy act compliance as a part of its ongoing oversight review responsibility.

Each creditor agency participating in the salary offset program and providing files for matching will:

• Enter into a reimbursable agreement with DoD for matching. The Agencies will draft Memorandum of Understanding for DoD approval.

• Transmit to DoD only the delinquent debtor file to be matched containing the agreed upon record fields to be matched, accompanied by format specifications enabling the match.

Each agency will designate a primary and alternate point of contact for this initiative.

Attachment B.—Example of Inter-Agency Memorandum of Understanding (MOU) To Perform a Debt Collection Computer Matching Program

Purpose

The purpose of this Memorandum of Understanding (MOU) is to establish, before any matching takes place, administrative procedures and assign responsibility for a government-wide debt collection computer matching program. The matches will be performed at the Defense Manpower Data Center (DMDC) utilizing employment records provided by the Department of Defense and the Office of Personnel Management. The employment records will be matched with records of individuals delinquent in their debt to the Federal government as supplied by the signatory creditor agency to this MOU.

General

Under authority of the Debt Collection Act of 1982, and other applicable regulations, the head of a Federal agency may request that deductions be made from the pay of an employee or member delinquent in his/her debt to the United States. This matching program will facilitate the identification of the delinquent debtor employees and members by the employment records at one location (DMDC). The matches will be performed to allow the creditor agency to receive a current home or work address in order to issue the required due process notice. The creditor agency will be responsible for sending the request for offset to the employing agency. These procedures are expected to shorten the collection agency timeframes and reduce confusion due to utilizing standard formats and procedures.

Responsibilities

Defense Manpower Data Center shall:

• Establish and maintain a system of records (S322.11 DLA-LZ, Federal Creditor Agency Debt Collection Data Base) devoted exclusively for Federal debt collection efforts containing, at the onset, a data bank record of DoD active and retired military members, including the Reserve, National Guard, and the OPM Governnent-wide Federal civilian and retired civilian records for computer matching purposes with any Federal creditor agency that may wish to avail itself of this opportunity to utilize this resource.

• Assure before any matching takes place that the participating creditor agency has published a system of records notice in the **Federal Register** with an adequate routine use permitting disclosure of delinquent debtor records for computer matching purposes and that DMDC publishes a proper notice of the proposed match for public comment, including the starting date, as required by the OMB Computer Matching Guidelines.

• Provide name, social security number, demographic information and current address based on a match of social security number to the creditor agency within thirty (30) days of the start of the match.

• Bill the creditor agency for match reimbursement.

The Federal Creditor Agency shall:

• Provide to DMDC before any matching occurs a copy of the full text notice of the record system(s), and any amendments thereto, originally published in the **Federal Register** (not from Privacy Act Issuances Compilation) containing an appropriate routine use authorizing the disclosure of debtor records to DMDC(DoD) for the purpose of conducting a computer matching program.[1]

• Provide only delinquent debtor records to DMDC in an agreed upon format with any specific instructions as to the control and final disposition of the creditor agency records upon completion of the match.[2]

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[1] *Model "Routine Use" for record system notice of creditor agency to disclose records of debtors to DMDC for conducting computer matching programs.*

To the Defense Manpower Data Center, Department of Defense, to conduct computer matching programs for the purpose of identifying and locating individuals who are receiving Federal salaries or benefit payments and delinquent in their repayment of debts owed to the U.S. Government under certain programs administered by the * * * (insert Federal creditor agency name) * * * in order to collect the debts under the provisions of the Debt Collection Act of 1982, (Pub. L. 97-365) by voluntary repayment, or by administrative or salary offset procedures.

[2] *Procedures for participation in matching program.*

General

All computer matches are performed at the Defense Manpower Data Center (DMDC) in Monterey, CA using an IBM computer system located at the Naval Postgraduate School (NPS) in Monterey, CA. Computer files of Active Duty, Retired and Reserve members, Federal Civil Service employees and retirees are maintained at the NPS Computer Center and are updated on a quarterly (for DoD files) or semiannual (for other files) basis. All file matching is performed using the full nine (9) digit social security number as the determinate.

Participation and Contract Point

All Federal agencies are eligible to participate in the matching program after entering into a written memorandum of understanding (MOU) with DMDC. A sample MOU is included in this notice. Signed agreements should be sent to: Kenneth C. Scheflen, Director, Defense Manpower Data Center, 1600 N. Wilson Blvd., Suite 400, Arlington, VA 22209-2593, Telephone (202) 696-5816.

Technical inquiries can be directed to Debt Collection Project Leader, Stewart Reiman, telephone (408) 646-2951.

Legal or policy questions can be directed to Don Rouse, Treasury FMS—telephone (202) 634-2031.

Data Information

All data submitted for a match must consist only of delinquent debts of individuals indebted under a Federal Program. At a minimum, the data must contain: Social Security Number, Name of Debtor (Last, First, MI), Amount of Delinquent Debt.

—The matching agency will provide to the creditor agency summary totals and dollar amounts of raw hits.

—Matching will be on SSN, and validated using the name. The natching agency will identify for the

Continued

• Assure by proper certification or statement that due process has been, or shall be, given upon locating the debtor prior to requesting any administrative or salary offset procedures according to the Debt Collection Act of 1982, 4 CFR Chapter II, 5 CFR 550.1101–.1108, and any other applicable regulations of the creditor agency.

• Provide quarterly reports to DMDC on collection activity resulting from hits of the matches in a format and content as agreed upon jointly by DMDC and the creditor agency.

• Assure that proper reimbursement is made to DoD in accordance with schedule of charges.

• Designate a primary and an alternate contact point with full name, title, address and telephone number.

Reimbursement for Match

Costs of the file maintenance, computer time and staff time for the matching effort will be reimbursed by the creditor agency to DMDC according to the following schedule of charges:

Schedule of Charges

$500 flat fee per match plus $.25 per "hit" record.

Data Security

Both the creditor agency and DMDC will safeguard individual data as required by the Privacy Act of 1974 and the OMB computer matching guidelines. Data security extends to non-hit records which will not be used for any purpose. Hard copy records will be stored in lockable desks or file cabinets and automated records will be stored in limited access computer facilities.

Duration of Agreement

This MOU will remain in force unless notified or terminated in writing by both agencies.

For
(Creditor Agency)

(Responsible Official)

Date

For
Defense Manpower Data Center

Kenneth C. Scheflen, Director

Date

creditor agency invalid hits because of garbled data, incorrect SSN, same SSN, different name, etc.

—The matching agency will transmit to the creditor agency the matched records containing the following data elements from the employment records:

—Agency where employed and location.

—Address of employment and home address or latest address of record.

—The matching agency, within 30 days after the match, will as standard practice either erase or return to the creditor agency the file of delinquent debt records unless contrary specific instructions are furnished by the creditor agency.

—The creditor agency will reimburse the matching agency for the cost of operations according to a schedule of charges set forth in the MOU.

Tape Specifications

IBM compatible, unlabled, 6250 (or 1600) BPI, fixed block, 9 track, odd parity, EBCDIC, character data. Tape(s) should be sent to: Defense Manpower Data Center, ATTN: Debt Collection Project, 550 Camino El Estero, Suite 200, Monterey, CA 93940–3231.

S322.11 DLA-LZ

SYSTEM NAME:

Federal Creditor Agency Debt Collection Data Base.

SYSTEM LOCATION:

Primary location: W.R. Church Computer Center, Naval Postgraduate School, Monterey, CA 93943–5000 Decentralized segments: Military and civilian payment and personnel centers of the military services, the Office of Personnel Management, and Federal creditor agencies. Backup location: Defense Manpower Data Center, 550 Camino El Estero, Monterey, CA 93940–3231

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of Defense officers and enlisted personnel, members of reserve and guard components, retired military personnel. All Federal-wide civilian employees and retirees. Individuals identified by Federal creditor agencies as delinquent in repayment of debts owed to the U.S. Government.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Account Number, debt principal amount, interest and penalty amount, if any, debt reason, debt status, demographic information such as grade or rank, sex, date of birth, duty and home address, and various dates identifying the status changes occurring in the debt collection process.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5514 "Installment deduction of indebtedness"; 5 U.S.C. 552a "Privacy Act of 1974"; 10 U.S.C. 136; 4 CFR Chapter II "Federal Claims Collection Standards"; 5 CFR 550.1101–.1108 "Collection by Offset from Indebted Government Employees"; Office of Management and Budget, "Revised Supplemental Guidance for Conducting Matching Programs," May 11, 1982 (47 FR 21656, May 19, 1982) and "Guidelines on the Relationship Between the Privacy Act of 1974 and the Debt Collection Act of 1982," March 30, 1983 (48 FR 15556, April 11, 1983); the Interagency Agreement for Federal Salary Offset Initiative (Office of Management and Budget, Department of the Treasury, Office of Personnel Management and the Department of Defense, April 1987).

PURPOSE(S):

The primary purpose for the establishment of this system of records is to maintain a computer data base permitting computer matching to assist and implement debt collection efforts by Federal creditor agencies under the Debt Collection Act of 1982 to identify and locate individual debtors. To increase the efficiency of U.S. Government-wide efforts to collect debts owed the U.S. Government. To provide a centralized Federal data bank for computer matching of Federal employment records with delinquent debt records furnished by Federal creditor agencies under an interagency agreement sponsored and monitored by the Department of the Treasury and the Office of Management and Budget. To identify and locate employees or beneficiaries who are receiving Federal salaries or other benefit payments and indebted to the creditor agency in order to recoup the debt either through voluntary repayment or by administrative or salary offset procedures established by law.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEMS, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Individual's name, SSN, Federal agency or military service, category of employee, Federal salary or benefit payments, records of debts and current work or home address and any other appropriate demographic data to a Federal creditor agency for the purpose contacting the debtor to obtain voluntary repayment and, if necessary, to initiate any administrative or salary offset measures to recover the debt.

The DoD Blanket Routine Uses do not apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on magnetic computer tape.

RETRIEVABILITY:

Records are retrieved by social security number and name from a computerized index.

SAFEGUARDS:

Primary location at the W.R. Church Computer Center, Monterey, CA, tapes are stored in a controlled access area; tapes can be physically accessed only by computer center personnel and can be mounted for processing only if the appropriate security code is provided.

At the back-up location in Monterey, CA tapes are stored in rooms protected with cypher locks, the building is locked up after hours, and only property cleared and authorized personnel have access.

RETENTION AND DISPOSAL:

Records are erased within six months after each match cycle.

SYSTEM MANAGER AND ADDRESS:

Deputy Director, Defense Manpower Data Center (DMDC), 550 Camino El Estero, Monterey, CA 93940-3231

NOTIFICATION PROCEDURE:

Information may be obtained from the system manager.

RECORDS ACCESS PROCEDURE:

Requests from individuals should be addressed to the system manager. Written requests for information should contain the full name, social security number, current address and telephone number of the individual requesting information.

CONTESTING RECORD PROCEDURES:

The agency's rules for access to records and for contesting contents and appealing initial determinations may be obtained from the system manager and are contained in Defense Logistics Agency Regulation 5400.21 (32 CFR Part 1286).

RECORD SOURCE CATEGORIES:

Federal creditor agencies, the Office of Personnel Management and DoD personnel and finance centers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 87-22481 Filed 9-29-87; 8:45 am]

BILLING CODE 3810-01-T

Department of The Navy

Performance of Commercial Activities; Announcement of Program Cost Studies

The Department of the Navy intends to conduct OMB Circular A-76 (48 FR 37110, August 16, 1983) cost studies of various functions at the listed activities, commencing September 14, 1987. The cost study process is a rigorous, time-consuming procedure and, depending upon the size of the functions involved, can take several months to several years to complete. Since the studies have not yet begun, specifications have not yet been prepared. When bids/proposals are desired, appropriate advertisements will be placed. No consolidated bidders' list is being maintained since the solicitations will be processed by various contracting offices throughout the U.S.

USNS MERCURY, Oakland, CA

Water Transportation

Naval Station, San Diego, CA

Other Intermediate, Direct, of General Repair and Maintenance of Equipment

Naval Station, Treasure Island, CA

Other Intermediate, Direct, or General Repair and Maintenance of Equipment

Naval Weapons Center, China Lake, CA

Personnel Movement

Naval Submarine School, Groton, CT

Training Devices and Simulators

Naval Air Facility, Washington, DC

Buildings and Structures Maintenance
Grounds and Surfaced Areas Maintenance

Naval Air Station, Key West, FL

Motor Vehicle Operation
Motor Vehicle Maintenance

Naval Coastal System Center, Panama City, FL

Motor Vehicle Operation
Crane Operations
Heavy Truck Operations
Other Vehicle Operations
Motor Vehicle General Repair
Improved Grounds

Naval Station, Pearl Harbor, HI

Magnetic Silencing Facility

Naval Medical Command National Capital Region, Bethesda, MD

Grounds and Surfaced Areas
Motor Vehicle Maintenance
Air Conditioning & Refrigeration Plants
Pest Management
Heating Plants and Systems
Other Maintenance/Repair Real Property
Motor Vehicle Operations
Motor Pool Operations

Naval Hospital, Beaufort, SC

Grounds and Surface Areas
Motor Vehicle Maintenance
Air Conditioning and Refrigeration Plants
Pest Management
Medical Records Transcription
Motor Vehicle Operations
Heating Plants and System
Building and Structure (Other Than Family Housing)

Submarine Training Facility, Charleston, SC

Training Devices and Simulators

Naval Air Station, Corpus Christi, TX

Aircraft

Naval Guided Missiles School Detactment, Norfolk, VA

Training Devices and Simulators

Naval Medical Clinic, Quantico, VA

Grounds and Surfaced Areas

Naval Supply Center, Norfolk, VA

SERVMART (Receipt and Acquisition)

TRIDENT Refit Facility, Bangor, Bremerton, WA

Test, Measurement, and Diagnostic Equipment

Date: October 2, 1987.

D.A. Guy,

Commander, JAGC, U.S. Navy, Alternate Federal Register Liaison, and Certifying Officer (202) 325-9860.

[FR Doc. 87-23190 Filed 10-6-87; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

[CFDA No. 84.133C]

Notice Inviting Applications for Innovation Grants Under the National Institute on Disability and Rehabilitation Research for Fiscal Year 1988

PURPOSE: Provides support to public and private agencies and organizations, including institutions of higher education and Indian tribes and tribal organizations, to support timely and innovative research, demonstrations, evaluations of techniques or devices, or unique methods to disseminate the results of research that will improve the rehabilitation of individuals with disabilities. Historically Black Colleges and Universities are encouraged to apply. NIDRR may fund projects from time to time during the year.

DEALINE FOR TRANSMITTAL OF APPLICATIONS: June 1, 1988.

APPLICATIONS AVAILABLE: November 9, 1987.

AVAILABLE FUNDS: $1,000,000.

ESTIMATED RANGE OF AWARDS: Awards are limited to $50,000 by statute.

ESTIMATED AVERAGE SIZE OF AWARDS: $50,000.

PROJECT PERIOD: 12 months.

APPLICABLE REGULATIONS: (a) Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78, and (b) National Institute on Disability and Rehabilitation Research Regulations, 34 CFR Parts 350 and 358.

FOR APPLICATIONS OR INFORMATION CONTACT: National Institute on Disability and Rehabilitation Research, U.S. Department of Education, 400 Maryland Avenue SW, Switzer Building, Room 3070, Washington, DC 20202. Telephone: (202) 732-1207; deaf and hearing impaired individuals may call (202) 732-1198 for TDD services.

Program Authority: 29 U.S.C. 760-762.

Dated: October 2, 1987.

Madeleine Will,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 87-23172 Filed 10-6-87; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Atomic Energy Agreements; Proposed Subsequent Arrangements; EURATOM and Austria

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangements" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Austria concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangements to be carried out under the above-mentioned agreements involve approval of the following retransfers: RTD/AT(EU)-66, for the transfer from the Federal Republic of Germany to Austria of silicide fuel elements containing 37 kilograms of uranium, enriched to 19.95 percent in the isotope uranium-235 for use in the ASTRA research reactor. RTD/AT(EU)-67, for the transfer from the Federal Republic of Germany to Austria of 5 fuel spheres containing 29.8 grams of uranium enriched to 16.8 percent in the isotope uranium-235 for nuclide inventory measurements.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that these subsequent arrangements will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: September 30, 1987.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 87-23224 Filed 10-6-87; 8:45 am]

BILLING CODE 6450-01-M

Cooperative Agreements; Industrial Heat Pump Design and Installation

September 29, 1987.

AGENCY: Department of Energy.

ACTION: Solicitation for Cooperative Agreement Porposals (SCAP) No. DE-SC07-87ID12706 for the development of an industrial heat pump design and installation.

SUMMARY: The Idaho Operations Office of the U.S. Department of Energy is seeking support for the design and installation of heat pumps in industrial processes for heat recovery (industrial refrigeration and space heating are excluded). It is intended that projects include three phases: (I) Heat pump/process assessment, (II) implementation, and (III) operation. About $650,000 is now available for Phase I, and multiple awards are anticipated. It is intended that the Phase I heat pump and process assessment will involve thermodynamically consistent methods of analyzing processes to determine the optimum heat pump placement, the type of heat pump, the size and lift of the heat pump, the effect of the heat pump on the overall process, and the economics of the proposed heat pump installation. The analyses in Phase I must be for specific operating industrial process plants, into which the heat pump will be installed during Phase II. Phase II will involve final design of the heat pump, final design of any required process modifications, modification of the process, and installation of the heat pump. During Phase III, the heat pump will be operated. Operating characteristics of the heat pump and overall impact of the heat pump on the process will be measured and reported. Proposers will be expected to have the capability to complete the entire project from design through operation, as well as to be able to obtain, during Phase I, a commitment from the industrial plant operator responsible for the process into which the heat pump will actually be installed. Cost-type cooperative agreements are anticipate, and Phase I is expected to take approximately one year.

DATES: SCAP No. DE-SC07-87ID12706 is expected to be issued during early November 1987 with a closing date approximately 45 days from the issue date.

CONTACTS: Potential proposers desiring to receive a copy of the SCAP should request it in writing within 10 calendar days from the date of this notice from: Dallas L. Hoffer, Contracts Management Division, U.S. Department of energy, Idaho Operations Office 785 DOE Place, Idaho Falls, ID 83402, Telephone No.: (208) 526-0014.

Issued at Idaho Falls, Idaho, on September 29, 1987.

H. Brent Clark,

Director, Contracts Management Division.

[FR Doc. 87-23225 Filed 10-6-87; 8:45 am]

BILLING CODE 6450-01-M

National Petroleum Council; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: National Petroleum Council.

Date: October 28, 1987—9:00 a.m.

Place: Madison Hotel, Dolley Madison Ballroom, Fifteenth and M Streets, NW., Washington, DC.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE-1), Washington, DC 20585, Telephone: 202/586-4695.

Purpose: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industry.

Tentative Agenda:

Call to order by Edwin L. Cox, Chairman, National Petroleum Council.

Remarks by the Honorable John S. Herrington, Secretary of Energy.

Guest speaker.

Progress report on the NPC Committee on Petroleum Storage & Transportation.

Consideration of administrative matters.

Discussion of any other business properly brought before the National Petroleum Council.

Public comment (10-minute rule).

Adjournment.

Public Participation: The meeting is open to the public. The chairperson of the Council is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Council will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at

least five days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on October 2, 1987.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 87-23226 Filed 10-6-87; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 87-48-NG]

Application to Export Natural Gas to Canada; Victoria Gas Corp.

AGENCY: Economic Regulatory Administation, DOE.

ACTION: Notice of application for blanket authorization to export natural gas to Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on August 31, 1987, of an application; from Victoria Gas Corporation (Victoria) for blanket authorization to export natural gas to Canada for sale to spot market purchasers, including gas distribution companies, and industrial and commerical end users. Authorization is requested to export up to 100 MMcf of United States natural gas per day and a maximum of 72 Bcf of natural gas over a two-year period beginning on the date of first delivery. Victoria is a corporation registered in the State of Texas and operates solely as a natural gas marketing company.

Victoria intends to use existing facilities at the border and within the United States for the transportation of the proposed exports. Victoria will advise the ERA of the date of first delivery of the export and submit quarterly reports giving details of individual transactions.The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than November 6, 1987.

FOR FURTHER INFORMATION CONTACT:

Frank Duchaine, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA-076, 1000 Independence SW., Washington, DC 20585, (202) 586-8233, or

Diane J. Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Ave SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: This export application will be reviewed pursuant to Section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order No. 0204-111. The decision on whether the export of natural gas is in the public interest will be based upon the domestic need for the gas and on whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing parties to freely negotiate their own trade arrangements. The applicant asserts that the requested authorization would promote competition and, in light of the continuing "gas bubble", would benefit the public interest. Parties especially those that may oppose this application, should comment in their responses on these matters.

All parties should be aware that if the EPA approves this requested blanket export, it may designate a total amount of authorized volumes for the term rather than a daily or annual limit, in order to provide the applicant with maximum flexibility of operation.

Public Comment Procedures:

In responses to his notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specfied by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. They must be filed no later than 4:30 p.m. e.d.t., November 6, 1987.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Victoria's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076-A, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 30, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-23227 Filed 10-6-87; 8:45 am]

BILLING CODE 6450-01-M

Proposed Remedial Order; Tampimex Oil International, Ltd.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed remedial order to Tampimex Oil International, Ltd.

SUMMARY: Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Tampimex Oil International, Ltd. (Tampimex), c/o 4100 One Shell Square, New Orleans, Louisiana 70139. This Proposed Remedial Order alleges violations of 10 CFR 212.186, 210.62(c) and 205.202 of the petroleum price regulations during the period January 1979 through December 1980 in the amount of $3,669,009.81. The effect of the alleged violations is nationwide.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from: Office of Freedom of Information Reading Room, United States Department of Energy, Forrestal Building, Room 1E-190, 1000 Independence Avenue, SW., Washington, DC 20585.

Within fifteen (15) days of publication of this Notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, United States Department of Energy, Forrestal Building, Room 6F-078, 1000 Independence Avenue, SW., Washington, DC 20585, in accordance with 10 CFR 205.193. The notice shall be filed in duplicate, shall briefly describe how the person would be aggreived by issuance of the Proposed Remedial Order as a final order and shall state the person's intention to file a Statement of Objections. A person who fails to file a Notice of Objection shall be deemed to have admitted the findings of fact and conclusions of law stated in the PRO. If a Notice of Objection is not filed in accordance with § 205.193, the PRO may be issued as a final Remedial Order by the Office of Hearings and Appeals.

Issued in Washington, DC, on the 24th day of September, 1987.

Marshall Staunton,

Administrator, Economic Regulatory Administration.

[FR Doc. 87-23126 Filed 10-6-87; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Energy Research Advisory Board, Research & Technology Utilization Panel; Meeting

Notice is hereby given of the following meeting:

Name: Research and Technology Utilization Panel of the Energy Research Advisory Board (ERAB).

Date and Time: October 21, 1987—8:30 am-5:00 pm; October 22, 1987—8:30 am-12:00 Noon.

Place: Department of Energy, 1000 Independence Ave. SW., Room 4A-110, Washington, DC 20585.

Contact: Charles E. Cathey, Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585, (202) 586-2263.

Purpose of the Parent Board: To advise the Department of Energy (DOE) on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Purpose of the Panel: The Research and Technology Utilization Panel is a subgroup of ERAB and reports to the parent Board. The Research and Technology Utilization Panel will: Review the process and effectiveness of the movement of scientific research and technology from DOE and its contractors to industry, universities, and state and local governments; review the technology transfer objectives and efforts of the major Departmental programs; evaluate the significance of past activities in this area; and make recommendations to improve the activities.

Tentative Agenda: The agenda for this meeting will be to hear presentations from DOE multiprogram and single program laboratories. These will include presentations from Oak Ridge National Laboratory, Fermi National Accelerator Laboratory, and Stanford Linear Accelerator Center, among others.

Public Comment (10 minute rule).

Public Participation: The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Charles Cathey at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes of the Meeting: Available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Ave. SW., Washington, DC, between 9:00 am and 4:00 pm, Monday through Friday, except Federal holidays.

Issued at Washington, DC, on September 30, 1987.

Charles E. Cathey,

Deputy Director, Science & Technology Affairs, Office of Energy Research.

[FR Doc. 87-23127 Filed 10-6-87; 8:45 am]

BILLING CODE 6450-01-M

Grants; University Research Instrumentation Program

AGENCY: Department of Energy.

ACTION: Program solicitation announcement.

SUMMARY: The purpose of this notice is to announce the availability of the University Research Instrumentation (URI) program solicitation, and to inform potential applicants of the closing date and location for transmittal of applications for awards under this program. For more detailed background information about the URI solicitation, please refer to the following related documents: (1) DOE request for public comment on the URI program, June 7, 1983 (48 FR 26328-26331), (2) October 18, 1983, DOE changes to the program (48 FR 48277-48281); and (3) December 15, 1983, DOE program solicitation announcement (48 FR 55774-55775).

FOR FURTHER INFORMATION CONTACT: All communications or questions regarding this program solicitation should be directed to: Ms. Susan G. Hiser, Procurement and Contracts Division, Oak Ridge Operations Office, Department of Energy, Oak Ridge, TN 37831, Telephone Number: (615) 576-6367.

SUPPLEMENTARY INFORMATION:

Background

The purpose of the University Research Instrumentation program is to assist university and college scientists in strengthening their capabilities to conduct long-range research in specific energy research and development areas of direct interest to DOE through the acquisition of specialized research instrumentation. This program is consistent with, and part of, a government-wide effort to increase the availability of advanced research instrumentation in universities and colleges. Although no final congressional action for Fiscal Year 1988 has yet been approved for this program, the Presidential budget request to Congress for this program for FY 1988 is $5.0 million. In anticipation of Congressional support for the program, DOE invites all qualified universities to write for a copy of its University Research Instrumentation program solicitation, DOE-ER-0184/3, Notice of Program Announcement Number DE-PS01-87ER75385. Selection for award under this solicitation is subject to the availability of funds.

Principal Research Areas

While all areas of energy research are eligible, in FY 1988 the URI program's funds will be concerned primarily with capital equipment (costing $100,000 or more) needed for on-campus research in one of five specific energy areas (listed below in alphabetical order). In order to indicate the potential breadth of the research in each area, a number of examples of related research topics are given. Within each topic area no

preference is given to any of the examples.

1. Biological Energy Conversion

a. Early events in photosynthesis; b. biochemical and enzymatic reactions involved in key metabolic steps in carbon compound conversions in plants and microbes, and in the characterization of micro-organisms involved in carbon compound conversion to fuels; c. structures of protein, carbohydrates and lipids involved in recognition and catalytic, regulatory or storage functions; d. physiological control of growth and development of plants under optimal or suboptimal condition; e. measurement and control systems for experimental research of biological effects of carbon dioxide, including those from coal fired power plants; f. studies of energy conversion in microalgal systems; g. research on biological coal conversion and coal cleaning.

2. Biomedical and Environmental Research

a. Nuclear Medicine: (1) Research on the applications of radiation, radioisotopes and stable isotopes in the diagnosis and treatment of human diseases; (2) production of radionuclides, new radiopharmaceuticals, automated chemical synthesis systems, studies of biodistribution and pharmacokinetics of radiolabeled compounds; (3) improvement of biomedical imaging techniques (SPECT, PET, and NMR spectroscopy) for physiologic and metabolic studies; (4) development of optimal antibody species for cancer screening, detection, localization, monitoring, and therapy; (5) development of boronated compounds with higher selectivity for tumor tissue to ascertain clinical merit of boron neutron capture therapy.

b. Molecular Genetics/Structural Biology: (1) Characterization of genetic structure ranging from chromosomes to DNA structure; (2) characterization of damage to DNA and other biological macromolecules by radiation and energy-related chemicals; (3) separation of biological macromolecules and organelles; (4) characterization of protein and other macromolecules fine structure and correlation of structure with biological function; (5) computer networks, data acquisition and analysis of molecular biological and structural data.

c. Environmental Processes and Effects: (1) Subsurface characterization of biota, contaminants, and factors affecting mobility of mixed wastes in soils and subsurface systems, including those from emerging coal technologies; (2) determination of the movement and fate of materials introduced along U.S. ocean margins; (3) influence of environmental factors on gene expression and regulation in plants; (4) development of integrated ecological studies, focusing on water relations in arid lands and large-scale ecosystem experiments that will contribute to global research activities.

3. Energy Resource Geoscience

a. Fluid Interaction with the Natural Environment: (1) Rockwater interactions in fractured hosts; (2) mineral-hydrocarbon surface reactions; (3) hydrogeology.

b. Generation and Migration of Petroleum: (1) Control of source rock; (2) time-temperature reaction paths; (3) multiphase flow; (4) reservoir dynamics.

c. Remote Sensing: (1) Of the solid earth through enhanced seismic studies; (2) of the earth's surface through interpretation of high altitude data; (3) of strain both at laboratory and earth scales; (4) geological interpretation of satellite data.

d. Fracture Processes: (1) In natural media, particularly shales, sandstones, limestones, tuffs, and granite; (2) on the crustal scale; (3) in heterogeneous media.

4. Nuclear Physics

Understanding of the interactions, properties, and structure of atomic nuclei using probes of light ions, heavy ions, electrons, and other nuclear particles for research in:

a. Nuclear collision dynamics via detection of nuclear reaction products;

b. Polarization effects in the collision of nuclear systems;

c. Nuclear structure and nuclear spectroscopy;

d. Giant resonances and other mechanisms of gamma-ray emission;

e. Probing fundamental symmetries and interactions;

f. Neutron scattering physics;

g. Radiative capture reactions; and

h. Properties of hot nuclear matter.

5. Photochemical Energy Conversion

a. Inorganic and organic photochemistry;

b. Excited-state electron transfer;

c. Photoelectrochemistry;

d. Photo-induced charge separation in microheterogenous environments;

e. Artificial photosynthesis; and

f. Picosecond spectroscopy;

g. Synthesis and catalysis as it relates to the photoconversion of various substrates into fuels and chemicals.

While the equipment requested will be equally suitable and may be used for research on other energy-related topics, the need for the instrument(s) must be justified (and the application will be reviewed) in terms of its value and ability to enhance the institution's capabilities in the principal designated energy-related research area specified on the cover sheet. The instrument's utility is advancing other areas of scientific or technical research is of peripherai interest during the application's review procedure.

Eligibility and Limitations

Participation in the URI program is limited to U.S. universities and colleges that currently have active, ongoing DOE-funded research support (including subcontracts) totalling at least $150,000 in value in the specific area for which the equipment is requested during the past two fiscal years (October 1, 1985, to September 30, 1987).

DOE is establishing this limitation to ensure that the instrumentation acquired with these grants will significantly expand the research capability of institutions which have already demonstrated the capability to perform long-range energy research. The Office of Energy Research believes that restricting eligibility to institutions which have performed $150,000 of DOE supported research over a two-year period will limit eligibility in this grant program to those institutions which, becuse of their existing commitment to energy research, are best able to incorporate advanced instrumentation into their research programs. Special consideration will be given to Historically Black Colleges and Universities (HBCU's) which meet the institutional eligibility criteria, and have significant research capabilities in the selected research area.

DOE will consider only requests for larger instruments, costing about $100,000 or more, which are required to advance research in the designated area. Smaller research instruments (less than $100,000 each) will not be eligible for consideration in this program. General purpose computing equipment is also not eligible under this program. However, laboratory computers and associated peripherals dedicated for use directly with the instrument(s) requested (or for use with existing research instrument(s) in the selected area) may be considered.

Application Forms

Program solicitations are expected to be ready for mailing by October 9, 1987. Applications must be prepared and submitted in accordance with the instruments and forms included in the

program solicitation. Copies may be obtained by writing to: Division of University and Industry Programs, Office of Field Operations Management, Office of Energy Research, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; Telephone Number: (202)586-8910.

Closing Date for Transmittal of Applications

To be eligible, applications must be received by the Oak Ridge Operations Office by 4:30 p.m., December 11, 1987.

Authority for the University Research Instrumentation Program is contained in section 31(a) and (b) of the Atomic Energy Act of 1954 (42 U.S.C. 2051) and section 209 of the Department of Energy Organization Act (42 U.S.C. 7139).

(Catalog of Federal Domestic Assistance No. 81.077, University Research Instrumentation Program)

Issued in Washington, DC, on September 30, 1987.

David B. Nelson,

Executive Director, Office of Energy Research.

[FR Doc. 87-23228 Filed 10-6-87; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER87-519-000, et al.]

Electric rate and Corporate Regulation Filings; Commonwealth Edison Co. et al.

September 30, 1987.

Take notice that the following filings have been made with the Commission:

1. Commonwealth Edison Company

[Docket No. ER87-519-000]

Take notice that on September 24, 1987, Commonwealth Edison Company (Edison) tendered for filing additional information with respect to Amendment No. 5 to the Interconnection Agreement between Edison and Wisconsin Power and Light Company (Wisconsin Power).

This amended filing is in response to a request by the Federal Energy Regulatory Commission to provide an explanation of the circumstances which led to the agreement, Amendment No. 5, to return the $739,710 paid by Wisconsin Power over the last ten years.

Copies of the filing were served upon Wisconsin Power and Light Company, Madison, Wisconsin, the Illinois Commerce Commission, Springfield, Illinois, and the Public Service Commission of Wisconsin, Madison, Wisconsin.

Comment date: October 14, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Glen Park Associates Limited Partnership

[Docket No. ER87-668-000]

Take notice that on September 24, 1987, Glen Park Associates Limited Partnership (Glen Park), a New York limited partnership, tendered for filing a power sale agreement pursuant to which Glen Park is to Niagara Mohawk Power Corporation all of the power and energy to be produced at the 32.6 MW Glen Park Project (FERC Project No. 4769). The rates set forth in the power sale agreement have been negotiated, and the agreement has been approved by the New York Public Service Commission. Glen Park requests waiver of the Commission's Regulations with respect to the filing of cost support information and with respect to all or a portion of the Commission's accounting, reporting, securities, property transfer, interlocking director and annual charge regulation. Glen Park requested that the filing be allowed to become effective on September 1, 1987, the date on which the power production capacity of the project first exceeded 30 MW.

Comment date: October 14, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. Gulf States Utilities Company

[Docket No. ER87-667-000]

Take notice that on September 24, 1987, Gulf States Utilities Company (GSU) tendered for filing a contract for purchases of economic energy by Jacksonville Electric Authority from GSU.

GSU requests an effective date of September 23, 1987, for the contract.

Comment date: October 14, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. Kansas Power and Light Company

[Docket No. ER87-666-000]

Take notice that on September 24, 1987, Kansas Power and Light Company (KPL) tendered for filing a newly executed renewal contract dated September 1, 1987, with the City of St. Marys, St. Marys, Kansas for wholesale service to that community. KPL states that this contract permits the City of St. Marys to receive service under rate schedule WSM-12/83 designated Supplement No. 9 to R.S. FERC No. 195. The proposed effective date is November 1, 1987. The proposed contract change provides essentially for the ten year extension of the original terms of the presently approved contract. In addition, KPL states that copies of the contract have been mailed to the City of St. Marys and the State Corporate Commission.

Comment date: October 14, 1987, in accordance with Standard Paragraph E at the end of this notice.

5. Northern States Power Company

[Docket No. ER87-669-000]

Take notice that on September 24, 1987, Northern States Power Company (Minnesota) tendered for filing the Transmission Service Agreement and Supplement Nos. 1 and 2 between Northern States Power Company and the City of Sauk Centre.

The Transmission Service Agreement and Supplement Nos. 1 and 2 supersede the Municipal Resale Transmission and Transformation Service Agreement, FERC Rate Schedule No. 389, between Northern States Power Company and the City of Sauk Centre, which expires by its own terms on October 20, 1987.

The Transmission Service Agreement and Supplement Nos. 1 and 2 essentially provide transmission service associated with the delivery of power and energy purchased by Sauk Centre from the Western Area Power Administration and other power suppliers. The rates and charges for this service are on file with the Commission for similar agreements with other municipalities.

Northern States Power Company requests that the filing have an effective date of October 20, 1987, and therefore, requests waiver of the Commission's notice requirements.

Comment date: October 14, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-23219 Filed 10-6-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-1-20-000]

Proposed Change in FERC Gas Tariff; Algonquin Gas Transmission Co.

September 30, 1987.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on September 25, 1987, tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, six (6) copies each of the following tariff sheets:

Twenty-second Revised Sheet No. 201
Twenty-second Revised Sheet No. 203
Fifteenth Revised Sheet No. 204
Fifteenth Revised Sheet No. 205
Substitute Fifteenth Revised Sheet No. 204

Algonquin states that above-mentioned tariff sheets are being filed pursuant to the provisions of its tariff to flow through its rates the approved ACA unit surcharges imposed upon Algonquin by its upstream pipeline suppliers, Consolidated Gas Transmission Corporation, National Fuel Gas Supply Corporation, Texas Eastern Transmission Corporation and Transcontinental Gas Pipe Line Corporation as established by Commission Order No. 472 in Docket No. RM87-3-000.

The proposed effective date of the above-mentioned tariff sheets is October 1, 1987.

Algonquin notes that a copy of this filing is being served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 7, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-23131 Filed 10-6-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-3-48-009]

PGA Rate Change Filing; ANR Pipeline Co.

September 30, 1987.

Take notice that on September 25, 1987, ANR Pipeline Company ("ANR"), pursuant to section 15 of the General Terms and Conditions of its F.E.R.C. Gas Tariff, Original Volume No. 1, tendered for filing with the Federal Energy Regulatory Commission ("Commission") the following tariff sheets:

Substitute Tenth Revised Sheet No. 18
Substitute Alternate Twelfth Revised Sheet No. 18

Substitute Tenth Revised Sheet No. 18 and Substitute Alternate Twelfth Revised Sheet No. 18 reflect a 13.64¢ per dekatherm ("dth") increase in the gas cost component of the commodity rate of ANR's CD-1 and MC-1 Rate Schedules, a decrease of $0.682 in the monthly demand rate of CD-1 and MC-1 Rate Schedules and an increase in ANR's one-part rates applicable to Rate Schedules SGS-1 and LVS-1 of 2.82¢ and 10.36¢ respectively, per dth.

In this tariff filing, ANR is revising its demand and commodity rates to reflect cost functionalization and classification consistent with Opinion Nos. 256 and 256A with respect to ANR's Canadian gas costs. ANR has designed its rates based upon its existing Atlantic Seaboard rate design methodology.

ANR states that copies of the filing were served upon all of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 7, 1987. Protects will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-23132 Filed 10-6-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ST87-3449-000, et al.]

Self-Implementing Transactions; ANR Pipeline Co., et al.

September 30, 1987.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's Regulations, and sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA).[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's Regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's Regulations and section 311(a)(2) of the NGPA. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and the expiration date of the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a petition to intervene with the Secretary of the Commission.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate

[1] Notice of transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's Regulations.

pipeline or local distribution company pursuant to § 284.163 of the Commission's Regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G–S" indicates transportation by an interstate pipeline company on behalf of any shipper pursuant to a § 284.223 and a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G(LT)" or "G(LS)" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

A "G(HT)" or "G(HS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

Any person desiring to be heard or to make any protest with reference to a transaction reflected in this notice should on or before October 21, 1987, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). 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 party to a 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.

Kenneth F. Plumb,

Secretary.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date[2]	Transportation rate (¢/MMBTU)
ST-3499	ANR Pipeline Co	Wisconsin Fuel and Light Co	08-3-87	B		
ST-3500	ANR Pipeline Co	Wisconsin Natural Gas Co	08-3-87	B		
ST-3501	ANR Pipeline Co	Michigan Consolidated Gas Co	08-3-87	B		
ST-3502	ANR Pipeline Co	Consumers Power Co	08-3-87	B		
ST-3503	ANR Pipeline Co	Michigan Consolidated Gas Co	08-3-87	B		
ST-3504	ANR Pipeline Co	Bishop Pipeline Corp	08-3-87	B		
ST-3505	ANR Pipeline Co	Michigan Gas Utilities Co	08-03-87	B		
ST-3506	ANR Pipeline Co	Wisconsin Power and Light Co	08-03-87	B		
ST-3507	ANR Pipeline Co	Iowa Southern Utilities Co	08-03-87	B		
ST-3508	ANR Pipeline Co	Wisconsin Fuel and Light Co	08-03-87	B		
ST-3509	ANR Pipeline Co	Wisconsin Natural Gas Co	08-03-87	B		
ST-3510	ANR Pipeline Co	Wisconsin Public Service Co	08-03-87	B		
ST-3511	ARKLA Energy Resources	Amoco Gas Co	08-03-87	B		
ST-3512	Panhandle Eastern Pipe Line Co	Washington Gas Light Co., et al	08-03-87	B		
ST-3513	Panhandle Eastern Pipe Line Co	Peoples Natural Gas Co	08-03-87	B		
ST-3514	Panhandle Eastern Pipe Line Co	Eastex Gas Transmission Co	08-03-87	B		
ST-3515	Tennessee Gas Pipeline Co	Phillips Petroleum Co	08-03-87	G-EU		
ST-3516	Tennessee Gas Pipeline Co	Mountaineer Gas Co	08-03-87	B		
ST-3517	Tennessee Gas Pipeline Co	Western Kentucky Gas Co	08-03-87	B		
ST-3518	Trunkline Gas Co	South Carolina Pipeline Corp	08-03-87	B		
ST-3519	Western Gas Supply Co	Northwest Pipeline Corp	08-03-87	C		
ST-3520	Williams Natural Gas Co	Peoples Natural Gas Co	08-03-87	B		
ST-3521	Williams Natural Gas Co	Llano, Inc	08-03-87	B		
ST-3522	ANR Pipeline Co	Wisconsin Public Service Co	08-04-87	B		
ST-3523	ANR Pipeline Co	Peoples Gas Light & Coke Co	08-04-87	B		
ST-3524	ANR Pipeline Co	Consumers Power Co	08-04-87	B		
ST-3525	ANR Pipeline Co	Michigan Consolidated Gas Co	08-04-87	B		
ST-3526	ANR Pipeline Co	Wisconsin Public Service Co	08-04-87	B		
ST-3527	ANR Pipeline Co	Madison Gas & Electric Co	08-04-87	B		
ST-3528	ANR Pipeline Co	Wisconsin Natural Gas Co	08-04-87	B		
ST-3529	ANR Pipeline Co	Delhi Gas Pipeline Corp	08-04-87	B		
ST-3530	ANR Pipeline Co	Coastal States Gas Transmission Co	08-04-87	B		
ST-3531	ANR Pipeline Co	Wisconsin Natural Gas Co	08-04-87	B		
ST-3532	ANR Pipeline Co	Columbia Gas of Pennsylvania, Inc	08-04-87	B		
ST-3533	ANR Pipeline Co	Michigan Gas Utilities Co	08-04-87	B		
ST-3534	ANR Pipeline Co	Michigan Consolidated Gas Co	08-04-87	B		
ST-3535	ANR Pipeline Co	Michigan Colsolidated Gas Co	08-04-87	B		
ST-3536	ANR Pipeline Co	Wisconsin Power and Light Co	08-04-87	B		
ST-3537	Channel Industries Gas Co	Tennessee Gas Pipeline Co	08-04-87	C		
ST-3538	Channel Industries Gas Co	Transcontinental Gas Pipe Line Corp	08-04-87	C		
ST-3539	Enogex Inc	Arkla Energy Resources	08-04-87	C	1-01-88	28.50
ST-3540	Natural Gas Pipeline Co. of America	Winnie Pipeline Co	08-04-87	B		
ST-3541	Natural Gas Pipeline Co. of America	Wisconsin Southern Gas Co., Inc	08-04-87	B		
ST-3542	Tennessee Gas Pipeline Co	Peoples Gas Light and Coke Co., et al	08-04-87	B		
ST-3543	Tennessee Gas Pipeline Co	Texas Gas Transmission Corp	08-04-87	B		
ST-3544	Tennessee Gas Pipeline Co	Western Kentucky Gas Co	08-04-87	B		
ST-3545	Tennessee Gas Pipeline Co	Connecticut Natural Gas Corp	08-04-87	B		
ST-3546	Tennessee Gas Pipeline Co	Valley Resources, Inc	08-04-87	B		
ST-3547	Texas Eastern Transmission Corp	Bay State Gas Co., et al	08-04-87	B		
ST-3548	Texas Eastern Transmission Corp	Town of Middleborough, et al	08-04-87	B		
ST-3549	Texas Eastern Transmission Corp	Boston Gas Co	08-04-87	B		
ST-3550	Texas Eastern Transmission Corp	Connecticut Light & Power Co	08-04-87	B		
ST-3551	Texas Eastern Transmission Corp	Connecticut Natural Gas Corp	08-04-87	B		
ST-3552	Texas Eastern Transmission Corp	Boston Gas Co	08-04-87	B		
ST-3553	Texas Eastern Transmission Corp	Bay State Gas Co	08-04-87	B		
ST-3554	Texas Eastern Transmission Corp	Providence Gas Co	08-04-87	B		
ST-3555	Texas Eastern Transmission Corp	Allied Gas Co	08-04-87	B		
ST-3556	Texas Eastern Transmission Corp	City of Bernie	08-04-87	B		
ST-3557	Texas Eastern Transmission Corp	Connecticut Light & Power Co	08-04-87	B		
ST-3558	Texas Eastern Transmission Corp	Philadelphia Gas Works	08-04-87	B		
ST-3559	United Gas Pipe Line Co	Mobile Gas Service Corp	08-04-87	B		
ST-3560	Northern Natural Gas Co	Iowa Electric Light & Power Co	08-05-87	B		
ST-3561	Panhandle Eastern Pipe Line Co	Michigan Consolidated Gas Co	08-05-87	B		
ST-3562	Phillips Gas Pipeline Co	Phillips Natural Gas Co	08-05-87	B		
ST-3563	Tennessee Gas Pipeline Co	Pennsylvania Gas and Water Co	08-05-87	B		

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date[2]	Transportation rate (¢/MMBTU)
ST-3564	Texas Gas Transmission Corp	Indiana Gas Co., Inc	08-05-87	B		
ST-3565	Texas Gas Transmission Corp	Indiana Gas Co., Inc	08-05-87	B		
ST-3566	Trunkline Gas Co	Consumers Power Co	08-05-87	B		
ST-3567	Trunkline Gas Co	Consumers Power Co	08-05-87	B		
ST-3568	Trunkline Gas Co	United Cities Gas Co., et al	08-05-87	B		
ST-3569	Williams Natural Gas Co	KPL Gas Service Co	08-05-87	B		
ST-3570	Williams Natural Gas Co	Kansas Gas Supply Corp	08-05-87	B		
ST-3571	ANR Pipeline Co	Michigan Gas Utilities Co	08-06-87	B		
ST-3572	ANR Pipeline Co	Wisconsin Natural Gas Co	08-06-87	B		
ST-3573	ANR Pipeline Co	Michigan Consolidated Gas Co	08-06-87	B		
ST-3574	ANR Pipeline Co	Wisconsin Public Service Co	08-06-87	B		
ST-3575	ANR Pipeline Co	Northern Indiana Public Service Co	08-06-87	B		
ST-3576	ANR Pipeline Co	Michigan Gas Utilities Co	08-06-87	B		
ST-3577	ANR Pipeline Co	Wisconsin Natural Gas Co	08-06-87	B		
ST-3578	ANR Pipeline Co	Wisconsin Public Service Co	08-06-87	B		
ST-3579	ANR Pipeline Co	Llano, Inc	08-06-87	B		
ST-3580	ANR Pipeline Co	Southeastern Michigan Gas Co	08-06-87	B		
ST-3581	ANR Pipeline Co	Wisconsin Public Service Co	08-06-87	B		
ST-3582	ANR Pipeline Co	South Jersey Gas Co	08-06-87	B		
ST-3583	ANR Pipeline Co	Michigan Consolidated Gas Co	08-06-87	B		
ST-3584	ANR Pipeline Co	Southeastern Michigan Gas Co	08-06-87	B		
ST-3585	ANR Pipeline Co	Consumers Power Co	08-06-87	B		
ST-3586	ANR Pipeline Co	Wisconsin Natural Gas Co	08-06-87	B		
ST-3587	ANR Pipeline Co	Michigan Gas Utilities Co	08-06-87	B		
ST-3588	ANR Pipeline Co	Madison Gas & Electric Co	08-06-87	B		
ST-3589	ANR Pipeline Co	Excel Intrastate Pipeline Co	08-06-87	B		
ST-3590	ANR Pipeline Co	Wisconsin Natural Gas Co	08-06-87	B		
ST-3591	Mountain Fuel Resources, Inc	Mountain Fuel Resources, Inc	08-06-87	B		
ST-3592	Tennessee Gas Pipeline Co	Cranberry Gas Pipeline	08-06-87	B		
ST-3593	Tennessee Gas Pipeline Co	Consolidated Edison Co. of NY, Inc	08-06-87	B		
ST-3594	Tennessee Gas Pipeline Co	Yankee Pipeline Co	08-06-87	B		
ST-3595	Tennessee Gas Pipeline Co	Commonwealth Gas Co	08-06-87	B		
ST-3596	Tennessee Gas Pipeline Co	Southern Connecticut Gas Co	08-06-87	B		
ST87-3597	Tennessee Gas Pipeline Co	Cabot Corp	08-06-87	B		
ST87-3598	Texas Eastern Transmission Corp	Indiana Natural Gas Co	08-06-87	B		
ST87-3599	Texas Eastern Transmission Corp	Mississippi Valley Gas Co	08-06-87	B		
ST87-3600	Texas Eastern Transmission Corp	Southern Connecticut Gas Co	08-06-87	B		
ST87-3601	Texas Eastern Transmission Corp	New Jersey Natural Gas Co., et al	08-06-87	B		
ST87-3602	Texas Eastern Transmission Corp	Elizabethtown Gas Co	08-06-87	B		
ST87-3603	Texas Eastern Transmission Corp	Philadelphia Electric Co	08-06-87	B		
ST87-3604	Texas Eastern Transmission Corp	Niagara Mohawk Power Corp	08-06-87	B		
ST87-3605	Transok, Inc	Natural Gas Pipeline Co. of America	08-06-87	C	1-03-88	26.25
ST87-3606	Natural Gas Pipeline Co. of America	Illinois Power Co	08-07-87	B		
ST87-3607	Natural Gas Pipeline Co. of America	City of Richmond	08-07-87	B		
ST87-3608	Natural Gas Pipeline Co. of America	Virginia Natural Gas Co	08-07-87	B		
ST87-3609	Natural Gas Pipeline Co. of America	Mountaineer Gas Co	08-07-87	B		
ST87-3610	Natural Gas Pipeline Co. of America	Baltimore Gas and Electric Co	08-07-87	B		
ST87-3611	Algonquin Gas Transmission Co	Connecticut Light & Power Co	08-07-87	B		
ST87-3612	Algonquin Gas Transmission Co	Connecticut Natural Gas Corp	08-07-87	B		
ST87-3613	Algonquin Gas Transmission Co	Connecticut Light & Power Co	08-07-87	B		
ST87-3614	Algonquin Gas Transmission Co	Connecticut Light & Power Co	08-07-87	B		
ST87-3615	Algonquin Gas Transmission Co	Fall River Gas Co	08-07-87	B		
ST87-3616	Algonquin Gas Transmission Co	Connecticut Light & Power Co	08-07-87	B		
ST87-3617	Algonquin Gas Transmission Co	Boston Gas Co	08-07-87	B		
ST87-3618	Algonquin Gas Transmission Co	Bay State Gas Co	08-07-87	B		
ST87-3619	Algonquin Gas Transmission Co	City of Norwich	08-07-87	B		
ST87-3620	Algonquin Gas Transmission Co	Orange and Rockland Utilities, Inc	08-07-87	B		
ST87-3621	Algonquin Gas Transmission Co	Connecticut Natural Gas Corp	08-07-87	B		
ST87-3622	Algonquin Gas Transmission Co	Connecticut Natural Gas Corp	08-07-87	B		
ST87-3623	Algonquin Gas Transmission Co	Southern Connecticut Gas Co	08-07-87	B		
ST87-3624	Algonquin Gas Transmission Co	Town of Middleborough	08-07-87	B		
ST87-3625	Algonquin Gas Transmission Co	Connecticut Light & Power Co	08-07-87	B		
ST87-3626	Algonquin Gas Transmission Co	Southern Connecticut Gas Co	08-07-87	B		
ST87-3627	Algonquin Gas Transmission Co	Boston Gas Co	08-07-87	B		
ST87-3628	Algonquin Gas Transmission Co	Commonwealth Gas Co	08-07-87	B		
ST87-3629	Algonquin Gas Transmission Co	Colonial Gas Company	08-07-87	B		
ST87-3630	Algonquin Gas Transmission Co	Commonwealth Gas Co	08-07-87	B		
ST87-3631	Algonquin Gas Transmission Co	Boston Gas Co	08-07-87	B		
ST87-3632	Algonquin Gas Transmission Co	Bay State Gas Co	08-07-87	B		
ST87-3633	Algonquin Gas Transmission Co	Providence Gas Co	08-07-87	B		
ST87-3634	Algonquin Gas Transmission Co	Bay State Gas Co	08-07-87	B		
ST87-3635	Algonquin Gas Transmission Co	Boston Gas Co	08-07-87	B		
ST87-3636	Algonquin Gas Transmission Co	Orange and Rockland Utilities, Inc	08-07-87	B		
ST87-3637	Algonquin Gas Transmission Co	Consolidated Edison Co. of NY, Inc	08-07-87	B		
ST87-3638	Algonquin Gas Transmission Co	Connecticut Light & Power Co	08-06-87	B		
ST87-3639	Algonquin Gas Transmission Co	Connecticut Light & Power Co	08-07-87	B		
ST87-3640	Algonquin Gas Transmission Co	Connecticut Light & Power Co	08-07-87	B		
ST87-3641	Algonquin Gas Transmission Co	Connecticut Light & Power Co	08-07-87	B		
ST87-3642	Algonquin Gas Transmission Co	City of Norwich	08-07-87	B		
ST87-3643	ANR Pipeline Co	Northwestern Indian Public Service Co	08-07-87	B		
ST87-3644	ANR Pipeline Co	Southeastern Michigan Gas Co	08-07-87	B		
ST87-3645	ANR Pipeline Co	Iowa Electric Light & Power Co	08-07-87	B		
ST87-3646	ANR Pipeline Co	Wisconsin Public Service Co	08-07-87	B		
ST87-3647	ANR Pipeline Co	Wisconsin Natural Gas Co	08-07-87	B		
ST87-3648	ANR Pipeline Co	Northern Intrastate Pipeline Co	08-07-87	B		
ST87-3649	ANR Pipeline Co	Michigan Consolidated Gas Co	08-07-87	B		
ST87-3650	ANR Pipeline Co	South Carolina Pipeline Corp	08-07-87	B		
ST87-3651	ANR Pipeline Co	Consumers Power Co	08-07-87	B		
ST87-3652	ANR Pipeline Co	Wisconsin Public Service Co	08-07-87	B		
ST87-3653	ANR Pipeline Co	Long Island Lighting Co	08-07-87	B		
ST87-3654	ANR Pipeline Co	Wisconsin Natural Gas Co	08-07-87	B		
ST87-3655	ANR Pipeline Co	Wisconsin Public Service Co	08-07-87	B		

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date[2]	Transportation rate (¢/MMBTU)
ST87-3656	ANR Pipeline Co	Central Illinois Light Co	08-07-87	B		
ST87-3657	ANR Pipeline Co	NGC Intrastate Pipeline Co	08-07-87	B		
ST87-3658	ANR Pipeline Co	Wisconsin Natural Gas Co	08-07-87	B		
ST87-3659	ANR Pipeline Co	Wisconsin Public Service Co	08-07-87	B		
ST87-3660	ANR Pipeline Co	Wisconsin Power and Light Co	08-07-87	B		
ST87-3661	ANR Pipeline Co	Michigan Consolidated Gas Co	08-07-87	B		
ST87-3662	ANR Pipeline Co	Wisconsin Public Service Co	08-07-87	B		
ST87-3663	Colorado Interstate Gas Co	Quivira Gas Co	08-07-87	B		
ST87-3664	Colorado Interstate Gas Co	Quivira Gas Co	08-07-87	B		
ST87-3665	Colorado Interstate Gas Co	Southern California Gas Co	08-07-87	B		
ST87-3666	Colorado Interstate Gas Co	Southern California Gas Co	08-07-87	B		
ST87-3667	Columbia Gas Transmission Corp	Gas Transport, Inc	08-07-87	B		
ST87-3668	Columbia Gas Transmission Corp	Claysville Natural Gas Company	08-07-87	B		
ST87-3669	Columbia Gas Transmission Corp	Johnson County Gas Co., Inc	08-07-87	B		
ST87-3670	Columbia Gas Transmission Corp	Nycotex Gas Transport	08-07-87	B		
ST87-3671	Columbia Gulf Transmission Co	Nashville Gas Co	08-07-87	B		
ST87-3672	El Paso Natural Gas Co	Pacific Gas and Electric Co	08-07-87	B		
ST87-3673	El Paso Natural Gas Co	Southern California Gas Co	08-07-87	B		
ST87-3674	El Paso Natural Gas Co	Pacific Gas and Electric Co	08-07-87	B		
ST87-3675	El Paso Natural Gas Co	Southwest Gas Corp	08-07-87	B		
ST87-3676	Gas Transport, Inc	Parkersburg Sanitary Bd, Parkersburg	08-07-87	G-EU		
ST87-3677	Northern Natural Gas Co	Southern California Gas Co	08-07-87	B		
ST87-3678	Northern Natural Gas Co	Houston Pipe Line Co	08-07-87	B		
ST87-3679	Washington Gas Light Co		08-07-87	C	1-04-88	21.70
ST87-3680	Washington Gas Light Co		08-07-87	C	1-04-88	21.10
ST87-3681	Williams Natural Gas Co	Kansas Power and Light Co	08-07-87	B		
ST87-3682	ANR Pipeline Co	City of New Boston	08-10-87	B		
ST87-3683	ANR Pipeline Co	Columbia Gas of Pennsylvania, Inc	08-10-87	B		
ST87-3684	ANR Pipeline Co	Wisconsin Gas Co	08-10-87	B		
ST87-3685	ANR Pipeline Co	Michigan Gas Utilities Co	08-10-87	B		
ST87-3686	ANR Pipeline Co	North Central Public Service Co	08-10-87	B		
ST87-3687	ANR Pipeline Co	Northern Indiana Fuel & Light Co	08-10-87	B		
ST87-3688	ANR Pipeline Co	Wisconsin Natural Gas Co	08-10-87	B		
ST87-3689	ANR Pipeline Co	Consumers Power Co	08-10-87	B		
ST87-3690	ANR Pipeline Co	City of Unionville	08-10-87	B		
ST87-3691	ANR Pipeline Co	Central Illinois Light Co	08-10-87	B		
ST87-3692	ANR Pipeline Co	City of Milan	08-10-87	B		
ST87-3693	ANR Pipeline Co	Consumers Power Co	08-10-87	B		
ST87-3694	ANR Pipeline Co	Wisconsin Public Service Co	08-10-87	B		
ST87-3695	ANR Pipeline Co	Wisconsin Natural Gas Co	008-10-87	B		
ST87-3696	ANR Pipeline Co	Wisconsin Natural Gas Co	08-10-87	B		
ST87-3697	ANR Pipeline Co	Michigan Power Co	08-10-87	B		
ST87-3698	Blue Dolphin Pipe Line Co	Dow Chemical Co	08-10-87	G-EU		
ST87-3699	Columbia Gulf Transmission Co	Monterey Pipeline Co	08-10-87	B		
ST87-3700	Gas Gathering Corp	Southern Natural Gas Co	08-10-87	G		
ST87-3701	Panhandle Eastern Pipe Line Co	Michigan Consolidated Gas Co	08-10-87	B		
ST87-3702	Sea Robin Pipeline Co	Columbia Gas of Pennsylvania, Inc	08-10-87	B		
ST87-3703	Texas Eastern Transmission Corp	Public Service Electric and Gas Co	08-10-87	B		
ST87-3704	United Gas Pipe Line Co	South Carolina Pipeline Corp	08-10-87	B		
ST87-3705	United Gas Pipe Line Co	Boston Gas Co., et al	08-10-87	B		
ST87-3706	United Gas Pipe Line Co	Alabama Gas Corp., et al	08-10-87	B		
ST87-3707	United Gas Pipe Line Co	Pine Pipeline Co	08-10-87	B		
ST87-3708	Acadian Gas Pipeline System	Transcontinental Gas Pipe Line Corp	08-11-87	C	01-08-88	15.50
ST87-3709	Acadian Gas Pipeline System	Transcontinental Gas Pipe Line Corp	08-11-87	C	01-08-88	15.50
ST87-3710	Acadian Gas Pipeline System	Florida Gas Transmission Co	08-11-87	C	01-08-88	15.50
ST87-3711	Acadian Gas Pipeline System	Piedmont Natural Gas Co	08-11-87	C	01-08-88	15.50
ST87-3712	Natural Gas Pipeline Co. of America	Central Illinois Light Co	08-11-87	B		
ST87-3713	Natural Gas Pipeline Co. of America	Iowa Southern Utilities Co	08-11-87	B		
ST87-3714	Michigan Gas Storage Co	Michigan Gas Utilities Co	08-11-87	B		
ST87-3715	Tennessee Gas Pipeline Co	Washington Gas Light Co., et al	08-11-87	B		
ST87-3716	Williams Natural Gas Co	Louisiana Gas Marketing Co	08-11-87	B		
ST87-3717	El Paso Natural Gas Co	El Paso Gas Transportation Co	08-12-87	B		
ST87-3718	Natural Gas Pipeline Co. of America	Midwest Gas Co., et al	08-12-87	B		
ST87-3719	Natural Gas Pipeline Co. of America	North Shore Gas Co	08-12-87	B		
ST87-3720	Natural Gas Pipeline Co. of America	Iowa-Illinois Gas & Electric Co., et al	08-12-87	B		
ST87-3721	Tennessee Gas Pipeline Co	Valley Gas Co	08-12-87	D		
ST87-3722	Tennessee Gas Pipeline Co	Pennsylvania Gas and Water Co	08-12-87	B		
ST87-3723	Valero Transmission, L.P	Texas Eastern Transmission Co	08-12-87	C		
ST87-3724	Valero Transmission, L.P	El Paso Natural Gas Co	08-12-87	C		
ST87-3725	Taft Pipeline Co	Yankee Pipeline Co	08-12-87	C	01-09-88	09.60
ST87-3726	Taft Pipeline Co	Northern Natural Gas Co	08-12-87	C	01-09-88	09.60
ST87-3727	Somerset Gas Service	Columbia Gulf Transmission Co	07-28-87	C		
ST87-3728	Somerset Gas Service	Texas Eastern Transmission Corp	07-28-87	C		
ST87-3729	Arkla Energy Resources	New York State Electric and Gas Co	08-13-87	B		
ST87-3730	Natural Gas Pipeline Co. of America	Peoples Gas Light & Coke Co	08-13-87	B		
ST87-3731	Panhandle Eastern Pipe Line Co	Consumers Powr Co	08-13-87	B		
ST87-3732	Tennessee Gas Pipeline Co	Pennsylvania Gas and Water Co	08-13-87	B		
ST87-3733	El Paso Natural Gas Co	Pacific Gas and Electric Co	08-14-87	B		
ST87-3734	El Paso Natural Gas Co	Pacific Gas and Electric Co	08-14-87	B		
ST87-3735	El Paso Natural Gas Co	Pacific Gas and Electric Co	08-14-87	B		
ST87-3736	El Paso Natural Gas Co	Llano, Inc	08-14-87	B		
ST87-3737	El Paso Natural Gas Co	Southern California Gas Co	08-14-87	B		
ST87-3738	El Paso Natural Gas Co	Westar Transmission Co	08-14-87	B		
ST87-3739	Northern Natural Gas Co	Westar Transmission Co	08-14-87	B		
ST87-3740	Ong Transmission Co	ANR Pipeline Co	08-14-87	C	01-11-88	10.00
ST87-3741	Texas Gas Transmission Corp	Neches Gas Distribution Co	08-14-87	B		
ST87-3742	Texas Gas Transmission Corp	Northern Intrastate Pipeline Co	08-14-87	B		
ST87-3743	Texas Gas Transmission Corp	Northern Indiana Fuel & Light Co	08-14-87	B		
ST87-3744	Williams Natural Gas Co	Kansas Power and Light Co	08-14-87	B		
ST87-3745	Williams Natrual Gas Co	Associated Intrastate Pipeline Co	08-14-87	B		
ST87-3746	Tennessee Gas Pipeline Co	Connecticut Natural Gas Co., et al	08-14-87	B		
ST87-3747	Tennessee Gas Pipeline Co	Baltimore Gas & Electric Co., et al.,	08-14-87	B		

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date[2]	Transportation rate (¢/MMBTU)
ST87-3748	ANR Pipeline Co	Associated Natrual Gas Co	08-14-87	B		
ST87-3749	ANR Pipeline Co	Wisconsin Public Service Co	08-14-87	B		
ST87-3750	ANR Pipeline Co	Northern Indiana Public Service Co	08-14-87	B		
ST87-3751	ANR Pipeline Co	Northern Indiana Public Service Co	08-14-87	B		
ST87-3752	Colorado Interstate Gas Co	Pacific Gas and Electric Co	08-14-87	B		
ST87-3753	ANR Pipeline Co	Wisconsin Public Service Co	08-14-87	B		
ST87-3754	ANR Pipeline Co	Columbia Gas of Ohio, Inc.	08-14-87	B		
ST87-3755	ANR Pipeline Co	Fountaintown Gas Co	08-14-87	B		
ST87-3756	ANR Pipeline Co	Yankee Pipeline Co	08-14-87	B		
ST87-3757	ANR Pipeline Co	Madison Gas & Electric Co	08-14-87	B		
ST87-3758	ANR Pipeline Co	St. Joseph Light & Power Co	08-14-87	B		
ST87-3759	ANR Pipeline Co	Michigan Power Co	08-14-87	B		
ST87-3760	ANR Pipeline Co	Iowa Southern Utilities Co	08-14-87	B		
ST87-3761	ANR Pipeline Co	Lamoni Municipal Utilities	08-14-87	B		
ST87-3762	ANR Pipeline Co	Michigan Consolidated Gas Co	08-14-87	B		
ST87-3763	ANR Pipeline Co	Columbia Gas of Pennsylvania, Inc.	08-14-87	B		
ST87-3764	ANR Pipeline Co	Ohio Gas Co	08-14-87	B		
ST87-3765	ANR Pipeline Co	Louisiana Gas Maraketing Co	08-14-87	B		
ST87-3766	ANR Pipeline Co	Michigan Consolidated Gas Co	08-14-87	B		
ST87-3767	Columbia Gulf Transmission Co	Northern Natural Gas Co	08-17-87	G		
ST87-3768	Mid Louisiana Gas Co	Excel Intrastate Pipeline Co	08-17-87	B		
ST87-3769	Northern Natural Gas Co	Houston Pipe Line Co	08-17-87	B		
ST87-3770	ANR Pipeline Co	Wisconsin Public Service Co	08-17-87	B		
ST87-3771	ANR Pipeline Co	Wisconsin Gas Co	08-17-87	B		
ST87-3772	ANR Pipeline Co	City of Aledo	08-17-87	B		
ST87-3773	ANR Pipeline Co	Paris Henry Co. Public Utility Dist	08-17-87	B		
ST87-3774	ANR Pipeline Co	City of Princeton	08-17-87	B		
ST87-3775	ANR Pipeline Co	Northern Indiana Public Service Co	08-17-87	B		
ST87-3776	ANR Pipeline Co	Wisconsin Public Service Co	08-17-87	B		
ST87-3777	ANR Pipeline Co	Michigan Consolidated Gas Co	08-17-87	B		
ST87-3778	ANR Pipeline Co	Northern Indiana Public Service Co	08-17-87	B		
ST87-3779	ANR Pipeline Co	Wicsonsin Natural Gas Co	08-17-87	B		
ST87-3780	ANR Pipeline Co	Wisconsin Public Service Co	08-17-87	B		
ST87-3781	ANR Pipeline Co	Wisconsin Fuel and Light Co	08-17-87	B		
ST87-3782	ANR Pipeline Co	Northern Illinois Gas Co	08-17-87	B		
ST87-3783	ANR Pipeline Co	Michigan Power Co	08-17-87	B		
ST87-3784	ANR Pipeline Co	West Ohio Gas Co	08-17-87	B		
ST87-3785	ANR Pipeline Co	Wisconsin Public Service Co	08-17-87	B		
ST87-3786	ANR Pipeline Co	Louisiana Industrial Gas Supply System	08-17-87	B		
ST87-3787	ANR Pipeline Co	Bridgeline Gas Distribution Co	08-17-87	B		
ST87-3788	ANR Pipeline Co	Great River Gas Co	08-17-87	B		
ST87-3789	ANR Pipeline Co	Missouri Valley Natural Gas Co	08-17-87	B		
ST87-3790	Tennessee Gas Pipeline Co	Consolidated Edison Co. of NY, Inc	08-17-87	B		
ST87-3791	Tennessee Gas Pipeline Co	Baltimore Gas & Electric Co., et al.	08-17-87	B		
ST87-3792	Tennessee Gas Pipeline Co	Mountaineer Gas Co., et al.	08-17-87	B		
ST87-3793	Tennessee Gas Pipeline Co	Southern Connecticut Gas Co	08-17-87	B		
ST87-3794	Tennessee Gas Pipeline Co	Berkshire Gas Co	08-17-87	B		
ST87-3795	Williams Natural Gas Co	Associated Intrastate Pipeline Co	08-17-87	B		
ST87-3796	Williams Natural Gas Co	Kansas Power and Light Co	08-17-87	B		
ST87-3797	Williams Natural Gas Co	Peoples Natural Gas Co	08-17-87	B		
ST87-3798	Williams Natural Gas Co	City of Osage City	08-18-87	B		
ST87-3799	Arkla Energy Resources	Southern Connecticut Gas Co	08-18-87	B		
ST87-3800	Arkla Energy Resources	Arkansas Louisiana Gas Co	08-18-87	B		
ST87-3801	Arkla Energy Resources	Neches Gas Distribution Co	08-18-87	B		
ST87-3802	Texas Eastern Transmission Corp	City of Norwich	08-19-87	B		
ST87-3803	Texas Eastern Transmission Corp	National Fuel Gas Distribution Corp	08-19-87	B		
ST87-3804	Tennessee Gas Pipeline Co	Connecticut Light & Power Co	08-19-87	B		
ST87-3805	El Paso Natural Gas Co	Southern California Gas Co	08-19-87	B		
ST87-3806	Williams Natural Gas Co	Taft Pipeline Co	08-19-87	B		
ST87-3807	Panhandle Eastern Pipe Line Co	Columbia Gas of Va, Inc., et al	08-19-87	B		
ST87-3808	Panhandle Eastern Pipe Line Co	Unioln Electric Co	08-19-87	B		
ST87-3809	Panhandle Eastern Pipe Line Co	Ohio Gas Co	08-19-87	B		
ST87-3810	Panhandle Eastern Pipe Line Co	Bishop Pipeline Corp	08-19-87	B		
ST87-3811	Panhandle Eastern Pipe Line Co	Miami Pipeline Co	08-19-87	B		
ST87-3812	Panhandle Eastern Pipe Line Co	Northern Indiana Public Service Co	08-19-87	B		
ST87-3813	Panhandle Eastern Pipe Line Co	Northern Indiana Public Service Co	08-19-87	B		
ST87-3814	Panhandle Eastern Pipe Line Co	Michigan Gas Utilities Co	08-19-87	B		
ST87-3815	Panhandle Eastern Pipe Line Co	Battle Creek Gas Co	08-19-87	B		
ST87-3816	ANR Pipeline Co	Consumers Power Co	08-19-87	B		
ST87-3817	ANR Pipeline Co	Great River Gas Co	08-19-87	B		
ST87-3618	ANR Pipeline Co	City of Albany	08-19-87	B		
ST87-3819	ANR Pipeline Co	Wisconsin Natural Gas Co	08-19-87	B		
ST87-3820	ANR Pipeline Co	Wisconsin Public Service Co	08-19-87	B		
ST87-3821	ANR Pipeline Co	Columbia Gas of Ohio, Inc	08-19-87	B		
ST87-3822	ANR Pipeline Co	Consumers Power Co	08-19-87	B		
ST87-3823	ANR Pipeline Co	Llano, Inc	08-19-87	B		
ST87-3824	ANR Pipeline Co	Consumers Power Co	08-19-87	B		
ST87-3825	ANR Pipeline Co	Wisconsin Public Service Co	08-19-87	B		
ST87-3826	ANR Pipeline Co	Ohio Gas Co	08-19-87	B		
ST87-3827	Louisiana Intrastate Gas Corp	Southern Natural Gas Co	08-20-87	C	1-17-88	27.40
ST87-3828	Trunkline Gas Co	Consumers Power Co	08-20-87	B		
ST87-3829	Houston Pipe Line Co	Texas Estern Transmission Corp	08-20-87	C		
ST87-3830	Houston Pipe Line Co	Southern Natural Gas Co	08-20-87	C		
ST87-3831	Houston Pipe Line Co	Public Service Electric and Gas Co	08-20-87	C		
ST87-3832	Houston Pipe Line Co	El Paso Natural Gas Co	08-20-87	C		
ST87-3833	Oasis Pipe Line Co	El Paso Natural Gas Co	08-20-87	C		
ST87-3834	Tennessee Gas pipeline Co	Pontchartrain Natural Gas System	08-20-87	B		
ST87-3835	Panhandle Eastern Pipe Line Co	Columbia Gas of Ohio, Inc	08-20-87	B		
ST87-3836	Tennessee Gas Pipeline Co	Quivira Gas Co	08-21-87	B		
ST87-3837	Sea Robin Pipeline Co	Washington Gas Light Co., et al	08-21-87	B		
ST87-3838	United Gas Pipe Line Co	Clajon Gas Co	08-21-87	B		
ST87-3839	United Gas Pipe Line Co	Supenn Pipeline Co	08-21-87	B		

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ST87-3840	United Gas Pipe Line Co	Clajon Gas Co	08-21-87	B		
ST87-3841	Tennessee Gas Pipeline Co	Southern Natural Gas Co	08-24-87	G		
ST87-3842	Tennessee Gas Pipeline Co	Peoples Gas Light and Coke Co., et al	08-24-87	B		
ST87-3843	Valley Gas Transmission, Inc	Southern Connecticut Gas Co., et al	08-24-87	B		
ST87-3844	Trunkline Gas Co	Consumers Power Co	08-24-87	B		
ST87-3845	Trunkline Gas Co	Consumers Power Co	08-24-87	B		
ST87-3846	Panhandle Eastern Pipe Line Co	Columbia Gas of Pa., Inc., et al	08-24-87	B		
ST87-3847	Texas Eastern Transmission Corp	Orange and Rockland Utilities, Inc	08-24-87	B		
ST87-3848	Texas Eastern Trnsmission Corp	Pulic Service Electric and Gas Co	08-24-87	B		
ST87-3849	Texas Eastern Transmission Corp	Boston Gas Co	08-24-87	B		
ST87-3850	Texas Eastern Transmission Corp	Connecticut Natural Gas Corp	08-24-87	B		
ST87-3851	Texas Eastern Transmission Corp	Colonial Gas Company	08-24-87	B		
ST87-3852	ANR Pipeline Co	SoutheasternMichigan Gas Co	08-24-87	B		
ST87-3853	Trunkline Gas Co	Consumers Power Co	08-24-87	B		
ST87-3854	ANR Pipeline Co	Michigan Consolidated Gas Co	08-24-87	B		
ST87-3855	ANR Pipeline Co	Wisconsin Power and Light Co	08-24-87	B		
ST87-3856	ANR Pipeline Co	Madison Gas & Electric Co	08-24-87	B		
ST87-3857	ANR Pipeline Co	Wisconsin Public Service Co	08-24-87	B		
ST87-3858	ANR Pipeline Co	Wisconsin Public Service Co	08-24-87	B		
ST87-3859	ANR Pipeline Co	Peoples Natural Gas Co	08-24-87	B		
ST87-3860	ANR Pipeline Co	Acadian Gas Pipeline System	08-24-87	B		
ST87-3861	ANR Pipeline Co	Michigan Consolidated Gas Co	08-24-87	B		
ST87-3862	ANR Pipeline Co	Michigan Gas Utilities Co	08-24-87	B		
ST87-3863	ANR Pipeline Co	Northern Indiana Public Service Co	08-24-87	B		
ST87-3864	ANR Pipeline Co	Madison Gas & Electric Co	08-24-87	B		
ST87-3865	ANR Pipeline Co	Michigan Consolidated Gas Co	08-24-87	B		
ST87-3866	ANR Pipeline Co	Llano, Inc	08-24-87	B		
ST87-3867	ANR Pipeline Co	Wisconsin Natural Gas Co	08-24-87	B		
ST87-3868	ANR Pipeline Co	Wisconsin Natural Gas Co	08-24-87	B		
ST87-3869	ANR Pipeline Co	Wisconsin Natural Gas Co	08-24-87	B		
ST87-3870	ANR Pipeline Co	Coastal States Gas Transmission Co	08-24-87	B		
ST87-3871	ANR Pipeline Co	Wisconsin Natural Gas Co	08-24-87	B		
ST87-3872	ANR Pipeline Co	Michigan Gas Utilities Co	08-24-87	B		
ST87-3873	ANR Pipeline Co	Wisconsin Natural Gas Co	08-24-87	B		
ST87-3874	Acadian Gas Pipeline System	ANR Pipeline Co	08-25-87	C	01-22-88	15.50
ST87-3875	Panhandle Eastern Pipe Line Co	Columbia Gas of Pa, Inc., et al	08-25-87	B		
ST87-3876	Tennessee Gas Pipeline Co	Alabama Gas Corp., et al	08-25-87	B		
ST87-3877	Tennessee Gas Pipeline Co	Baltimore Gas & Electric Co., et al	08-25-87	B		
ST87-3878	Trunkline Gas Co	Consumers Power Co	08-25-87	B		
ST87-3879	Trunkline Gas Co	Consumers Power Co	08-25-87	B		
ST87-3880	Trunkline Gas Co	Consumers Power Co	08-25-87	B		
ST87-3881	United Gas Pipe Line Co	Eastex Gas Transmission Co	08-25-87	B		
ST87-3882	Williams Natural Gas Co	Yankee Pipeline Co	08-25-87	B		
ST87-3883	Wiliams Natural Gas Co	KPL Gas Service Co	08-25-87	B		
ST87-3884	Williams Natural Gas Co	Golden Gas Energies, Inc	08-25-87	B		
ST87-3885	ANR Pipeline Co	Ohio Gas Co	08-25-87	B		
ST87-3886	ANR Pipeline Co	Michigan Consolidated Gas Co	08-25-87	B		
ST87-3887	ANR Pipeline Co	Michigan Consolidated Gas Co	08-25-87	B		
ST87-3888	El Paso Natural Gas Co	Southern California Gas Co	08-25-87	B		
ST87-3889	El Paso Natural Gas Co	Battle Creek Gas Co., et al	08-25-87	B		
ST87-3890	El Paso Natural Gas Co	Southern California Gas Co	08-25-87	B		
ST87-3891	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	08-26-87	B		
ST87-3892	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	08-26-87	B		
ST87-3893	Consolidated Gas Transmission Corp	Peoples Natural Gas Co	08-26-87	B		
ST87-3894	Consolidated Gas Transmission Corp	Peoples Natural Gas Co	08-26-87	B		
ST87-3895	Consolidated Gas Transmission Corp	New York State Electric and Gas Co	08-26-87	B		
ST87-3896	Consolidated Gas Transmission Corp	New York State Electric and Gas Co	08-26-87	B		
ST87-3897	Consolidated Gas Transmission Corp	North Penn Gas Co	08-26-87	B		
ST87-3898	Consolidated Gas Transmission Corp	Hope Gas, Inc.	08-26-87	B		
ST87-3899	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	08-26-87	B		
ST87-3900	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	08-26-87	B		
ST87-3901	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	08-26-87	B		
ST87-3902	Consolidated Gas Transmission Corp	Niagara Mohawk power Corp	08-26-87	B		
ST87-3903	Consolidated Gas Transmission Corp	New York State Electric and Gas Co	08-26-87	B		
ST87-3904	Consolidated Gas Transmission Corp	New York State Electric and Gas Co	08-26-87	B		
ST87-3905	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	08-26-87	B		
ST87-3906	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	08-26-87	B		
ST87-3907	Northern Natural Gas Co	Panhandle Gas Co	08-26-87	B		
ST87-3908	Tennessee Gas Pipeline Co	Commonwealth Gas Co	08-26-87	B		
ST87-3909	Tennessee Gas Pipeline Co	Quivira Gas Co	08-26-87	B		
ST87-3910	Tennessee Gas Pipeline Co	NGC Intrastate Pipeline Co	08-26-87	B		
ST87-3911	Tennessee Gas Pipeline Co	UGI Corp	08-26-87	B		
ST87-3912	Texas Eastern Transmission Corp	Southern Connecticut Gas Co	08-26-87	B		
ST87-3913	Texas Eastern Transmission Corp	Providence Gas Co., et al	08-26-87	B		
ST87-3914	Texas Eastern Transmission Corp	Connecticut Natural Gas Corp	08-26-87	B		
ST87-3915	Trunkline Gas Co	Consumers Power Co	08-26-87	B		
ST87-3916	Trunkline Gas Co	Southeastern Michigan Gas Co	08-26-87	B		
ST87-3917	Trunkline Gas Co	Consumers Power Co	08-26-87	B		
ST87-3918	Trunkline Gas Co	Consumers Power Co	08-26-87	B		
ST87-3919	Williams Natural Gas Co	City of Humboldt	08-26-87	B		
ST87-3920	Arkla Energy Resources	Phillips Natural Gas. Co	08-27-87	B		
ST87-3921	Arkla Energy Resources	Connecticut Natural Gas Corp	08-27-87	B		
ST87-3922	Equitable Gas Co	Columbia Gas Transmission Corp	08-27-87	B		
ST87-3923	Tennessee Gas Pipeline Co	City of Richmond, et al	08-27-87	B		
ST87-3924	Tennessee Gas Pipeline Co	West Tennessee Public Utility Dist	08-27-87	B		
ST87-3925	Texas Gas Transmission Corp	City of Linton	08-27-87	B		
ST87-3926	Texas Gas Transmission Corp	CSX Intrastate Gas Co	08-27-87	B		
ST87-3927	Texas Gas Transmission Corp	Western Kentucky Gas Co	08-27-87	B		
ST87-3928	Texas Gas Transmission Corp	Western Kentucky Gas Co	08-27-87	B		
ST87-3929	Texas Gas Transmission Corp	Memphis Light, Gas & Water Div., et al	08-27-87	B		
ST87-3930	Texas Gas Transmission Corp	Western Kentucky Gas Co	08-27-87	B		
ST87-3931	Texas Gas Transmission Corp	Indiana Gas Co. Inc	08-27-87	B		

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date[2]	Transportation rate (¢/MMBTU)
ST87-3932	Texas Gas Transmission Corp	Hoosier Gas Corp	08-27-87	B		
ST87-3933	Texas Gas Transmission Corp	Baltimore Gas & Electric Co., et al.	08-27-87	B		
ST87-3934	Texas Gas Transmission Corp	Hoosier Gas Corp	08-27-87	B		
ST87-3935	Algonquin Gas Transmission Co	Connecticut Light & Power Co	08-28-87	B		
ST87-3936	Algonquin Gas Transmission Co	Connecticut Light & Power Co	08-28-87	B		
ST87-3937	Algonquin Gas Transmission Co	Connecticut Light & Power Co	08-28-87	B		
ST87-3938	Algonquin Gas Transmission Co	Commonwealth Gas Co	08-28-87	B		
ST87-3939	Algonquin Gas Transmission Co	North Attleboro Gas Co	08-28-87	B		
ST87-3940	Algonquin Gas Transmission Co	Fall River Gas Co	08-28-87	B		
ST87-3941	Algonquin Gas Transmission Co	Providence Gas Co	08-28-87	B		
ST87-3942	Algonquin Gas Transmission Co	Connecticut Light & Power Co	08-28-87	B		
ST87-3943	Algonquin Gas Transmission Co	Connecticut Light & Power Co	08-28-87	B		
ST87-3944	Algonquin Gas Transmission Co	Connecticut Natural Gas Corp	08-28-87	B		
ST87-3945	Algonquin Gas Transmission Co	Southern Connecticut Gas Co	08-28-87	B		
ST87-3946	Algonquin Gas Transmission Co	Colonial Gas Company	08-28-87	B		
ST87-3947	Algonquin Gas Transmission Co	Town of Middleborough	08-2-87	B		
ST87-3948	Algonquin Gas Transmission Co	Orange and Rockland Utilities, Inc.	08-28-87	B		
ST87-3949	Algonquin Gas Transmission Co	Bay State Gas Co	08-28-87	B		
ST87-3950	Algonquin Gas Transmission Co	Connecticut Light & Power Co	08-28-87	B		
ST87-3951	Algonquin Gas Transmission Co	Southern Connecticut Gas Co	06-28-87	B		
ST87-3952	Algonquin Gas Transmission Co	Connecticut Light & Power co	08-28-87	B		
ST87-3953	Algonquin Gas Transmission Co	Central Hudson Gas and Electric Co	08-28-87	B		
ST87-3954	Algonquin Gas Transmission Co	Orange and Rockland Utilities, Inc.	08-28-87	B		
ST87-3955	Algonquin Gas Transmission Co	Providence Gas Co	08-28-87	B		
ST87-3956	Algonquin Gas Transmission Co	Southern Connecticut Gas Co	08-28-87	B		
ST87-3957	Algonquin Gas Transmission Co	Providence Gas.	08-28-87	B		
ST87-3958	Algonquin Gas Transmission Co	North Attleboro Gas Co	08-28-87	B		
ST87-3959	Algonquin Gas Transmission Co	Connecticut Light & Power Co	08-28-87	B		
ST87-3960	Algonquin Gas Transmission Co	Colonial Gas Company	08-28-87	B		
ST87-3961	Algonquin Gas Transmission Co	Central Hudson Gas and Electric Co	08-28-87	B		
ST87-3962	Algonquin Gas Transmission Co	Connecticut Natural Gas Corp	08-28-87	B		
ST87-3963	Algonquin Gas Transmission Co	Commonwealth Gas Co	08-28-87	B		
ST87-3964	El Paso Natural Gas Co	Southern California Gas Co	08-28-87	B		
ST87-3965	Northern Natural Gas Co	Peoples Natural Gas Co	08-28-87	B		
ST87-3966	Seagull Energy Corp	Transcontinental Gas Pipe Line Corp	08-28-87	C		
ST87-3967	Superior Offshore Pipeline Co	Tennessee River Intra. Gas Co., et al.	08-28-87	B		
ST87-3968	Transcontinental Gas Pipe Line Corp	Yankee Taft Co	08-28-87	B		
ST87-3969	Transcontinental Gas Pipe Line Corp	Rockland Corp	08-28-87	B		
ST87-3970	Columbia Gulf Transmission Co	Southern Natural Gas Co	08-31-87	G		
ST87-3971	Columbia Gulf Transmission Co	Florida Gas Transmission Co	08-31-87	G		
ST87-3972	Delhi Gas Pipeline Corp	Texas Gas Transmission Corp	08-31-87	C		
ST87-3973	Enogex Inc.		06-31-87	C	1-28-88	28.50
ST87-3974	Enogex Inc.		08-31-87	C	1-28-88	28.50
ST87-3975	Northern Natural Gas Co	Northern Illinois Gas Co	08-31-87	B		
ST87-3976	Northern Natural Gas Co	Iowa Electric Light & Power Co	08-31-87	B		
ST87-3977	Northern Natural Gas Co	City of Freemont NE	08-31-87	B		
ST87-3978	Northern Natural Gas Co	Enron Industrial Natural Gas Co	08-31-87	B		
ST87-3979	Mississippi River Transmission Corp	Laclede Gas Co	08-31-87	B		
ST87-3980	ONG Transmission Co	Phillips Gas Pipeline Co	08-31-87	C	1-28-88	10.00
ST87-3981	Sabine Pipe Line Co	Longhorn Pipeline Co	08-31-87	B		
ST87-3982	Tennessee Gas Pipeline Co	Florida Gas Transmission Co	08-31-87	G		
ST87-3983	Tennessee Gas Pipeline Co	Commonwealth Gas Co	08-31-87	B		
ST87-3984	Tennessee Gas Pipeline Co	Wellhead Ventures Corp	08-31-87	B		
ST87-3985	Transwestern Pipeline Co	Southern California Gas Co	08-31-87	B		
ST87-3986	Transwestern Pipeline Co	Southern California Gas Co	08-31-87	B		
ST87-3987	Transwestern Pipeline Co	Canadian River Gas Co	08-31-87	B		
ST87-3988	Transwestern Pipeline Co	Southern California Gas Co	08-31-87	B		
ST87-3989	Trunkline Gas Co	Consumers Power Co	08-31-87	B		
ST87-3990	Trunkline Gas Co	Consumers Power Co	08-31-87	B		
ST87-3991	Trunkline Gas Co	Consumers Power Co	08-31-87	B		
ST87-3992	Trunkline Gas Co	Consumers Power Co	08-31-87	B		
ST87-3993	Trunkline Gas Co	Consumers Power Co	08-31-87	B		
ST87-3994	Trunkline Gas Co	Northern Indiana Fuel & Light Co., et al.	08-31-87	B		
ST87-3995	Seagull Energy Corp	Florida Gas Transmission Co	08-31-87	C		
ST87-3996	Northern Natural Gas Co	Amoco Gas Co	08-28-87	B		
ST87-3997	Northern Natural Gas Co	Yankee Pipeline Co	08-28-87	B		
ST87-3998	Northern Natural Gas Co	Rockland Pipeline System	06-28-87	B		
Below are eleven revised petitions for rate approval. They are noticed at this time to give interested parties the appropriate 150-day comment period.						
ST86-1010	Acadian Gas Pipeline System	Columbia Gas Transmission Corp	08-11-87	C	01-08-88	15.50
ST86-1792	Acadian Gas Pipeline System	Columbia Gas Transmission Corp	06-11-87	C	01-08-88	15.50
ST86-2505	Acadian Gas Pipeline System	Louisiana Industrial Gas Supply System	08-11-87	C	01-08-88	15.50
ST87-0430	Acadian Gas Pipeline System	Bridgeline Gas Distribution Co	08-11-87	C	01-08-88	15.50
ST87-0588	Acadian Gas Pipeline System	Tennessee Gas Pipeline Co	08-11-87	C	01-08-88	15.50
ST87-0589	Acadian Gas Pipeline System	Pontchartrain Natural Gas Co	06-11-87	C	01-08-89	15.50
ST87-1126	Acadian Gas Pipeline System	Columbia Gas Transmission Corp	08-11-87	C	01-08-88	15.50
ST87-1525	Acadian Gas Pipeline System	Spindletop Gas Distribution System	08-11-87	C	01-08-88	15.50
ST87-1526	Acadian Gas Pipeline System	Columbia Gas of Ohio, Inc., et al	08-11-87	C	01-08-88	15.50
ST87-1527	Acadian Gas Pipeline System	Florida Gas Transmission Co	08-11-87	C	01-08-88	15.50
ST87-1974	Acadian Gas Pipeline System	Columbia Gas of Ohio, Inc	08-11-87	C	01-08-88	15.50

[1] Notice of transactions does not constitute a determination that filings comply with commission regulations in accordance with Oder No. 436 (final rule and notice requesting supplemental comments, 50 FR 42372, October 18, 1985).

[2] The Intrastate Pipeline has sought commission approval of its transportation rate pursuant to § 284.123(B)(2) of the Commission's regulations (18 CFR 284.123(b)(2)). Such rates are deemed fair and equitable if the Commission does not take action by the date indicated.

[FR Doc. 87-23129 Filed 10-6-87; 8:45 am]
BILLING CODE 6717-01-M

Oil Pipeline Tentative Valuation

October 2, 1987.

The Federal Energy Regulatory Commission by order issued February 10, 1987, established an Oil Pipeline Board and delegated to the Board its functions with respect to the issuance of valuation reports pursuant to section 19a of the Interstate Commerce Act.

Notice is hereby given that tentative valuations are under consideration for the common carrier by pipeline listed below:

1982, 1983 Consolidated Reports
Valuation Docket No. PV-1475-000
Sonat Oil Transmission Inc., P.O. Box 2563, Birmingham, Alabama 35202

On or before November 9, 1987, persons other than those specifically designated in section 19a(h) of the Interstate Commerce Act having an interest in these valuations may file, pursuant to rule 214 of the Federal Energy Regulatory Commission's "Rules of Practice and Procedure" (18 CFR 385.214), an original and three copies of a petition for leave to intervene in these proceedings.

If the petition for leave to intervene is granted the party may thus come within the category of "additional parties as the FERC may prescribe" under section 19a(h) of the Act, thereby enabling it to file a protest. The petition to intervene must be served on the individual company at its address shown above and an appropriate certificate of service must be attached to the petition. Persons specifically designated in section 19a(h) of the Act need not file a petition; they are entitled to file a protest as a matter of right under the statute.

Francis J. Connor,
Administrative Officer, Oil Pipeline Board.

[FR Doc. 87-23130 Filed 10-6-87; 8:45 am]
BILLING CODE 6717-01-M

Western Area Power Administration

Central Valley Project; Proposed Power and Transmission Rates Adjustments, Revenue Adjustment Clause Evidentiary Hearing

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Hearing Procedures on Revenue Adjustment Clause, Western File No. 1988 CVP RAC Hearing; and Extension of the Consultation and Comment Period for the Central Valley Project Proposed Power and Transmission Rates Adjustments.

SUMMARY: On August 4, 1987 (52 FR 28864), the Western Area Power Administration (Western) proposed a power rate decrease and a transmission rate increase for the Central Valley Project (CVP), a multipurpose Federal water project located in northern California. The CVP power rates are set as low as practicable consistent with sound business principles and must, by law, also be sufficient to recover the annual power expenses plus repay the power and certain nonpower investments of the CVP within the prescribed time periods.

Unlike other Western projects, the CVP power marketing program is significantly supported by power purchases made from various sources including utilities in the Pacific Northwest and the Pacific Gas and Electric Company.

As part of the proposed CVP rates for firm power sales, Western has proposed the use of a revenue adjustment clause (RAC) that would periodically adjust for differences between estimated and actual purchased power expenses and, at the same time, adjust for differences between estimated and actual revenue from capacity and energy sales. The net result of these adjustments would be surcharged or credited to the CVP customers' subsequent bills. Adjustments would occur on a 6-month cycle. The limit to any 6-month adjustment would be $15 million overall.

In addition to the basic RAC, Western is proposing an automatic capacity rate adjustment provision. This provision is proposed as a subsection of the RAC and would provide for a specific adjustment to the adopted CVP capacity rate for each megawatt of contract dependable capacity credit received or lost (pursuant to Western's Integration Agreement with the Pacific Gas and Electric Company) for firm power purchases made by Western; provided that such credit had not already been considered in the development of the adopted capacity rate.

The CVP annually sells over 500 million kilowatthours of electric energy for purposes other than resale. Because of the CVP's volume of this type of sale, Western is required to comply with certain provisions of the Public Utility Regulatory Policies Act (PURPA), 16 U.S.C. sections 2601-2645. PURPA sections 2623 and 2625(e) require the nonregulated electric utility to give public notice and conduct an evidentiary hearing, in accordance with the Administrative Procedure Act (APA), 5 U.S.C. sections 500-576, prior to adopting any PURPA standard such as the RAC.

Western will conduct a hearing under PURPA section 2602(6)(B) and the APA, 5 U.S.C. sections 554 and 556-557, in establishing the RAC. Opportunities will be available for interested persons to review the proposed RAC, to participate in the hearing, and to submit written testimony. During the development of the record for the RAC, the Hearing Officer will evaluate all written and oral testimony submitted during the hearing. The Hearing Officer will issue findings of fact and law after all testimony and briefs are submitted.

The document titled "Western Area Power Administration United States Department of Energy Rules of Procedure Governing Public Utility Regulatory Policies Act Hearing" (Procedures) has been prepared specifically for this RAC evidentiary hearing and has been mailed to all CVP customers. A copy of the Procedures will be provided to anyone upon request directed to the Area Manager or the General Counsel listed below.

ADDRESS: All notices of participation or intervention, motions, written testimony, comments, data requests, briefs, letters, or other documents related to the hearing should be addressed to: Hearing Officer, Western Area Power Administration, 1825 Bell Street, Suite 105, Sacramento, CA 95825.

Western requests that all comments and documents submitted as part of the Official Record compiled in the process of developing the revenue adjustment clause contain the file number designation: 1988 CVP RAC Hearing.

FOR FURTHER INFORMATION CONTACT:

Mr. David G. Coleman, Area Manager, Sacramento Area Office, Western Area Power Administration, 1825 Bell Street, Suite 105, Sacramento, CA 95825, (916) 978-4418

or

Mr. Michael S. Hacskaylo, General Counsel, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401, (303) 231-1534.

DATES: A prehearing conference to organize the hearing presentations will be held at 9 a.m. on November 4, 1987, at the Sacramento Area Office, 1825 Bell Street, Suite 105, Sacramento,

California. Registration for the prehearing conference will begin at 8:30 a.m. The evidentiary hearing will be held at 10 a.m. on November 10, 1987, at the same location.

Evidentiary Hearing: A verbatim transcript will be made of both the prehearing conference and the evidentiary hearing.

The discovery period will begin with the issuance of this notice and end on November 6, 1987. Any CVP customer or interested person may make a written request for data from Western in accordance with section 8(a) of the Procedures. Pursuant to the Procedures, Western will provide the requested data within 5 working days.

Notices of participation must be received by the Hearing Officer at or before the prehearing conference on November 4, 1987. Participants may make oral comments at the evidentiary hearing and/or submit written comments. Such written comments must be submitted at or before the date of the evidentiary hearing, to be assured of consideration in the findings of facts and law. Any person filing comments at or before the prehearing conference on November 4, 1987, shall be deemed a participant whether or not such person has filed a notice of participation.

All persons desiring to be a party with full procedural rights at the evidentiary hearing (right to cross-examine, etc.), must file a notice of intervention which must be received by the Hearing Officer at or before the prehearing conference on November 4, 1987. Any person filing a notice of intervention who does not file timely written testimony shall be deemed to be a participant. All parties must file written testimony which must be received by the Hearing Officer at or before the prehearing conference on November 4, 1987.

Western's written testimony on the RAC will be available on or before October 14, 1987, to all CVP customers, previously identified parties, and such other interested parties who request such testimony from the Area Manager, Sacramento Area Office at the address shown above during the discovery period.

When the evidentiary hearing has concluded, parties will be allowed to submit briefs to the Hearing Officer. Briefs should be submitted on or before November 20, 1987, to be considered in the findings of fact and law. Briefs on the RAC shall be based on the written testimony and on the record of the evidentiary hearing.

The Hearing Officer will issue a findings of fact and law on or before December 10, 1987.

Rate Adjustment Consultation and Comment Period: Upon publication of the **Federal Register** notice on August 4, 1987, the consultation and comment period for the CVP proposed power and transmission rates adjustments began, and would end November 2, 1987. However, in order to incorporate the activities associated with the revenue adjustment clause evidentiary hearing, the end of the consultation and comment period has been extended to November 25, 1987.

Schedule of Events

Discovery period begins—October 7, 1987

Sacramento Area Office testimony becomes available—October 14, 1987**

Prehearing conference—November 4, 1987

Notice of participation—November 4, 1987*

Filing of a notice of intervention—November 4, 1987*

Filing of written testimony—November 4, 1987*

Discovery period ends—November 6, 1987

Evidentiary hearing—November 10, 1987

Submittal of briefs—November 20, 1987**

CVP rate adjustment consultation and comment period ends—November 25, 1987

Finding of fact and law issued by the Hearing Officer—December 10, 1987**

*At or before the prehearing conference.
** On or before.

SUPPLEMENTARY INFORMATION: Under section 553(b)(3)(A) of the APA, rules of agency organization, procedure, or practice are exempt from notice and comment rulemaking procedures (5 U.S.C. 553(b)(3)(A)). In *Southern California Edison* v. *FERC*, 770 F. 2d 779 (9th Cir. 1985), the court held that the procedural rules of agency organization, procedure, or practice are exempt from the notice and comment requirement of the APA. Western finds that these rules are procedural, and therefore are exempt from notice and comment rulemaking procedures. Accordingly, the procedures are effective upon publication of this notice.

Issued in Golden, Colorado, September 29, 1987.

William H. Clagett,

Administrator.

[FR Doc. 87-23128 Filed 10-6-87; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/49A; FRL-3273-9]

Preliminary Determination To Cancel Certain Registrations of Tributyltin Products Used as Antifoulants; Availability of Technical Support Document and Draft Notice of Intent To Cancel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of preliminary determination.

SUMMARY: EPA issued a Notice of Initiation of a Special Review of Certain Pesticide Products Containing Tributyltins (TBT) Used as Antifoulants. This Notice sets forth EPA's preliminary determination regarding the continued registration of these products and EPA's assessment of the risks and benefits associated with the use of tributyltin antifouling paint products, and announces EPA's proposed decision to allow continued registration of TBT pesticide products only if registrants modify certain terms and conditions of registration as noted herein. This Notice also announces availability of the Tributyltin Special Review Technical Support Document and a Draft Notice of Intent to Cancel. The Technical Support Document and accompanying scientific reviews constitute the technical documents in support of the action.

DATE: Written comments must be received on or before January 5, 1988.

ADDRESS: Submit three copies of written comments, bearing the document control number "OPP-30000/49A" by mail 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, Crystal Mall #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 with the CBI portions deleted must be submitted for inclusion in the public record. Information not marked CBI may be publicly disclosed by EPA without prior notice to the submitter. The tributyltin public docket, which contains all non-

CBI written comments and the correspondence index, will be available for public inspection and copying in Rm. 236 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By Mail: Janet L. Andersen, Special Review Branch, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 1006F, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-0276).

Copies of the Tributyltin Technical Support Document and draft Notice of Intent to Cancel are available from the contact person at the address given above. To request information pertaining to the Tributyltin Special Review public docket or indices to the Tributyltin Special Review public docket, contact Bruce Hoak (703-557-2805).

SUPPLEMENTARY INFORMATION: This Notice is organized in the following units. Unit I provides the background on tributyltin (TBT) and the initiation of the Special Review. Unit II provides the legal background. Unit III provides a summary of the risk and benefit determinations and proposed regulatory actions. Unit IV sets forth procedural matters. Unit V discusses the opportunity for public comment. Unit VI includes information on the public docket.

I. Background

There are nine TBT compounds registered for use as antifoulants. These are: bis(tributyltin) adipate, bis(tributyltin) dodecenyl succinate, bis(tributyltin) oxide, bis(tributyltin) sulfide, tributyltin acetate, tributyltin acrylate, tributyltin fluoride, tributyltin methacrylate, and tributyltin resinate.

TBT compounds are registered for use in paint formulations as antifoulants on vessel hulls and other marine structures to inhibit the growth of certain aquatic organisms such as barnacles and algae which cause fouling. The major use of TBT paints is on ship and boat hulls with less than four percent of the use on docks, buoys, crab pots, fish nets, etc. Approximately 624,000 gallons of TBT antifouling paint are sold annually which uses approximately one million pounds of TBT compounds. When the TBT Special Review was initiated in 1986, there were a total of 61 registrants with 364 registered TBT antifouling paints and 20 formulating intermediate products.

The Special Review of TBT antifouling paints was published in the **Federal Register** of January 8, 1986 (51 FR 778) because the pesticidal use of TBT antifouling paints met or exceeded EPA's then applicable adverse effects to nontarget organisms criterion under 40 CFR 162.11. Subsequently, the risk criteria in 40 CFR 162.11 were superseded by new criteria set forth in 40 CFR 154.7(a)(3). EPA has determined that TBT compounds used in antifouling paints exceed the new criterion for exposure of nontarget aquatic organisms to concentrations which are acutely or chronically toxic to such organisms.

At the initiation of the TBT Special Review, the Agency determined that it needed certain additional data for use in characterizing the toxicity, exposure, and benefits of TBT antifouling paints. EPA, using its authority under section 3(c)(2)(B) of FIFRA, issued a Data Call In Notice (DCI) to all registrants of TBT antifouling paints and the producers of the TBT active ingredients. The DCI required product chemistry data, ecological effects data, environmental fate data, TBT paint release rate and cumulative release rate data, worker exposure data, quantitative usage and application data, and efficacy data. Ecological effects data are due into the Agency in one to four years; environmental fate data are due in one to two years; worker exposure data are due in early 1988; and other data have already been submitted to the Agency or the registrant has been suspended or requested a suspension hearing.

Based on information received in public comments to the initiation of the TBT Special Review, the data submitted to the Agency in response to the DCI, and on additional analyses performed since the initiation of the TBT Special Review, EPA has made a preliminary determination to propose (1) cancellation of TBT antifouling paint products with short term cumulative release (first 14 days of release) exceeding 168 μg organotin (calculated as TBT cation)/cm^2 or average daily release rates exceeding 4 μg organotin (calculated as TBT cation)/cm^2/day; (2) prohibition of use of TBT antifouling paints on non-aluminum hulled vessels less than 65 feet in length; (3) classification of TBT antifouling paints as restricted use pesticides and restriction of their sale to certified commercial applicators and their use to persons under the direct supervision of an on-site certified commercial applicator; and (4) require compliance with certain requirements pertaining to removal and disposal of old paint prior to application of new paints, and/or application of new TBT paints. EPA's position and a summary of the rationale underlying that position are set forth in summary in this Notice. The basis for EPA's proposed action is explained more fully in the Tributyltin Antifouling Paint Technical Support Document. Copies of the Technical Support Document are available upon request from the contact person listed at the beginning of this Notice.

In accordance with the Federal Insecticide, Fungicide and Rodenticide Act, EPA is sending a copy of this Notice, the Technical Support Document, and the draft Notice of Intent to Cancel to the Secretary of Agriculture and the Scientific Advisory Panel for the required 30-day review. EPA is also providing a 90-day public comment period on these documents. After reviewing any comments received within the applicable time limits, EPA will determine what final regulatory actions are appropriate.

II. Legal Background

A. The Statute

A pesticide product may be sold or distributed in the United States only if it is registered or exempt from registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (7 U.S.C. 136 et seq.). Before a product can be registered it must be shown that it can be used without "unreasonable adverse effects on the environment" (FIFRA section 3(c)(5)), that is, without causing "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of the pesticide" (FIFRA section 2 (bb)). The burden of proving that a pesticide meets this standard for registration is, at all times, on the proponent of initial or continued registration. If at any time EPA determines that a pesticide no longer meets this standard for registration, then the Administrator may cancel this registration under section 6 of FIFRA.

B. The Special Review Process

The Special Review process, formerly called the Rebuttable Presumption Against Registration (RPAR), is a mechanism by which EPA collects information on the risks and benefits associated with the uses of pesticides to determine whether any use causes unreasonable adverse effects to human health or the environment. The Special Review process is currently governed by 40 CFR Part 154.

Through the Special Review process EPA: (1) Announces and describes the Agency's findings that use of a pesticide meets one or more of the risk criteria, (2) establishes a public docket, (3) solicits

comments from the public and, under certain circumstances, from the Secretary of Agriculture and the Scientific Advisory Panel regarding the Agency's analysis and proposed regulatory decisions; (4) reviews and responds to all significant comments submitted in a timely manner; and (5) makes a final regulatory decision based on a balancing of risks and benefits associated with a pesticide's use.

Issuance of this Notice means that EPA has assessed the potential adverse effects and benefits associated with the use of antifouling paints containing TBT and that EPA has preliminarily determined that, unless the terms and conditions of registration are modified as proposed in this Notice, the risks from TBT exposure outweigh the benefits of its use. The Agency proposes that the terms and conditions of TBT registration be modified so that (1) all TBT antifouling paint products with short term release (first 14 days) exceeding 168 μg organotin/cm^2 or with average daily release rates exceeding 4 $\mu g/cm^2$/day will be cancelled, (2) no TBT antifouling paint may be used on a non-aluminum vessel under 65 feet in length, and (3) TBT antifouling paints will be classified as restricted use pesticides, their sales will be restricted to certified commercial applicators, their use to persons under the direct supervision of an on-site certified commercial applicator, and that users comply with certain requirements pertaining to removal and disposal of old paint prior to application of new paints, and/or application of new TBT paints.

As noted in the section of this Notice entitled **FOR FURTHER INFORMATION CONTACT,** a document entitled "Tributyltin Technical Support Document" (Technical Support Document) has been developed and is available to the public. The Technical Support Document provides a detailed explanation of the basis for EPA's preliminary decision and also contains references, background information, and other information pertinent to the registration of antifouling paints containing TBT.

In addition, copies of a draft Notice of Intent to Cancel TBT products are also available from the contact person listed above. Preparation of the draft Notice of Intent to Cancel is required by 40 CFR 154.31(b)(1). This draft Notice is being forwarded to the Scientific Advisory Panel (SAP) and the Secretary of Agriculture to permit their review of EPA's action. The draft Notice of Intent to Cancel, along with the Tributyltin Technical Support Document and this Notice prepared pursuant to 40 CFR 154.31 are being sent to all registrants and applicants for registration of antifouling paints containing TBT. The draft Notice contains the draft provisions regarding disposition of existing stocks and procedures for requesting a cancellation or denial hearing after issuance of a final notice of intent to cancel.

III. Summary of Risk and Benefit Determinations and Proposed Regulatory Actions

A. Determinations on Risk

Laboratory testing and field trials have established that TBT can be toxic at low levels to fish (0.2 ppb), bivalves (0.02 to 0.05 ppb), gastropods (0.002 to 0.02 ppb, lowest value an extrapolation), crustaceans (0.09 to 0.14 ppb), and algae (0.1 to 0.35 ppb). TBT concentrations at or above 0.02 ppb have been reported for at least 30 sites in the United States, predominantly in areas with heavy boating and shipping activity.

Harbors and boating activity are usually concentrated in relatively shallow (< 30 ft) coastal waters. These areas also coincide with many estuaries or ecologically dynamic environments that tend to support larage fisheries populations and are important nursery areas. The toxicity of TBT to nontraget aquatic organisms reportedly has caused adverse population effects in France and England. While there are limited reports of TBT effects in the U.S., actual impacts have been observed in Coos Bay, Oregon.

1. *Toxicity to nontarget aquatic organisms.* The full extent of the risks of TBT to nontarget aquatic organisms is unknown at this time. While observable effects under field conditions have not been determined for many aquatic species, TBT toxicity studies have been conducted on algae, fish, crustaceans, and molluscs (both bivalves and gastropods). Although short term acute studies have demonstrated that TBT is highly toxic to certain aquatic organisms (LC_{50} > 0.1 ppb), larger chronic testing revealed a degree of toxicity effects that were one to three orders of magnitude greater (>0.002 ppb extrapolated value). For most organisms, the process of development from fertilized eggs through various larval stages is most sensitive to TBT toxicity. In addition to reproductive effects, the sublethal toxicity of TBT may be of sufficient magnitude to gradually alter aquatic populations by changing their size or composition (individual year class strength), metabolism (TBT is a membrane effector), behavior (competition abilities, defense mechanisms, feeding strategies), and/or result in deterioration of environmental conditions through physical, chemical, or biotic factors.

The Agency's Office of Water plans to issue its draft Tributyltin Water Quality Advisory in the near future. The Advisory will be a guideline to EPA Regional Offices suggesting maximum TBT concentrations which would protect fresh and salt water organisms. The values in the Advisory are subject to change depending upon new scientific data made available to the Agency. Further data have been required of TBT registrants; however, thte data are not expected to be submitted to the Agency for one to four years. In the meantime, there are sufficient laboratory and field data to indicate that certain harbor and estuarine areas have TBT residues above levels which may be safe to certain aquatic organisms. The Agency has determined that some action is necessary at this time to protect nontarget aquatic organisms from the adverse effects of TBT contamination.

a. *Fish.* Acute toxicity to both fresh and marine fish species have been reported with values as low as 1.5 ppb, 96-hour LC_{50} for chinook salmon *(Oncorhynchus tshawytscha).* Researchers at the Alaskan National Marine Fisheries Service have observed several incidents of high mortality after transfer of juvenile salmon to newly TBT-treated marine net pens.

Chronic exposure of TBT to fish has been found to result in physiological alterations in growth rate and in histological damage to rainbow trout *(Salmo gairdneri)* at concentrations as low as 0.2 ppb TBT. Prolonged exposure to sublethal doses of TBT could result in growth retardation or lowered disease resistance. Chronic exposure of parent sheepshead minnow *(Cyprinodon variegatus)* to TBT for over 121 days at 0.24 ppb resulted in a high progeny morality.

Bioaccumulation (accumulation in the body of an organism of concentrations higher than in surrounding water) of TBT has been reported for sheepshead minnow where an equilibrium was not reached during a 58-day test period. With exposures of 0.96 to 2.07 ppb, residues were as high as 4.19 ppb in the whole body. When transferred to clean water, depuration (loss of the toxicant from the organism) was rapid for the first 7 days, but slowed over the next 21 days. Also chinook salmon were reported to bioaccumulate TBT by a factor 200 to 4300 times greater than the TBT concentration in the water column.

b. *Bivalves.* Larval stages are more sensitive to TBT than adults. Acute

toxicity to bivalve larvae (48-hour LC_{50}) has been reported to be 1.6 ppb for Pacific oyster larvae *(Crassostrea gigas)* and 0.1 to 2.3 ppb for mussel larvae *(Mytilus edulis)*.

Chronic effects of TBT exposure are reported to cause growth retardation at 0.02 to 0.05 ppb in European oyster *(Ostrea edulis)* and clams *(Venerupis decussata)*, shell thickening at 0.15 ppb in Pacific oyster, and reproductive aberrations (predominance of males in the hermaphroditic European oyster) at 0.24 ppb.

Bivalves rapidly bioaccumulate and slowly depurate TBT. Bioaccumulation factors of 2000- to 6000-fold for Pacific oyster and 1000- to 1500-fold for European oyster have been recorded. In mussels, TBT accumulates in lipid-rich tissue, especially in gonadal tissue.

c. *Gastropods.* Mud snails (specifically *Nassarius obsoletus* and *Nucella lapillus)* are reported to develop a condition termed "imposex" as a result of TBT exposure. Imposex is the superimposition of male characters (penis and vas deferens) on female organisms. A high frequency of imposex has been observed in areas with heavy boating and shipping activities and high levels of TBT in the water column. Imposex is infrequent in more pristine areas. Also a relationship with TBT antifouling paints has been demonstrated in the laboratory at 0.02 ppb for 120 days (extrapolation of data has been used to predict effects at 0.002 ppb).

d. *Crustaceans.* Acute toxicity of TBT to tested crustacean species ranges from 0.42 ppb for a 96-hour LC_{50} for juvenile mysid shrimp *(Acanthomysis sculpta)* to 41 ppb for a 96-hour LC_{50} for adult shrimp *(Crangon crangon)*.

The sublethal chronic effects of TBT to crustaceans have involved growth retardation in mysid shrimp (0.31 to 0.45 ppb), delayed metamorphosis in mysid shrimp (10 to 20 ppb), delayed limb regeneration in fiddler crabs *(Uca pugilator)* (0.5 ppb), reproductive effects in adult female mysid shrimp (0.25 ppb), and behavioral changes in daphnids *(Daphnia magna)* (0.5 ppb).

e. *Algae.* A limited number of marine diatoms and fresh water algae have been examined for toxic effects from TBT compounds. In laboratory studies, an EC_{50} for growth inhibition of the marine diatoms *Skeletonema costatum* and *Thalassiosira pseudonana* was observed after 75 hours exposure at 0.33 ppb and 1.33 ppb, respectively. Growth reduction was reported for *S. costatum, Pavlova lutheri,* and *Dunaliella tertiolecta* at 0.1 ppb and death at 5 ppb after 2 days.

2. *Comparative toxicities of tributyltin, triphenyltin, and copper.* Copper based antifouling paints are the major alternative to TBT paints. Although copper can be highly toxic to aquatic organisms, it appears to be less toxic than TBT by one to three orders of magnitude. Copper toxicity and bioavailability are reduced in the marine environment because the toxicity unit, the free cupric ion, is absorbed by and forms complexes with organic and inorganic ligands.

Also, triphenyltin (TPT) could be used as a substitute antifouling compound in paints. Therefore, the use of TPT could be expected to increase. The Agency has a limited set of data on TPT (based on nominal concentrations) which indicates that TPT causes chronic effects on fish at 2.0 ppb and effects on crustaceans at >0.27 ppb. TBT effect levels for these organisms are >0.2 ppb and 0.09 ppb, respectively. The Agency issued a DCI on TPT antifoulant uses on August 26, 1987, which will require ecological effects data along with other data. The information obtained from this DCI will be useful to the Agency in assessing the risks of TPT to nontarget aquatic organisms.

3. *International reports of TBT contamination and population effects*—a. *France.* In France, a correlation has been found between TBT residual levels in certain estuaries and gross malformations in Pacific oysters grown in commercial oyster *(C. gigas)* beds in and adjacent to areas of heavy boating activity. These deformities are characterized by the production of a series of cavities within the shell causing extreme thickening of the valves. The oyster tissue has a higher proportion of amino acids such as threonine, but a smaller amount of serine, glycine, and asparatic acid compared to normal unaffected oysters. Environmental concentrations of organotin in the water column were measured at 0.2 to 0.3 ppb in Arcachon Bay during 1982 and appeared to have caused shell deformities in seventy to 100 percent of the 2-year old oysters. Following a ban on TBT antifouling paints on vessels less than 25 meters (82 feet) in length, the degree of shell deformities has decreased and the regeneration rate of juvenile oysters (spat) has improved.

b. *England.* In England similar shell deformities were found for Pacific oysters (*C. gigas*) exposed to 0.15 ppb TBT. Reproductive abnormalities (imposex) have been observed in a type of mud snail called dogwelk snails (*Nucella lapillus*) and may be responsible for the observed decline in the snail populations. Researchers established that this reproductive failure can occur in snails when TBT tissue concentrations exceed 0.1 ppb. Laboratory testing demonstrated that tissue levels of 1.65 ppb have been found to induce imposex after snails were exposed to 0.02 ppb TBT for four months. Therefore, researchers extrapolated that imposex could occur after a longer period of exposure to 0.002 ppb TBT because the effects had been seen at tissue concentrations an order of magnitude (0.1 ppb) below that observed in the laboratory (1.65 ppb).

c. *Canada.* In Canada, organotin residues have been found in several fresh water locations including lakes, rivers, and harbors. Several sample stations had TBT levels (0.22 to 2.34 ppb) that were comparable to the chronic level (>0.2 ppb) associated with growth retardation in rainbow trout larvae. High levels of TBT residues at these sample stations were associated with heavy boating or shipping activity.

d. *United States.* Reports on the effects of TBT on aquatic populations in the United States have been limited because the environmental impact of tin-based antifoulant paints has only been studied for a few years. However, from the information that is available, it appears that adverse effects to nontarget aquatic organisms may have occurred. Insufficient data are available to define the full extent of the problem.

The Department of Fish and Wildlife of Oregon recently found shell deformities in oysters from Coos Bay, and have attributed these abnormalities to TBT residues from paint chips coming from a nearby shipyard. Researchers at California Department of Fish and Game demonstrated that oysters (*C. gigas*) and mussels (*M. edulis* and *M. californianus*) transplanted along a known gradient of TBT concentations in San Diego Bay exhibited shell thickening and growth effects similar to laboratory and field findings documented in France and England. The observed shell thickening and decreased growth correspond to increased concentrations of TBT in the water column. These values were comparable to environmental concentrations observed in France and England (0.24 ppb). Imposex in female mud snails has been reported in the U.S. along the East Coast and in California in close proximity to yacht harbors and marinas. In marinas and areas of high boating activity of the southern Chesapeake Bay TBT concentrations are reported to be at 0.014 to 0.1 ppb, levels that laboratory tests indicate cause reproductive effects in molluscs and snails.

4. *Endangered species.* There are approximately 90 endangered species in fresh water lakes and streams and in marine estuaries and harbors of the U.S. There are no available organotin toxicity data for these species; however, EPA has asked the Office of Endangered Species of the Fish and Wildlife Service, Department of the Interior and the Marine and Estuaries Fisheries Service in the Department of Commerce to determine if organotin compounds would jeopardize any endangered species.

5. *Exposure*—a. Environmental fate. The environmental chemistry and fate of tributyltin in estuaries are complex and not completely understood. Studies indicate that photolysis and microbial action are potential mechanisms of degradation from tri- to di- to monobutyltin and finally to inorganic tin. Studies indicate the half-life of TBT may be 116 days in aerobic soils, 815 days in anaerobic soils, 6 to 12 days in seawater, and up to 238 days in fresh water. TBT is readily sorbed to soils and sediments. Sediment-water partition coefficients of 300 and 700 μg/kg/mg/L have been reported for sediment loadings of 10 and 100,000 mg/kg, respectively. Thus, newly deposited sediments would have TBT concentration when the solid concentration was 10 mg/L in the water column. As the amount of solid in the water column increased, the difference between the ambient water column concentrations and the sediment concentration would decrease. Data from monitoring studies has consistently indicated that TBT and its di- and monobutyltin degradates concentrate in bottom sediments. Sediment-bound residues appear to contain proportionally higher concentrations of the degradates than is found in the water column. The means of TBT deposition in the sediments and the relative strength of TBT adsorption versus adsorption of the degradates are not known. The overall partitioning of TBT among water, biota, sediment, surface microlayer, and atmosphere has not been experimentally investigated.

b. *Bioavailability.* Although a small amount of dissolved TBT appears to be bound to suspended particulate, TBT does accumulate in sediment at levels that are one to four orders of magnitude greater than the concentration found in the respective water column. This amassing of toxicant can have serious consequences for organisms living and feeding in the benthos (bottom of the body of water). For example, it has been found in laboratory experiments and field trials that TBT in combination with sediment can affect growth in Pacific oyster (*C. gigas*) at 0.15 ppb. In addition, the results of a laboratory study indicate that mud crabs (*Rhithropanopeus harrissi*) accumulate TBT from food as well as water exposure.

In estuarine environments, 95 percent of the particulate-bound TBT may be associated with bacterial cell walls (dead and alive cells). The adsorption of TBT to bacteria is a significant exposure component that can affect aquatic organisms that feed on detritus (organic matter) and suspended particulate. These organisms include species of polychaetes, snails, amphipods, sponges, bivalve molluscs, and arthropods.

c. *Environmental monitoring.* Monitoring studies have been carried out to determine the extent of TBT contamination in the water column of marine and fresh waters. Sampling was designed to compare levels of contamination in areas of varying boating activity (recreational and commercial). The seasonal, tidal, and spatial flux of TBT and its degradates were examined in some cases. Limited analyses of sediment and aquatic biota also have been performed.

TBT levels in tested areas of the Chesapeake Bay and San Diego Bay ranged from ND (nondetectable, meaning below the level of detection for the analytical method used) to 0.8 ppb and ND to 1 ppb, respectively. Other reported water column concentrations were: San Francisco Bay ND to 0.16 ppb, Honolulu Harbor 0.045 to 0.27 ppb, Los Angeles/Long Beach Harbor ND to 0.12 ppb, Narragansett Bay ND to 0.13 ppb, Thames River (CT) ND to 0.009 ppb, and Mayport, Florida ND to 0.016 ppb. Fresh water samples from 265 locations across Canada were analyzed for TBT. In 10 percent of the water samples, TBT was found at levels >0.2 ppb. Consistently, TBT concentrations were highest in areas of heavy boating activity. A montoring study in the Chesapeake Bay during the summer of 1986 showed a strong correlation between boat density and observed TBT concentrations in four harbors.

TBT concentrations have been shown to vary seasonally. In areas of moderate to high TBT loading, the water column levels of TBT appear to correlate to seasonal boating activity and boat maintenance activities. Seasonal variation in temperature may also influence the leaching of TBT from paints and/or the mobility and persistence of TBT in the marine environment.

Tidal flow and other hydrolic activities also have been shown to influence TBT concentrations. Flushing has a major impact on TBT concentrations. Sites with a fresh water influx into a large body of seawater and no significant backwater areas or recirculating currents, generally have very low concentrations of TBT regardless of loading rates. In areas where water residence times are relatively long, TBT levels increase in proportion to the loading. Accumulation of TBT degradates have been oberved in locations where water movement is very slow (i.e., southern end of San Diego Bay).

d. *Environmental modeling.* The Agency is engaged in modeling Norfolk Harbor in Virginia. Norfolk Harbor is a major fishery with large populations of hard clams and Eastern oyster and is a nursery for spot, Atlantic crocker, Atlantic menhaden, striped bass, black sea bass, and summer flounder. The area is also an active boating and shipping area with recreational, commercial, and military use and contains large and small boat/shipyards. The Agency model will examine environmental concentrations under several loading levels and attempt to estimate the impact of possible regulatory approaches on TBT concentrations. The information may be useful to the Agency in making future regulatory decisions.

6. *Risk assessment summary.* As explained in the Technical Support Document, laboratory and field studies have demonstrated that low concentrations of TBT can cause irreversible chronic effects to a broad spectrum of nontarget aquatic organisms. At a concentration of approximately 0.02 ppb, TBT has caused a reduction in growth to commercially important bivalves and imposex in ecologically significant gastropods in laboratory studies. Monitoring studies which are further discussed in the Technical Support Document have demonstrated that TBT is moderately persistent in the marine environment and that the observed levels of TBT in the water column in and adjacent to marinas, dry dock areas, and poorly flushed harbors exceed concentrations that have been demonstrated to cause adverse effects in molluscs, gastropods, and other nontarget aquatic organisms. TBT levels in the water column are strongly influenced by currents and tides. It is believed that biologically significant levels of TBT may be transported to sensitive ecologically productive areas. The Agency also is concerned about the potential accumulation of TBT in aquatic sediments and in the tissue of aquatic

organisms; however, insufficient data are available to determine the extent and significance of these events.

C. Determination of Benefits

The benefits of TBT antifouling paints were analyzed for the boat and shipyard industry and three user groups: recreational, commercial, and military. As explained in the Technical Support Document, analysis was performed for three possible regulatory options: (1) Total ban of TBT antifouling paints, (2) restriction of TBT paints by release rate, and (3) restriction by release rate, size of vessel, and classification as a restricted use pesticide. Other regulatory options were not analyzed because it was determined that they were not feasible options to reduce the risks from TBT exposure to nontarget aquatic organisms.

Comparisons were made for TBT copolymer/ablative, TBT free association, copper conventional, and copper ablative paint systems. For each user group and each paint system, the impact of regulation was determined by subtracting the cost of hull maintenance using a particular paint system from the operational benefits gained from that system (i.e., fuel efficiency, time between dry dockings). The different paint systems were then compared for each user group. Hull preparation costs are lower when ablative paints are used, and vessel operators also can achieve extended dry docking intervals; the longer a vessel can stay in service between dry dockings or hull cleanings, the less expensive a vessel is to operate. The Navy plans to convert its entire fleet to certain organotin copolymer/ablative paints which it expects will enable it to operate vessels on a 5 to 7 year dry docking schedule.

The major currently available alternatives to TBT antifouling paints are copper compounds, chiefly cuprous oxide. There are copper ablatives which like TBT copolymer/ablatives do not require hull cleaning or frequent dry docking. There are currently only three registered copper ablative paints. More years of testing are needed to determine if they can give the 5 to 7 years of service noted for certain TBT copolymer/ablative paints. Testing now being conducted indicates copper ablatives give acceptable control of fouling for 3 to 4 years. The conventional copper paints require frequent hull cleanings (every 9 to 18 months) to remove fouling organisms and the layer of insoluble copper compounds that precipitate near the paint surface and block release of the toxicant. However, there is published research indicating the copper conventional paints may last over three years with several hull cleanings. The major disadvantage of copper is that it may cause galvanic corrosion to aluminum vessel hulls. Even with high quality anticorrosive primers, there may be small flaws in the primer coat that could allow copper corrosion to an aluminum hull, especially on vessels with long dry docking intervals.

Commercial vessels use approximately 60 percent of the TBT antifouling paints. For ocean going vessels, long periods between dry dockings and reduced fuel consumption are important considerations. Although many commercial vessels are dry docked and inspected every two years, TBT copolymer/ablative paints provide an estimated $318 million per year savings to U.S. commercial vessels over copper conventional paints and an estimated $143 million savings over copper ablative paints.

There are approximately 5 million recreational vessels in the U.S. Most recreational vessels are removed from the water after every use and do not antifouling paint. However, 14 percent of these vessels use some type of antifouling paint, of which about 30 percent use organotin antifouling paints (approximately 208,000 recreational vessels). It is estimated that 60,000 recreational vessels are painted with TBT copolymer/ablative paints, but of these, only some 21 percent of those using TBT copolymer/ablative paints take advantage of the extended dry docking intervals that can be achieved through use of these paints. The loss of TBT paints would cost recreational boaters currently using TBT copolymer/ablative paints an estimated $0.85 million per year. Recreational vessel owners who currently use free association TBT paints would incur an estimated additional cost of $0.28 million per year over using less expensive copper based paints which will give one to two seasons of protection. Therefore, in terms of antifouling use, there appears to be an economic benefit only to recreational boat owners using TBT copolymer/ablative paints who take advantage of the extended dry docking intervals. However, TBT compounds are colorless and offer recreational boat owners more choice of paint colors than copper based paints.

The impact of a total ban of TBT antifouling paints was calculated for the U.S. Coast Guard, Navy Sealift Command, and U.S. Navy assuming implementation of the proposed Navy fleetwide conversion to organotin antifouling paints. The estimated average annual net benefit of using TBT copolymer/ablative paints versus copper ablative paints is $35.3 million and $142 million over using copper conventional paints. Estimates for loss of fleet readiness were not quantified.

The total annual benefits (including commercial and recreational vessels) of an estimated $179 million would be lost if all users of TBT paints switched to copper based paints (copper ablatives substituted for TBT copolymer/ablative and conventional coppers substituted for TBT free association paints). If all users substituted conventional copper paints for all TBT paint use, the loss would be an estimated $460.8 million annually.

The foregone benefit (i.e., additional expense) of using copper ablatives may be reduced if copper ablatives can be shown to have service lives comparable to TBT copolymer/ablative paints. Since it has been shown that existing copper ablative paint formulations have in-service lives of at least 3 years, dry docking on a three year schedule was used for all copper ablative paint calculations.

There are approximately 6000 boat and shipyards in the U.S., 44 percent of which use antifouling paint. Approximately 48 percent of the antifouling paints used by these firms are TBT products; this accounts for about 70 percent of the gallons of TBT antifouling paints used in boat/shipyards. U.S. shipyards compete with foreign countries as well as domestically for business. Many U.S. flag (ocean going) vessels are currently docked and painted abroad because foreign labor and materials in this sector are generally less expensive despite a substantial ad valorem tax on these services. A ban on the use of TBT paints would encourage more vessels to be painted abroad, possibly having a substantial impact on domestic shipyards. However, boat and shipyards serving vessels too small to go abroad may have more business if conventional copper paint systems are used that require frequent hull cleaning and more frequent painting than TBT copolymer/ablative paints.

Under the option to restrict release rates, there would be TBT paints (both copolymer/ablative and free association) available for all user groups and for aluminum hulled vessels as well. An initial short supply of acceptable paints is likely and prices may be elevated in the short term until new paints with acceptable release rates are formulated or paints with unacceptably high release rates are reformulated and registered.

The last option included the following elements: (1) Release rate restrictions, (2) limiting the size of vessel treated, and (3) classifying TBT antifouling paints as restricted use pesticides. Restricting the size of vessel to be treated with TBT should have a minor economic impact on users because most non-aluminum hulled vessels under 65 feet in length do not gain an economic benefit from the use of TBT antifouling paints because vessels are painted frequently and there are effective alternatives. Making TBT antifouling paint a restricted use pesticide would cost users an estimated $600,000 in lost opportunity costs the first year and $150,000 in subsequent years. There would also be an estimated cost of $25,000 to $30,000 incurred by affected states each year to establish and maintain the required training programs. Estimated cost of required compliance with application, removal, and/or disposal directions is unknown at this time.

New technologies for controlling antifouling may be implemented that could reduce the impact of TBT restrictions. For example, the U.S. Navy is testing fluorocarbon coatings that contain no toxicant. The coating surface must be cleaned regularly (once a month in the summer and once every 3 months in the winter). A tug boat painted with the fluorocarbon coating has reformed well since 1977 without repainting. Also the antibiotic terramycin has recently been registered as an additive to antifouling paints; it must be incorporated with paints containing other toxicants and cannot be considered a direct substitute. Control of fouling organisms is an active area of research, especially in the U.S. Navy which conducts testing of promising new compounds for their overall performance.

In conclusion, it appears that the major benefits from the use of TBT antifouling paints are gained by those vessels taking advantage of the extended dry docking intervals. Because of the higher costs of TBT paints versus copper paints, most recreational boaters appear to lose money by using TBT paints, because they do not take advantage of the extended dry docking intervals. The U.S. Navy claims that the use of TBT paints will provide improved fleet readiness in addition to economic benefits. TBT antifouling paints appear to give large economic benefits to commercial vessel owners who take advantage of the extended dry docking schedule. Copper based paints are the major alternatives to TBT paints and for some users the copper ablative paints may prove to be equally effective. Further research is being conducted on other alternatives.

D. Analysis of Release Rates

The Tributyltin Data Call In Notice (TBT DCI) required all registrants of TBT antifouling paints to measure TBT release from registered paints following a test method developed in cooperation with the American Society for Testing and Materials (ASTM). In addition, each laboratory conducting the TBT release test was required to test a standard copolymer test paint provided by EPA as a means of assuring that the test method was consistent among testing facilities.

Results for the standard test paint varied substantially. All data were reviewed by the Agency and a value of 90 $\mu g/cm^2$ was assigned to the short term cumulative release (cumulative for the first 14 days of the test) and a value of 5 $\mu g/cm^2/day$ was assigned to the average daily release rate (average of weeks 3 to 5 of the test) for the standard test paint. Each laboratory's standard test paint data were normalized to these assigned values. This enabled the Agency to make comparable adjustments in the test results of the various TBT paints as noted below.

Release rate data were reviewed for the 96 TBT antifouling paint products submitting data to the Agency. It was determined that at least 57 of the tests were conducted satisfactorily and all data were normalized according to adjustments made to the standard test paint results. Details of release rate data are available in the Tributyltin Technical Support Document.

Generally the release rates start high and gradually decrease over the course of the test period. Some paints with a high percentage of TBT have a much higher short term cumulative release rate than other paints tested. It was concluded that while there was a strong statistical correlation between the percent active ingredient and the average daily release rate, the data points were too scattered (rather than concentrated around the regression line) for the data to be useful for regulating TBT paints. The scattered data points indicated that other factors, such as the type and quality of the inert ingredients (resins, rosins, binders, etc.) may be important in determining the release rate of a paint and that regulating on percent active ingredient would not necessarily reduce environmental loading of TBT.

Results of the release rate tests show that some TBT ablative and free association paints have lower release rates than many TBT copolymer paints. Using the normalized data for the satisfactory release rate tests, it was found that neither the type of TBT paint formulation (free association or copolymer) nor the percentage of TBT in the formulation could be used to predict the average release rate. Average release rates from TBT free association paints were not consistently higher or lower than release rate from the TBT copolymer paints; however, generally paints with a high percentage of TBT in the formulation had higher average release rates than paints with low TBT content.

An estimate of the average daily release rate prior to the initiation of the Special Review was made using all available release rate data. Based on the type of TBT compound(s), the percent active ingredient in each paint, and the release rates of similar paints, an estimated release rate was calculated for each paint where the release rate was unknown (data not submitted to the Agency). Then using the release rate data on hand and the estimated release rates, a mean of all release rates was determined. This mean was 19.7 or about $\mu g/cm^2/day$.

E. Risk/Benefit Analysis

FIFRA requires EPA to weigh the risks against the benefits of the use of pesticides to determine whether continued registration would cause unreasonable adverse effects on man and the environment. This section reviews EPA's conclusions concerning the risks and benefits of TBT antifoulants and their alternatives in order to determine whether continued registration of TBT antifoulants is appropriate. The Agency has determined that with current label restrictions, the risks posed to nontarget organisms from the use of TBT antifouling paints outweigh its benefits. Detailed discussion of the risk/benefit analysis appear in the Technical Support Document.

TBT has been shown to be highly toxic to aquatic organisms at or near 0.20 ppb. In particular, TBT has been shown to be somewhat persistent in the environment and may bioaccumulate in animal and plant tissue without complete degradation. Potential exposure to nontarget organisms is high in areas of boating and shipping activity, and TBT may be transferred to sensitive ecologically productive areas via currents and tides. TBT binding to sediments and particulate, suggests the potential for bioavailability to filter and deposit feeding organisms. TBT residues have been found in U.S. waters at levels comparable to the values that have

caused population effects in Europe and comparable to the values that have been shown to cause effects to nontarget organisms during laboratory experiments. Recent reports in the U.S. link TBT exposure to adversely affected oyster beds in Coos Bay, Oregon. The Agency believes that there is adequate information available to propose the set of regulatory actions designed to reduce environmental loading of TBT as presented here and in the Technical Support Document.

The total annual benefits of TBT antifoulant use are estimated to be $179 million compared with using the next best alternative, either copper ablative or copper conventional paint depending upon what the user is currently applying. However, the benefits are highest for those users taking advantage of the extended dry docking schedule offered by TBT copolymer/ablative paints. In most cases, recreational boat owners using TBT paints incur an additional cost from which they appear not to benefit compared to using less expensive copper based paints, because they generally do not take advantage of the extended dry docking schedule.

The Agency believes the risks posed from the use of TBT antifouling paints can be reduced without losing benefits for most commercial and military users through the use of TBT antifouling paints which release less TBT into the aquatic environment, while complying with the other elements of the proposed action. It is believed that many recreational vessel owners will save money by use of non-TBT alternatives. While there will be costs to states for training certified applicators and costs to user groups who must become certified under restricted use and comply with certain application, disposal, and removal requirements, the Agency believes that the benefits of reducing the environmental loading of TBT outweigh the costs.

F. Development of Regulatory Options

This section identifies the regulatory options available to EPA to reduce the risks from TBT antifoulants. Each option has been evaluated for its impact on the risks and benefits of TBT as antifoulants and the most appropriate regulatory options have been proposed.

The Agency considered three regulatory options: continued registration without changes, continued registration with modifications of the conditions of registration, and cancellation of all registrations.

1. *Continued registration without changes.* The Agency has concluded that, although further data will be used to refine our assessment of the risks posed by the use of TBT antifouling paints, there are sufficient data to conclude that some action should be taken to reduce the environmental loading of TBT in order to protect nontarget aquatic organisms from adverse effects due to exposure to residues from TBT antifoulants.

2. *Continuation of registration with changes.* The Agency believes that the risks posed by the use of TBT antifouling paints can be lowered by modifying the terms and conditions of registration. Although it is unknown at this time if such modifications will be adequate to reduce the risks to acceptable levels, the Agency is proposing a number of actions at this time designed to reduce environmental loading of TBT. Any action included in the Agency's final decision will be reviewed when the Agency receives additional data. The following actions were considered by the Agency:

a. *Limitation on percent active ingredient.* The Agency considered restricting the concentration of TBT in antifouling paints as done by Great Britain. However, from information obtained from the release rate testing, the Agency has determined that restrictions on the percent active ingredient would not assure a lowering of TBT environmental loading because the type and quality of the inert ingredients (resins, rosins, binders, etc.) are also important in determining the release rate of a paint. The inert ingredients could be changed by a registrant so as to alter the release rate of the paint product, without altering the percentage of active ingredient.

By regulating on release rate rather than on percent active ingredient, the Agency can be better assured that the environmental levels of TBT will be reduced.

b. *Regulation by paint formulation.* Another option considered by the Agency was to regulate by type of paint formulation. Early in the Special Review process, it was suspected that copolymer paints released TBT at a much slower rate than other formulations. However, as the release rate data became available to the Agency, it became obvious that there were free association paints with release rates both higher and lower than those of copolymer paints.

The complication of having free association paints with both lower and higher release rates than copolymer paints makes it difficult to regulate on the basis of paint formulation.

c. *Release rate restrictions.* The Agency considered an option requiring that TBT paints meet both the maximum short term cumulative release and the average daily release rate and examined the role that a dual rate restriction would have on protecting the shell fish beds and fish nursery grounds in shallow estuarine water where vessels are typically moored. A maximum short term cumulative release rate would be designed to limit TBT release from large vessels which are moored in estuary water after painting while additional maintenance is being done. For most paint formulations, freshly painted surfaces release TBT at much faster rates that surfaces seasoned for even three or four weeks in the water.

A maximum average daily release rate will help reduce the environmental loading of TBT by removing paints with high release rates from the market. The long term use of paints with medium or high average daily release rates could result in levels of TBT in the water column over time at chronic effects levels. Concentrations at such levels have been reported for at least thirty sites around the U.S. Therefore, regulatory measures are needed to reduce those concentrations and to prevent such concentrations in other areas.

This option provides that no TBT antifouling paint can be sold or distributed which exceeds either a short term cumulative release (cumulatively released over the first 14 days of the test) of 168 μg organotin (calculated as TBT cation) /cm^2 or an average daily release rate (average of weeks 3 to 5) of 4.0 μg organotin (calculated as TBT cation)/cm^2/day. The proposed average daily release rate would be a five-fold reduction over the estimated 20 μg/cm^2/day average daily release rate prior to initiation of the Special Review and would allow formulations to remain on the market which provide extended periods between dry dockings and high fuel efficiency. For a full discussion of release rates see the Technical Support Document.

Of the 57 registered products with satisfactory release rate test data, 29 products would meet the proposed standard. Assuming those paints remained marketed, there would be paint products available for all market sectors. In the future, the Agency may register additional products with acceptable release rates.

Cancellation of high release rate paints would initially decrease the supply of TBT antifouling paint products (less than 30 percent of the current market has acceptable release rates), which may result in a temporary increase in the price of antifouling paints. As users switched to non-TBT alternatives, or as more paints with

acceptable release rates enter the market (either through increased production, new products, or reformulated old products), the price should steadily approach the current price structure.

d. *Prohibition of use on certain vessels.* This option provides for a label restriction prohibiting the use of TBT antifouling paints on non-aluminum hulled vessels less than 65 feet in length. Copper paints may cause galvanic corrosion, even with the use of high quality primers and frequent repainting. The size limit of 65 feet was chosen because: (i) This size distinguishes between most vessels which the Agency believes either gain an economic benefit from the use of TBT antifouling paints or do not gain a benefit from the use of these paints; and (ii) most vessels of less than 65 feet in length are predominantly used in ecologically important, shallow estuary waters.

Approximately 37 percent of current TBT antifouling paint use would be eliminated under this option, primarily by recreational users. Vessels in this size class tend to be used as well as moored in shallow waters. Additionally, these craft are often painted yearly in the spring which is believed to result in elevated TBT levels during the reproductive period of many nontarget organisms. Therefore, the Agency believes that elimination of TBT paints from these numerous craft would significantly reduce the loading and concentration of TBT into these aquatic environments, and, in particular, into the most sensitive shallow waters.

e. *Restricted use.* This option includes classification of the TBT antifouling paints as restricted use pesticides. Under this option, TBT antifouling paint products would only be sold to certified commercial applicators and would only be applied, removed, and disposed of by these applicators or persons working in their physical presence. Certified applicators would be trained in proper application and disposal techniques in the aquatic pest control category of 40 CFR 171.3(b)(5). Practicing proper application, removal, and disposal techniques should significantly reduce the volume of TBT waste residues entering aquatic environments. Also, certified commercial applicators will be in position to assure compliance with any vessel size restriction.

TBT contamination has been found to occur around marinas, shipyards, and dry docks due to paint chips and dust being washed into the water. Labels would require compliance with the following directions for use: (1) During and after paint removal and/or application of new TBT paint, employ methods designed to prevent introduction of TBT paints into the aquatic environment; and (2) following removal of TBT paint and/or application of new TBT paint, all paint chips and spent abrasives, paint containers, unused paint, and any other waste products from paint removal or application must be disposed of in a sanitary landfill.

3. *Cancellation of registration.* A total ban would cost users an estimated $179 million a year as well as adversely affect shipyards servicing at least the large vessels. Even if EPA cancelled the registrations of TBT antifouling paints, ships treated in foreign countries which come into U.S. waters would release TBT into U.S. marine environments. Full cancellation of TBT antifouling paints is not being proposed at this time, because on the basis of what the Agency knows now, it does not appear warranted. The Agency believes it can accomplish reductions in environmental loading of TBT by means short of a full ban. The Agency may determine later, following receipt of new data or upon showing that any restrictions which are implemented do not adequately protect nontarget aquatic organisms, that cancellation of all TBT antifouling paints may need to be considered.

G. Proposed Regulatory Decision

In order to reduce the concentrations of TBT in the aquatic environment, the Agency proposes to (1) cancel all TBT antifouling paint registrations which exceed a short term cumulative release of 168 μg organotin/cm^2 14 days or exceed an average daily release rate of 4.0 μg organotin/cm^2 day; (2) prohibit the use of TBT antifouling paints on all non-aluminum vessels under 65 feet in length and require appropriate label language; (3) classify TBT antifouling paints as restricted use pesticides, restrict their sale to certified commercial applicators and their use to persons under the direct supervision of an on-site certified commercial applicator, and (4) require compliance with the following directions for use: (a) During and after paint removal and/or application of new TBT paint, employ methods designed to prevent introduction of TBT paints into aquatic environments; and (b) following removal of TBT paint and/or application of new TBT paint, all paint chips and spent abrasives, paint containers, unused paint, and any other waste products from paint removal or application must be disposed of in a sanitary landfill. The Agency proposes that TBT antifouling paint product labels include language requiring compliance with these actions as part of proper use of the TBT antifoulant product.

IV. Procedural Matters

A. Referral to the Secretary of Agriculture and the Scientific Advisory Panel

As required by FIFRA sections 6(b) and 25(d), and 40 CFR 154.31(b), EPA will transmit copies of this Notice, a draft Notice of Intent to Cancel and the support document, to the Secretary of Agriculture and the Scientific Advisory Panel for comment. If either the Secretary or the Panel comments in writing on EPA's proposed action within 30 days of receipt of the draft Notice and support documents, the Agency must publish any comments received from the Secretary or the Panel, and EPA's responses, in the Notice of Final Determination.

B. Procedures for Responding to Notice of Final Determination

1. *Hearing request.* Registrants, applicants, and other interested parties who would be adversely affected by any decision to cancel or deny applications for the registration of TBT antifouling paint products would be entitled to request a hearing in which to contest EPA's final decision to cancel registrations and deny applications for failure to comply with the modifications to registration listed in any final Notice of Intent to Cancel. Under FIFRA, such persons must submit their requests for a hearing within 30 days either following receipt of any final Notice of Intent to Cancel or Notice of Denial or following its publication in the **Federal Register**, whichever is later. As EPA will explain in detail in any final Notice of Intent to Cancel or Notice of Denial, a hearing request must contain information concerning the basis of the request. If a timely, properly formulated hearing request is submitted and a hearing is initiated, the product registrations which are the subject of the request will remain in effect during the cancellation hearing. Similarly, applications for registration with respect to which valid and timely hearing requests have been filed remain pending unless and until they are denied or granted by order of the Administrator at the conclusion of the hearing.

If a proper and timely hearing request is not submitted for a product, registration of that product would be cancelled. A final cancellation or denial would have the effect of prohibiting further sale and distribution, except as specified in any existing stocks provision included in the final notice.

2. *Amendment of registration or application.* Registrants who would be affected by any final decision to cancel the registrations of TBT antifouling paint products unless the terms and conditions of the registrations are modified may avoid cancellation, without requesting a hearing, by filing an application for an amended registration that contains release rate levels, which comply with the release rate standard detailed in any final Notice of Intent to Cancel, and the label modifications detailed in the Notice of Intent to Cancel. This application must be filed within 30 days of receipt of the final notice, or within 30 days of publication of the final notice, whichever occurs later. Similarly, applicants for a registration that would be subject to the final notice would have to file an amended application for registration within the applicable 30-day period to avoid denial of the application.

Applications which conform to the terms and conditions included in the Notice of Intent to Cancel which are found by the Agency to be acceptable will be granted conditional registrations. A condition of such registration will be that acceptable studies using the ASTM/EPA release rate method supporting the release rate included in the application will be submitted to the Agency within 120 days of the grant of conditional registration. The Agency believes this time period for submitting the supporting data is reasonable, particularly since the registrants are now on notice, well in advance of such a deadline.

It should be noted that registrants (and applicants) are not required to request a hearing or to amend their registrations (or applications) at this time in order to be allowed to continue to sell and distribute their products within this period.

V. Public Comment Opportunity

The Agency is providing a 90-day period to comment on this Notice and on the TBT Technical Support Document. The Agency is particularly soliciting comments on the issues discussed in Unit III above. Comments must be submitted by January 5, 1988. All comments and information should be submitted in triplicate to the address given in this Notice under ADDRESS, to facilitate the work of EPA and others interested in inspecting them. The comments and information should bear the identifying notation OPP-30000/49A. All comments, information, and analyses which come to the attention of EPA may serve as a basis for final determination of regulatory action during the Special Review.

During the comment period, interested members of the public or registrants may request a meeting to discuss factual information available to the Agency, to present any factual information, to respond to presentations by other persons, or to discuss what regulatory actions should be taken regarding TBT antifouling paint products. Persons interested in arranging such meetings should contact the Review Manager listed in this Notice under **FOR FURTHER INFORMATION CONTACT.**

VI. Public Docket

Pursuant to 40 CFR 154.15, the Agency, has established a public docket (OPP-30000/49A) for the Tributyltin Special Review. The public docket includes (1) this Notice; (2) any other notices pertinent to the TBT Special Review; (3) non-CBI documents and copies of written comments or other materials submitted to the Agency in response to this Notice, and any other Notice, regarding TBT submitted at any time during the Special Review process by any person outside government; (4) a transcript of any public meeting held by the Agency for the purpose of gathering information on TBT; (5) memoranda describing each meeting held during the Special Review process between Agency personnel and any person outside government pertaining to TBT; and (6) a current index of materials in the TBT public docket.

On a monthly basis, the Agency will distribute a compendium of indices for newly received comments and documents that have been placed in the public docket for this Special Review. This compendium will be distributed by mail to those members of the public who have specifically requested such material for this Special Review, pursuant to 40 CFR 154.15(f)(3).

Dated: September 30, 1987.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

FR Doc. 87-23177 Filed 10-6-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3273-7]

Sole Source Designation of the North Florence Dunal Aquifer Lane County, OR

AGENCY: Environmental Protection Agency.

ACTION: Final determination.

SUMMARY: Pursuant to section 1424(e) of the Safe Drinking Water Act, the Administrator of the U.S. Environmental Protection Agency has determined that the North Florence Dunal Aquifer in Lane County, Oregon is the sole source of drinking water for the Florence area and that the aquifer, if contaminated, would create a significant hazard to public health. As a result of this action, federal financially-assisted projects constructed in the designated area will be subject to EPA review to ensure that these projects are designed and constructed so that they do not create a significant hazard to public health.

EFFECTIVE DATE: This determination shall be promulgated for purposes of judicial review at 1:00 p.m. Eastern time on October 21, 1987.

ADDRESSES: The data upon which these findings are based are available to the public and may be inspected during normal business hours at the Siuslaw Public Library, 250 Highway 101, North Florence, Oregon; Eugene Public Library, 100 W. 13th Avenue; EPA Oregon Operations Office, 811 SW. Sixth Avenue, Portland, Oregon; and EPA Region 10 Library, 1200 Sixth Avenue, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Jonathan Williams at (206) 442-1541 or FTS 399-1541.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to section 1424(e) of the Safe Drinking Water Act [42 U.S.C. 300f, 300h-3(e), Pub. L. 93-523] the Administrator of the U.S. Environmental Protection Agency has determined that the North Florence Dunal Aquifer located in Lane County, Oregon is a sole or principal source of drinking water for much of the aquifer service area. Pursuant to section 1424(e), federal financially-assisted projects constructed in this designated area will be subject to EPA review.

I. Background

Section 1424(e) of the Safe Drinking Water Act states: "If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the **Federal Register.** After the publication of such notice, no commitment for federal financial assistance [through a grant, contract, loan guarantee, or otherwise] may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for federal financial assistance may, if authorized under

another provision of the law, be entered into to plan or designate the project to assure that it will not so contaminate the aquifer."

On June 2, 1985, Shirlee J. Gardinier of Florence, Oregon submitted a petition requesting that the Administrator of EPA designate the aquifer underlying the City of Florence and the Heceta Water District service area as the sole drinking water source for the area. Notice of this petition and a request for public comment was published in the **Federal Register** on November 13, 1985. Another **Federal Register** notice was published on March 3, 1986, stating the (1) The EPA Regional Office was proposing to recommend to the Administrator that the North Florence Dunal Aquifer be designated as a sole source aquifer, (2) a support document summarizing the bases for this recommendation was available for review, (3) public comments were being requested, and (4) a hearing was to be held if interest was expressed by the public. The hearing was cancelled because of insufficient public interest. The public comment period remained open until August 1, 1986.

Further technical evaluation resulted in adjusting the proposed designated area boundaries to coincide with published information which characterizes the geology and hydrology of the area. Accordingly, EPA prepared a revised document entitled *Resource Document for Consideration of the North Florence Dunal Aquifer as a Sole Source Aquifer*. Legal notices, announcing distribution of the document and requesting public comment until September 21, 1987, were printed in the Siuslaw News on August 26, 1987, and the Eugene Register Guard on August 27, 1987. Legal notices were sent to area post offices on August 21, 1987, and the Region 10 office issued a press release on August 25, 1987.

II. Basis for Determination

Among the determinations which the Administrator must make in connection with the designation of an area under section 1424(e) are: (1) Whether the aquifer is the sole or principal source of drinking water in the area, and (2) whether, if contaminated, a significant hazard to public health would result.

Based on the information available to this Agency, the Administrator has made the following findings, which are the bases for the determination noted above:

1. The North Florence Dunal Aquifer directly supplies 68 percent of the drinking water used in the area. Furthermore, the aquifer partly recharges Clear Lake, the only supply of surface water presently used for drinking water in the area.

2. No economically feasible alternative drinking water sources exist within the area or nearby.

3. Ground-water contamination can be difficult or impossible to reverse. Therefore, since the aquifer system represents the sole source of drinking water for the area, contamination of the aquifer would pose a significant hazard to public health.

III. Description of the North Florence Dunal Aquifer

[Information in this section represents an unfootnoted summary of material from: *Support Document for Designation of the North Florence Dunal Aquifer as a Sole Source Aquifer*, published in September of 1987 by the Region 10 Office of Ground Water.]

The North Florence Dunal Aquifer represents a hydrologically isolated portion of an extensive dunal aquifer located along the south-central Oregon coastline. The entire dunal aquifer, whose width ranges from less than one mile to over three miles, extends almost 60 miles from Coos Bay north to Heceta Head. The dunal area north of the Siuslaw River, referred to as the North Florence Dunal Aquifer, represents about 15 percent of the total aquifer length and covers roughly 19 square miles.

The area originally petitioned for sole source aquifer status included only the unconsolidated sand deposits between the Siuslaw River and Sutton Creek. However, available information suggests that the sand dune area north of Sutton Creek is not hydrologically separate from the rest of the aquifer. Also, part of the bedrock surface east of the dunes supplies runoff into lakes which are hydrologically connected to the aquifer. Therefore, these areas have also been included in the sole source aquifer area.

The North Floence Dunal Aquifer encompasses the entire continuous body of sand located north of the Siuslaw River and east of the Pacific Ocean. The surface contact between bedrock and the unconsolidated sand forms the northern and eastern boundary of the designated area as far south as Mercer Lake. The boundary between bedrock and the dunal aquifer has been drawn on the basis of a surface geological map published in 1974 by the Oregon Department of Geology and Mineral Industries. In addition to the dunal sand area itself, steep drainage areas east of Collard, Clear, Ackerley, and Munsel Lakes have been included in the designated area because published information strongly suggests that those lakes are hydrologically connected to the aquifer. Therefore, the surface drainage divided located just east of the lakes forms the eastern boundary of the designated area from Mercer Lake south to the Siuslaw River.

Rainfall in the area averages 65 inches per year, and approximately 85 percent of the rain which falls upon the sand-covered surface percolates into the water table. Locally, discontinuous buried soil layers and peat beds, both partly cemented by iron oxides, act to retard vertical movement. However, on a large scale, ground water moves rapidly and almost uniformly towards a discharge point. In fact, tritium age dating indicates that water in the aquifer replaces itself at least every 30 years.

The North Florence Dunal Aquifer discharges principally into the Pacific Ocean and Siuslaw River. Multiple seeps and springs occur along the coastline and riverbank, although areas of quicksand indicate that the aquifer discharges mostly as underflow. The water table slopes westward at about 10 feet per 1,000 feet and southward at about 5 feet per 1,000 feet from its highest portion, located west of Mercer, Collard, and Clear Lakes. Munsel Creek intercepts some of the ground water flowing towards the Siuslaw River. Likewise, Sutton Creek and Berry Creek intercept some of the westward moving ground water before it discharges into the Pacific.

The string of lakes along the eastern boundary of the acquifer are a minor discharge area. However, the aquifer supplies a significant amount of water to the lakes, especially during the summer months when surface water inflow decreases and withdrawals from Clear Lake are increased. Hydrographs comparing lake levels with aquifer levels strongly suggest a hydrologic connection between the surface and ground water supplies. More refined studies estimate that the aquifer supplies at least 27 percent of Clear Lake's annual water supply and a much higher proportion during the dry season.

Few streams cross the dunal area since most rainfall quickly infiltrates to the water table. Those streams which do flow across the area (Munsel Creek, Sutton Creek, and Berry Creek) originate in upland ares of relatively impermeable bedrock. Where streams flow across the sand they are hydrologically connected with the ground-water system. In fact, effluent ground water provides most of the flow of Sutton and Munsel Creeks at their points of discharge.

From a human health standpoint, the aquifer provides water of good quality.

However, naturally high concentrations of dissolved iron require treating the water for aesthetic reasons. The naturally high dissolved iron content apparently results from weakly acidic ground water (pH of 5.6 to 6.2) reacting with the iron-rich minerals found in some sand grains.

Rapid infiltration rates into the sand cover combined with a shallow water table make the North Florence Dunal Aquifer highly susceptible to contamination from surface activity. Despite the relatively rapid flow of ground water through the aquifer, water soluble contaminants introduced near the surface may remain in the ground water system for nearly 60 years. Immiscible contaminants, such as petroleum distillates, would spread rapidly if spilled onto the permeable sand cover but would resist flushing by natural ground water flow.

Possible sources of aquifer contamination include fuel storage tank failure, accidental spills of hazardous material transported across the aquifer, improper storing or handling of hazardous materials, spetic tank effluent, storm runoff, pesticides, and chemical fertilizers. The lakes located along the eastern margin of the dunal area would suffer from any contaminants introduced into that portion of the aquifer which recharges the lakes. Direct leaching from septic tanks located in sand-covered areas adjacent to the lakes could seriously downgrade the quality of Clear Lake—the only surface source of drinking water presently used in the area.

Localized overpumping of the aquifer near the ocean could result in saltwater intrusion. However, population projections by the Lane County Planning Staff suggest that such overdrafts are unlikely.

Drinking water for the proposed sole source area comes almost exclusively from two water districts. The City of Florence serves areas within the city limits whereas the Heceta Water District serves residents outside of Florence. Florence produces most of the water it consumes from two city owned and operated wells. A treatment plant near the wells precipitates and filters out the iron in additon to providing chlorination. The city purchases supplemental water from the Heceta Water District during seasonal periods of increased demand. The Heceta Water District pumps water from Clear Lake and distributes it after chlorination. As of 1985, withdrawals from Clear Lake by the water district accounted for about 18 percent of annual outflow from the lake. Although the Heceta Water District has only a few hundred connections fewer than Florence, a much higher percentage of its customers are seasonal residents. Accordingly, annual production by the Heceta Water District averages less thanb half that of the City of Florence.

Locally available surface water cannot qualify as a truly alternative source because of the hydrologic connection between surface water and ground water across the dunal surface. For instance, aquifer recharge to Clear Lake during the summer months, when surface inflow drops sharply and water consumption raises dramatically, already represents a significant part of the lake's inflow. Therefore, additional pumping from Clear Lake would, in essence, simply represent additional pumping from the aquifer.

Coastal lakes south of the Siuslaw River, such as Woahink Lake, have been suggested as an alternative water source. However, installing pumping stations, filtration equimpment, storage facilities, and transmission lines would significantly increase consumer costs. Furthermore, the coastal lakes south of the Siuslaw River are hydrologically connected to a dunal aquifer which is just as vulnerable to contamination as the North Florence Dunal Aquifer.

Streams which originate in the bedrock uplands east of the aquifer lack the year-around flow needed to meet water consumption in the area. Original studies of the dunal acquifer at Florence were conducted over 25 years ago because surface streams and wells drilled into bedrock could not meet the growing water needs of the area. Any reservoir construction projects designed to provide a steady supply of surface water would face serious obstacles which include: (1) Steep topography susceptible to landslides; (2) bedrock units which present engineering difficulties; and (3) silting problems associated with runoff from heavily logged slopes. These obstacles alone would raise costs to prohibitive levels.

IV. Project Review

When the EPA Administrator publishes this determination for a sole or principal drinking water source, the consequence is that no commitment for federal financial assistance may be made if the Administrator finds that the federal financially-assisted project may contaminate the aquifer through a recharge zone so as to create a significant hazard to public health [Safe Drinking Water Act section 1424(e), 42 U.S.C. 300h(e)]. In many cases, these federal financially-assisted projects may also be analyzed in a National Environmental Policy Act (NEPA) document, 42 U.S.C. 4332 (2)(c). All NEPA documents, as well as any other proposed federal actions affecting an EPA program or responsibility, are required by federal law to be reviewed and commented upon by the EPA Administrator.

To streamline EPA's review of the possible environmental impacts upon designated aquifers, when an action is analyzed in a NEPA document, the two reviews will be consolidated, and both authorities will be cited. The EPA review under the Safe Drinking Water Act of federal financially-assisted projects potentially affecting sole or principal source aquifers will be included in the EPA review of any NEPA document accompanying the same federal financially-assisted project. The letter transmitting EPA's comments on the final Environmental Impact Statement to the lead agency will be the vehicle for informing the lead agency of EPA's actions under section 1424(e).

V. Discussion of Public Comment

Most of the comments received from the public were supportive of the designation. However, one commenter requested additional information; one commenter requested an emergency determination for designation of the aquifer as a sole source aquifer; one commenter suggested Woahink Lake as an alternative source of drinking water; and several commenters felt EPA project review would create another layer of government that wasn't needed.

In review and response to the public comments, EPA believes it to be inappropriate to designate the aquifer under emergency powers because it has not been demonstrated that a threat of "an imminent and substantial endangerment to the health of persons" is present. Woahink Lake cannot be considered an alternative source of drinking water for the following reasons: (1) 100 percent of allowable withdrawals are reserved for Dunes City municipal use by the Oregon Water Resources Commission; (2) installing a water treatment plant, pumping stations, storage facilities, and transmission lines would significantly increase consumer costs; and (3) the lakes south of the Siuslaw River are hydrologically connected to a dunal aquifer which is as vulnerable to contamination as the North Florence Dunal Aquifer.

EPA project review will be streamlined and will not result in government redundancy. To date, no federal financially-assisted projects within a Region 10 designated sole source aquifer have required cancellation. The proponents of projects which were determined to represent a threat to the aquifer have either

willingly modified their plans to minimize the danger of aquifer contamination or sought a private source of financial backing.

VI. Summary

Today's action only affects the North Florence Dunal Aquifer in Lane County, Oregon. This action provides a review process to ensure that necessary ground-water protection measures are incorporated into federal financially-assisted projects.

Date: September 28, 1987.

Robie G. Russell,

Regional Administrator.

[FR Doc. 87-23179 Filed 10-6-87; 8:45 am]

BILLING CODE 6560-50-M

[OW-FRL-3274-6]

Water Quality Act Steering Committee; Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of reschedule of public meeting.

SUMMARY: This notice is a revision to the notice of public meeting of the Water Quality Act Steering Committee which appeared in the September 10, 1987 **Federal Register** under the heading "Water Quality Act Steering Commitee: Meeting." (52 FR 34294) The date and location of this meeting have been changed. The meeting is now scheduled to be held at Hall of the States, 444 North Capitol Street, NW., Washington, DC 20001, in Room 237-239 beginning at 10:00 a.m. on October 22, 1987 and ending at about 4:00 p.m. on the same day (with a break for lunch). All other information on this meeting which was provided in the September 10, 1987 notice of public meeting mentioned above is accuracte.

SUPPLEMENTARY INFORMATION: In a related activity to the Water Quality Act Meeting, the Environmental Protection Agency Management Advisory Group (MAG) is holding a public meeting on October 15 and 16 at Loew's L'Enfant Plaza, 480 L'Enfant Plaza, SW., Washington, DC 20024. A notice of the MAG meeting appeared in the **Federal Register** on September 29, 1987. The Draft State Water Pollution Revolving Fund (SRF) Guidance will be a major topic of discussion at this meeting.

The Draft SRF Guidance will, however, be one of several topics of discussion at the Water Quality Act Steering Committee Meeting which this notice addresses. Individuals interested in more than a cursory discussion of the Draft SRF Guidance should therefore attend the MAG meeting on October 15 and 16.

Dated: October 5, 1987.

Lawrence J. Jensen,

Assistant Administrator for Water.

[FR Doc. 87-23342 Filed 10-6-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

October 1, 1987.

Background: Notice is hereby given of the submission of proposed information collection(s) to the Office of Management and Budget (OMB) for its review and approval under the Paperwork Reduction Act (Title 44 U.S.C. Chapter 35) and under OMB regulations on Controlling Paperwork Burdens on the Public (5 CFR Part 1320). A copy of the proposed information collection(s) and supporting documents is available from the agency clearance officer listed in the notice. Any comments on the proposal should be sent to the OMB desk officer listed in the notice. OMB's usual practice is not to take any action on a proposed information collection until at least ten working days after notice in the **Federal Register**, but occasionally the public interest requires more rapid action.

For Further Information Contact:

Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822)

OMB Desk Officer—Robert Fishman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7340).

Request for OMB Approval To Extend Without Revision

1. Report title: Quarterly Country Exposure Report for U.S. Branches and Agencies of Foreign Banks

Agency form number: FFIEC 019

OMB Docket number: 7100-0213

Frequency: Quarterly

Reporters: U.S. branches and agencies of foreign banks

Annual reporting hours: 14,400

Small businesses are not affected.

General description of report: This information collection is mandatory [12 U.S.C. 248] and is given confidential treatment [5 U.S.C. 552(b)(4) and (b)(8)], except for one item, i.e., column 4, line 1, "Total adjusted claims" on home country.

Each quarter, every U.S. branch or agency (of a foreign bank) with more than $30 million in total direct claims on foreign residents is required to report information on its exposure to its home country and to the five other countries to which its exposure is largest and is at least $5 million for an individual country. The data are used for supervisory and regulatory purposes.

Board of Governors of the Federal Reserve System, October 1, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-23156 Filed 10-6-87; 8:45 am]

BILLING CODE 6210-01-M

Agency Forms Under Review

October 1, 1987.

Background: Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

For Further Information Contact:

Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822)

OMB Desk Officer—Robert Fishman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503 (202-395-7340)

Proposal to Approve Under OMB Delegated Authority the Extension, Without Revision, of the Following Reports

1. Report title: Officer's Questionnaire

Agency form number: FR 2410

OMB Docket number: 7100-0050

Frequency: On occasion

Reporters: State member banks

Annual reporting hours: 70

Small businesses are affected.

General description of report: This information collection is mandatory [12 U.S.C. 325] and is given confidential treatment [5 U.S.C. 552(b)(8)].

The Federal Reserve requests a senior bank officer to complete this questionnaire, which provides information regarding past, present, and potential lawsuits in which the bank has been or may become involved concerning consumer credit compliance.

2. Report title: Consumer Satisfaction Questionnaire
Agency form number: FR 1379
OMB Docket number: 7100–0135
Frequency: On occasion
Reporters: Consumers who have filed consumer complaints concerning state member banks
Annual reporting hours: 9
Small businesses are affected.
General description of report: This information collection is voluntary [15 U.S.C. 57(a)(f)(1)] and is not given confidential treatment.

This questionnaire is sent by the Federal Reserve system to people who have filed a consumer complaint with a Federal Reserve Bank concerning a state member bank. Ccmplainants are requested to answer questions voluntarily about the effectiveness of the Reserve Bank's effort in handling the consumer complaint.

3. Report title: Uniform Form for Registration as a Transfer Agent and for Amendment to Registration
Agency form number: FR TA–1
OMB Docket number: 7100–0099
Frequency: On occasion
Reporters: State member banks, bank holding companies, and nondeposit trust company subsidiaries of bank holding companies.
Annual reporting hours: 80
Significant effect on small businesses is not expected.
General description of report: This information collection is mandatory [Section 17A(c) of the Securities Exchange Act of 1934; and 12 CFR 208.8(f)(2)] and is not given confidential treatment.

This interagency form fulfills the statutory registration requirements for entities acting as transfer agents and enables certain basic information changes concerning the transfer agents to become known by the supervisory agencies.

4. Report title: Notice Claiming Status as an Exempt Transfer Agent
Agency form number: FR 4013
OMB Docket number: 7100–0137
Frequency: On occasion
Reporters: Banks, bank holding companies, and trust companies
Annual reporting hours: 16
Significant effect on small businesses is not expected.
General description of report: This information collection is mandatory [15 U.S.C. 78q–1(c)(1)] and is not given confidential treatment.

This notice provides a method for banks, bank holding companies, and trust companies who are subject to Federal Reserve Board supervision and who are engaged as a transfer agent on behalf of an issuer of securities to claim exemption from several of the Securities and Exchange Commission's rules applicable to registered transfer agents.

Board of Governors of the Federal Reserve System, October 1, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87–23157 Filed 10–6–87; 8:45 am]

BILLING CODE 6210–01–M

Agency Forms Under Review

October 1, 1987.

Background: Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

For Further Information Contact:

Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822)

OMB Desk Office—Robert Fishman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503 (202–395–7340)

Proposal to Approve Under OMB Delegated Authority the Extension, With Revision, of the Following Reports

1. Report title: Applications for Membership in the Federal Reserve System
Agency form number: FR 2083, 2083A–2083E
OMB Docket number: 7100–0046
Frequency: On occasion
Reporters: Commercial banks and certain mutual savings banks
Annual reporting hours: 3,071
Significant effect on small businesses is not expected.
General description of the report: This application provides managerial, financial and structural data necessary for the Federal Reserve Board to evaluate a new or existing bank's application for admission to the Federal Reserve System pursuant to criteria established by statute and regulation (Regulation H). The revisions would standardize the format of certain information and request certain additional information usually developed in the normal course of business in opening a new bank.

This information collection is authorized by law [12 U.S.C. 321–328]. Parts may be given confidential treatment at applicant's request [5 U.S.C. 552(b)(4)].

2. Report title: Report of Selected Deposits in Foreign Branches Held by U.S. Addressees
Agency form number: FR 2050
OMB Docket number: 7100–0068
Frequency: Weekly
Reporters: Foreign branches of U.S. banks and of Edge and Agreement corporations
Annual reporting hours: 9009
Small businesses are not affected.
General description of report: This information collection is authorized by law [12 U.S.C 248(a), 355, 461. Individual respondent data are exempt from disclosure under the Freedom of Information Act [5 U.S.C. 552 (b)(4), (b)(8)].

This report collects data from a selection of foreign branches of U.S. banks on overnight Eurodollar deposits held by U.S. nonbank residents. Data are used in construction of the monetary aggregates and analysis of liability management. A revision in the panel selection criteria will reduce the size of the panel by approximately 18 percent.

3. Report title: Monthly Report of Large International Banking Facility Accounts
Agency form number: FR 2072
OMB Docket number: 7100–0158
Frequency: Monthly
Reporters: International Banking Facilities (IBFs) of large U.S.-chartered banks and large U.S. branches and agencies of foreign banks
Reporting hours: 1187
Small businesses are not affected.
General description of report: This information collection is required by law [12 U.S.C. 248(a), 602, 625, and 3105(b)]. Individual respondent data are given confidential treatment [5 U.S.C. 552(b)(4)].

This report collects data on assets and liabilities of International Banking Facility (IBF) accounts. Data are used to assist in interpreting the monetary aggregates and to monitor IBF activities. The revisions include an increase in the reporting threshold which would reduce the panel; minor changes in report items; and a change in report date to the last day of the month.

4. Report title: Monthly Report of Foreign Branch Assets and Liabilities
Agency form number: FR 2502
OMB Docket number: 7100–0078
Frequency: Monthly
Reporters: Foreign branches of U.S. banks and of Edge and Agreement corporations

Reporting hours: 15,756
Small businesses are not affected.
General description of report: This report is required by law [12 U.S.C. 248(a)(2), 353 et seq., 602 and 625]. Individual respondent data are given confidential treatment [5 U.S.C. 552(b)(8)].

This report provides a breakdown of foreign branch assets and liabilities by category of customer and between dollars and foreign currencies. Data are used for supervisory purposes, in construction of the monetary aggregates, and to monitor U.S. banks' foreign activities. The revisions include minor changes in reporting instructions and in form items.

5. Report title: Quarterly Report of Foreign Branch Assets and Liabilities
Agency form number: FR 2502S
OMB Docket number: 7100-0079
Frequency: Quarterly
Reporters: Foreign branches of U.S. banks and Edge and Agreement corporations
Reporting hours: 7070
Small businesses are not affected.
General description of report: This report is required by law [12 U.S.C. 248(a)(2), 353 et seq., 602 and 625]. Individual respondent data are given confidential treatment [5 U.S.C. 552(b)(8)].

This report provides a geographic breakdown of assets and liabilities of foreign branch offices of U.S. banks. It is used to monitor U.S. banks' claims on and liabilities to individual foreign countries by particular branch offices and to monitor countries' indebtedness to U.S. banks. The revisions include minor changes in instructions and country names on the form.

6. Report title: Community Reinvestment Act Questionnaire
Agency form number: FR 1283
OMB Docket number: 7100-0052
Frequency: On occasion
Reporters: State member banks
Annual reporting hours: 521
Small businesses are affected.
General description of report: This information collection is mandatory [12 U.S.C. 325 and 12 U.S.C. 2901(b) and is given confidential treatment [5 U.S.C. 552(b)(8)].

The Federal Reserve requests a senior bank officer to complete this form, which is called the Community Reinvestment Act Questionnaire. The form provides information needed to make an assessment, as mandated by the Community Reinvestment Act, regarding the bank's effort to serve the credit needs of its local community. The revisions are minor wording changes to clarify the information being requested.

Board of Governors of the Federal Reserve System, October 1, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-23158 Filed 10-6-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Service's claims collection regulations (45 CFR Part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of the Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rates with Range of Maturities." This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register.**

The Secretary of the Treasury has certified a rate of 14.25% for the quarter ended September 30, 1987. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Date: October 2, 1987.

Dennis J. Fischer,

Deputy Assistant Secretary, Finance.

[FR Doc. 87-23199 Filed 10-6-87; 8:45 am]

BILLING CODE 41506-04-M

Food and Drug Administration

[Docket No. 87F-0300]

Betz Laboratories, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Betz Laboratories, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of hydroquinone as an additive in boilers producing steam that may come in contact with food.

FOR FURTHER INFORMATION CONTACT: Eric Flamm, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-5487.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 7A4031) has been filed by Betz Laboratories, Inc., 4636 Somerton Rd., Trevose, PA 19047, proposing that § 173.310 *Boiler water additives* (21 CFR 173.310) be amended to provide for the safe use of hydroquinone as an additive in boilers producing steam that may come in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Reister** in accordance with 21 CFR 25.40(c).

Dated: September 30, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-23186 Filed 10-6-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 87F-0302]

E.I. du Pont De Nemours & Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that E.I. du Pont de Nemours & Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of a polymer manufactured by the condensation of hexamethylenediamine, terephthalic acid, and isophthalic acid for contact with all types of food, except beverages containing more than 8 percent alcohol.

FOR FURTHER INFORMATION CONTACT: Edward J. Machuga, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAB 7B4001) has been filed by E.I. du Pont de Nemours & Co., Wilmington, DE 19898, proposing that § 177.1500 *Nylon resins* (21 CFR 177.1500) be amended to provide for the safe use of a polymer manufactured by the condensation of hexamethylenediamine, terephthalic

acid, and sophthaic acid for contact with all types of food, except beverages containing more than 8 percent alcohol.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: September 30, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-23187 Filed 10-6-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 87F-0309]

Sherex Chemical Co., Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Sherex Chemical Co., Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of a mixture of dodecyltin tri(isooctylmercaptoacetate) and di(dodecyl)tin di(isooctylmercaptoacetate) as a thermal stabilizer for polyvinyl chloride and vinyl chloride copolymers intended for use in contact with food.

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

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 5B3873) has been filed by Sherex Chemical Co., Inc., P.O. Box 646, Dublin, OH 43017, proposing that § 178.2650 *Organotin stabilizers in vinyl chloride plastics* (21 CFR 178.2650) be amended to provide for the safe use of a mixture of dodecyltin tri(isooctylmercaptoacetate) and di(dodecyl)tin di(isooctylmercaptoacetate) as a thermal stabilizer for polyvinyl chloride and vinyl chloride copolymers intended for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: September 30, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-23188 Filed 10-6-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 87F-0294]

Sumitomo Chemical Co., Ltd.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Sumitomo Chemical Co., Ltd., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of polyvinylcyclohexane as a clarifying agent for polypropylene and olefin copolymers intended for use in contact with food.

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

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 7B4032) has been filed by Sumitomo Chemical Co., Ltd., 7-9 Nihonbashi, 2-Chome, Chuo-ku, Tokyo, Japan, proposing that § 177.1520 *Olefin polymers* (21 CFR 177.1520) be amended to provide for the safe use of polyvinylcyclohexane as a clarifying in polypropylene complying with § 177.1520(c), item 1.1, and olefin copolymers complying with § 177.1520(c), items 3.1 and 3.2, for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: September 30, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-23185 Filed 10-6-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 87N-0337]

Drug Export; Carbicarb Injection

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that International Medication Systems, Ltd. (IMS), has filed an application requesting approval for the export of the human drug Carbicarb Injection to Canada and the United Kingdom.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Rudolf Apodaca, Center for Drugs and Biologics (HFN-310), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8063.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that they agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that International Medication Systems, Ltd. (IMS), 1886 Santa Anita Ave., South El Monte, CA 91733, has filed an application requesting approval for the export of the drug Carbicarb Injection to Canada and the United Kingdom. This drug is indicated for use when correction of the pH is required in conditions of metabolic acidosis such as that related to cardiopulmonary bypass, renal disease, circulation insufficiency due to shock or dehydration, cardiac arrest and primary lactic acidosis. The application was received and filed in the Center for Drugs and Biologics on September 17, 1987, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4.pm., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by October 19, 1987, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drugs and Biologics (21 CFR 5.44).

Dated: September 25, 1987.

Daniel L. Michels,

Director, Office of Compliance, Center for Drugs and Biologics.

[FR Doc. 87-23184 Filed 10-6-87; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[BPO-070-GNC]

Medicare Program; Criteria and Standards for Evaluating Intermediary and Carrier Performance During Fiscal Year 1988

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

ACTION: General notice With comment period.

SUMMARY: This notice describes the criteria and standards to be used for evaluating the performance of fiscal intermediaries and carriers in the administration of the Medicare program for the fiscal year beginning October 1, 1987. The results of these evaluations are considered whenever we enter into, renew, or terminate an intermediary or carrier contract or take other contract actions; assign or reassign providers of services to an intermediary; or designate regional or national intermediaries. In addition, this notice describes the methodology used for identifying contractors for competitive replacement under section 2326 of the Deficit Reduction Act of 1984.

This notice is published in accordance with sections 1816(f) and 1842(b)(2) of the Social Security Act, which requires us to publish for public comment in the **Federal Register**, those criteria and standards against which we evaluate intermediaries and carriers.

DATE: The criteria and standards are effective October 1, 1987. We will consider revising the criteria and standards based on public comments. To assure consideration, comments must be sent to the appropriate address and received by December 7, 1987.

ADDRESSES: Address comments in writing to: Health Care Financing Administration, Department of Health and Human Services, Attention: BPO-070-GNC, P.O. Box 26676, Baltimore, Maryland.

In commenting, please refer to file code BPO-070-GNC.

If you prefer, you may deliver your comments to Room 309-G Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC or to Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Comments will be available for public inspection as they are received, generally beginning approximately three weeks after publication, in Room 309-G of the Department's office at 200 Independence Avenue, SW., Washington, DC 20201, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202-245-7890).

Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. We will, however, accept the timely comments, consider them, and publish the comments and our responses to them in a subsequent Federal Register if we modify the FY 1988 criteria and standards as announced.

FOR FURTHER INFORMATION CONTACT: John Barton, (301) 594-8502.

SUPPLEMENTARY INFORMATION:

A. Background

Under section 1816 of the Social Security Act (the Act), public or private organizations and agencies participate in the administration of Part A (Hospital Insurance) of the Medicare program under agreements with the Secretary of Health and Human Services. These agencies or organizations are known as fiscal intermediaries, and they perform bill processing and benefit payment functions for the Medicare program. Most providers of services (such as hospitals, skilled nursing facilities (SNFs), and home health agencies (HHAs)) submit bills to these intermediaries, which determine whether the services are covered under Medicare and determine correct payment amounts. The intermediaries then make payments to the providers on behalf of the beneficiaries.

Under section 1842 of the Act, we are authorized to enter into contracts with carriers to fulfill various functions in the administration of Part B (Supplementary Medical Insurance) of the Medicare program. Beneficiaries, physicians and suppliers of services submit claims to these carriers. The carriers determine whether the services are covered under Medicare and the reimbursable amount (usually on the basis of reasonable charges) for the services or supplies and then make payment to the appropriate party.

Under section 1816(f) of the Act, we are required to develop criteria, standards, and procedures to evaluate an intermediary's performance of its functions under its agreement with us. We evaluate intermediary performance through the Contractor Performance Evaluation Program (CPEP). Our regulations at 42 CFR 421.120 provide for publication of Federal Register notices to announce criteria and standards applicable during each fiscal year.

Under section 1842(b)(2) of the Act allows us to evaluate the performance of Medicare carriers. Since 1981, we have evaluated carrier performance under CPEP using criteria and standards similar to those used for intermediaries. When a fiscal intermediary exercises functions which are Part B functions, technically it does so as a Part B carrier under section 1842 of the Act. Under section 1842(a) of the Act, the Secretary is authorized to enter into contracts with carriers, including carriers with which agreements under section 1816 are in effect, to perform some or all of the Medicare Part B functions.

As a result of section 2326(c) of Pub. L. 98-369, the Deficit Reduction Act of 1984 (DEFRA), we publish in the Federal Register the criteria and standards used to evaluate both intermediaries and carriers in order to allow the public an opportunity to comment before implementing them. This notice announces the FY 1988 criteria and standards to be used to measure the effectiveness and efficiency of both intermediaries and carriers.

In addition, section 2326(a) of DEFRA, as amended by Section 9321 of the Omnibus Budget Reconciliation Act of 1986, Pub. L. 99-509, established the Secretary's statutory authority to replace up to two Part A and up to two Part B contractors which, over a period of time, have been in the lowest 20th percentile of Medicare contractors, as measured by performance criteria and standards. The contractor community has played a significant role in developing the DEFRA methodology and the ongoing revisions necessitated each year since legislated. However, this is the first time that the methodology for applying the DEFRA requirements is being published for comment in the Federal Register. It is HCFA's intention to afford this formal comment opportunity each year in the notice which conveys the performance criteria and standards. The ongoing exchange of ideas and comments which occurs through interaction between HCFA and its contractors will also continue, as in the past.

B. Fiscal Year 1988 Criteria and Standards—General

For FY 1988, we have redesigned CPEP to focus on more results- and output-oriented measures in an effort to create a more enhanced measurement tool. This redesign was accomplished as a result of a joint effort on the part of HCFA and representatives of the contractor community.

In redesignating CPEP we first identified the main functional responsibilities which are performed by the intermediaries and carriers (e.g., claims processing, medical review/utilization review, financial management, etc.) and these responsibilities have been termed "Functional Criteria." For intermediaries, we identified eleven separate criteria and, for carriers, we have identified ten. Next we identified how to measure performance for each criterion. We decided that appropriate measurement should fall into three basic key indicators or categories; cost, quality (accuracy), and timeliness. As appropriate, each key indicator contains one or more standards which measures contractor performance for that indicator within the functional criterion. Please note that not all three of the performance indicators may be necessarily appropriate to a functional criterion. That is, some functional criteria may only contain standards which measure one or two of the performance indicators.

The primary difference between the 1988 CPEP and the program for 1987 is the scoring and weighting structure. The actual performance standards/measurements used for the two years are very similar. Where differences exist in the standards from FY 1987 they are due to our intention that the FY 1988 CPEP be more results- and output-oriented. The FY 1988 CPEP's scoring and weighting structure moves away from the FY 1987 approach of equally weighted criteria and using uniform weights of 5, 3, or 1 for the standards within the criteria. To more effectively recognize the differences in the relative importance of functional requirements, the FY 1988 CPEP assigns points ranging from 60 to 160 to each functional criterion and, similarly, assigns points ranging from one to 100 to each standard within a functional criterion. This new weighting scheme provides HCFA with greater flexibility and contractor management with a clearer understanding of program emphases for the evaluation period. The scoring system for FY 1988 is discussed in greater detail in Section C of this notice. We are implementing, on a test basis, a standard to measure a carrier's timeliness in completion of hearings.

Action Based on Performance Evaluations

We may, as in previous years, initiate administrative actions as a result of the evaluation of intermediary and carrier performance based on these performance criteria and standards.

Under sections 1816 and 1842 of the Social Security Act, we consider the results of the evaluation in our determination on:

1. Entering into, renewing, or terminating agreements with contractors; and

2. Decisions concerning other contract actions for intermediaries and carriers (such as deletion of an automatic renewal clause). These are made on a case-by-case basis and depend primarily on the nature and degree of performance. More specifically, they depend on:

a. Relative overall performance compared to other contractors;

b. Number of standards in which superior, average, or deficient performance occurs;

c. Extent of each failure; and

d. Relative significance of the standards for which superior or deficient performance occurs within the overall CPEP.

In addition, we consider the results of intermediary evaluation in determinations we make concerning assignment or reassignment of providers and designation of regional or national intermediaries for classes of providers.

We make individuals contract action decisions after considering these factors in terms of their reactive significance and impact on the efficient administration of the Medicare Program.

Replacement of Contractors Through Competitive Bidding

Section 2326(a) of Pub. L. 98-369 (DEFRA) allows HCFA to use competitive bidding to replace a contractor whose performance over a period of time has been in the lowest 20th percentile as measured by performance criteria and standards. In FY 1985 and FY 1986, section 2326(a) of DEFRA authorized HCFA to enter into two intermediary agreements and two carrier contracts based on competitive bidding, without regard to provider nomination rights, in order to replace poor performing intermediaries and carriers. The authority to replace poor performers under provisions of section 2326(a) was extended through the end of FY 1989 by section 9321(b) of Pub. L. 99-509. Section F of this notice outlines the methodology for complying with section 2326(a) of DEFRA for FY 1988.

C. Scoring System

For both intermediaries and carriers, the maximum score attainable is 1000 points. Each of the CPEP's functional criterion is assigned a given portion of the 1000 available points. There are two requirements for passing CPEP. One of the requirements is that 70 percent of the available points for each criterion must be attained. Each functional criterion contains one or more standards categorized as either a cost, quality, or timeliness measure. Each of the standards is assigned a portion of the total points for that functional criterion. Each standard has a method of evaluation that is used to calculate a rating based on a contractor's performance in that standard. The second requirement for passing CPEP is that 70 percent of the total available points for each category of standards, i.e., cost, quality/accuracy, and timeliness, must also be attained.

A contractor's performance is evaluated against each applicable standard. In general, if a contractor exactly meets the requirements for a standard, it achieves 70 percent of the points allocated to that standard, to which we refer as the threshold score. Any rating below that threshold (i.e., less than 70 percent) constitutes a deficiency requiring correction or improvement.

D. Criteria and Standards for Intermediaries

We will use 11 criteria to evaluate the overall performance of an intermediary in FY 1988. They are: (1) Unit Cost; (2) Process Claims; (3) Auditing; (4) Medical Review; (5) Medicare Secondary Payer; (6) Financial Management; (7) Beneficiary and Provider Services; (8) Reporting; (9) Fraud and Abuse; (10) Reimbursement; and (11) Management of Change. The eleven criteria contain a total of 60 standards. There are two for unit cost, nine for process claims, seven for auditing, three for medical review, one for Medicare secondary payer, five for financial management, four for beneficiary and provider services, 15 for reporting, three for fraud and abuse, six for reimbursement, and five for management of change.

1. Unit Cost Criterion (Total Points=95)

An intermediary must process all bills at an acceptable unit cost.

- Process bills at an acceptable unit cost (Standard 1=75 points) (Cost).
- Process appeals at an acceptable unit cost (Standard 2=20 points) (Cost).

2. Process Claims Criterion (Total Points=135)

An intermediary must properly control and process bills from providers, and transmit accurate bill information to HCFA. The intermediary is required to meet the following standards:

- Pay clean non-Periodic Interim Payment (PIP) bills within mandated timeframes (Standard 1=35 points) (Timeliness).
- Pay all bills within 60 days (Standard 2=5 points) (Timeliness).
- Pay all bills within 90 days (Standard 3=5 points) (Timeliness).
- Control payment of interest on clean bills (Standard 4=15 points) (Timeliness).
- Process adjustment records timely, and return the adjusted records to the PRO (Standard 5=10 points) (Timeliness).
- Assure that all Part A bills pass HCFA utilization and consistency edits (Standard 6=10 points) (Quality).
- Process Returns to Intermediaries (RTIs) in a timely manner (Standard 7=7 points) (Timeliness).
- Process Returns to Intermediaries (RTIs) accurately (Standard 8=3 points) (Quality).
- Process bills accurately (Standard 9=45 points) (Quality).

3. Auditing Criterion (Total Points=100)

An intermediary must administer the program in a manner that achieves maximum savings and cost avoidance for Medicare trust funds. We will use the standards below to evaluate the criterion for FY 1988. The intermediary is required to:

- Administer a cost-effective provider audit program (Standard 1=36 points) Cost).
- Perform properly when reviewing, auditing, adjusting, settling, and completing cost reports/statements (Standard 2=34 points) (Quality).
- Settle Hospital Cost reports timely (Standard 3=9 points) (Timeliness).
- Settle cost reports with malpractice and labor delivery room adjustments timely (Standard 4=9 points), (Timeliness).
- Issue Notices of Program Reimbursement (NPRs) on freestanding Home Health Agencies (HHA) cost reports timely (Standard 5=3 points) (Timeliness).
- Issue Notices of Program Reimbursement (NPRs) on freestanding SNF cost reports timely (Standard 6=3 points) (Timeliness).
- Complete Special Situations Audits timely (Standard 7=6 points) (Timeliness).

4. Medical Review Criterion (Total Points=125)

- An intermediary must perform medical review activities as required by HCFA instructions in a timely, accurate and cost effective manner. We will use the following standards to evalute this criterion in FY 1988. The intermediary is required to:

• Make accurate coverage determinations (Standard 1=75 points) (Quality).

• Administer a cost effective Medical Review (MR) program (Standard 2=25 points) (Cost).

• Apply appropriate HCFA MR policies (Standard 3=25 points) (Quality).

5. Medicare Secondary Payer Criterion (Total Points=80)

• An intermediary must administer the program in a manner which achieves maximum savings and cost avoidance to the Medicare trust funds. We will use the standard below to evaluate an intermediary's administration of the Medicare Secondary Payer provisions. The intermediary is required to:

• Achieve the Medicare Secondary Payer (MSP) savings goal (Standard 1=80 points) (Cost).

6. Financial Management Criterion (Total Points=65)

• An intermediary must take measures to trust the Medicare program and the public interest. It must manage Federal funds for both benefit payments and cost of administration in accordance with its agreement with the Secretary, the Federal Acquisition Regulations (Title 48, Chapter 1), the HHS Acquisition Regulations (Title 48, Chapter 3), and HCFA instructions. We will use the standards below to evaluate the criterion in FY 1988. The intermediary is required to:

• Ensure that costs are allowable, allocations are consistent (provide reasonable assurance that comparable transactions are treated alike) and chargeable to a particular cost objective in accordance with the relative benefits received or other equitable relationships (Standard 1=15 points) (Quality).

• Control administrative funds drawn to the quarterly limit on the Notice of Budget Approval (NOBA) and in line with actual expenditures (Standard 2=15 points) (Quality).

• Control actual expenditures to the latest approved budget (Standard 3=13 points) (Quality).

• Manage the benefit and time accounts properly and in accordance with the Medicare bank agreement (Standard 4=8 points) (Quality).

• Ensure proper expenditure of Payment Safeguards Funds (Standard 5=14 points) (Quality).

7. Beneficiary and Provider Services Criterion (Total Points=100)

An intermediary must ensure that, in Medicare matters, beneficiaries and providers are treated according to law, regulations, and general instructions covering such areas as responding to correspondence and processing reconsiderations timely and accurately. We will use the standards below to evaluate beneficiary and provider services for FY 1988. The intermediary is required to:

• Process reconsiderations accurately (Standard 1=25 points) (Quality).

• Process reconsiderations timely (Standard 2=15 points) (Timeliness).

• Process correspondence accurately (Standard 3=40 points) (Quality).

• Process correspondence timely (Standard 4=20 points) (Timeliness).

8. Reporting Criterion (Total Points=60)

An intermediary must manage Federal funds for both program payments and cost of administration in accordance with its agreement with HHS and HCFA. We will use the standards below to evaluate an intermediary's reporting function in FY 1988. The intermediary is required to:

• Submit accurate Plan of Expenditure Reports (POEs) and Variance Analyses (Standard 1=6 points) (Quality).

• Submit timely Plan of Expenditure Reports (POEs) and Variance Analyses (Standard 2=6 points) (Timeliness).

• Submit accurate Interim Expenditure Reports (IERs) (Standard 3=5 points) (Quality).

• Submit Interim Expenditure Reports (IERs) timely (Standard 4=5 points) (Timeliness).

• Submit the Final Administrative Cost Proposal (FACP) accurately (Standard 5=2 points) (Quality).

• Submit the Final Administrative Cost Proposal (FACP) timely (Standard 6=2 points) (Timeliness).

• Submit an accurate budget request (Standard 7=2 points) (Quality).

• Submit the budget request timely (Standard 8=2 points) (Timeliness).

• Submit the Contractor Audit and Settlement Report (CASR) timely (Standard 9=7 points) (Timeliness).

• Submit an accurate Provider Overpayment Report (POR) (Standard 10=5 points) (Quality).

• Submit the Provider Overpayment Report (POR) timely (Standard 11=5 points) (Timeliness).

• Submit Intermediary Workload Report (HCFA-1566) and Quarterly Supplement (HCFA-1566A) timely (Standard 12=8 points) (Timeliness).

• Submit accurate Reports of Benefit Savings (Standard 13=2 points) (Quality).

• Submit Reports of Benefit Savings timely (Standard 14=1 point) (Timeliness).

• Enter appeals data timely (Standard 15=2 points) (Timeliness).

9. Fraud and Abuse Criterion (Total Points=70)

An intermediary must administer the program in a manner that achieves maximum savings and cost avoidance for the Medicare trust funds. We will use the three standards below to evaluate an intermediary's efforts to identify and develop fraud and abuse situations. The intermediary is required to:

• Detect fraud and abuse situations (Standard 1=35 points) (Quality).

• Develop potential fraud and abuse cases (Standard 2=25 points) (Quality).

• Ensure that no payments are made to excluded providers and physicians (Standard 3=10 points) (Quality).

10. Reimbursement Criterion (Total Points=75)

An intermediary must administer the program in a manner that achieves maximum savings and cost avoidance for the Medicare trust funds. We will use the standards below to assess the intermediary's reimbursement activity. The intermediary is required to:

• Establish interim payments for hospitals to approximate reimbursable costs (Standard 1=20 points) (Quality).

• Establish interim payments for freestanding Skilled Nursing Facilities (SNFs) to approximate reimbursable costs (Standard 2=10 points) (Quality).

• Establish interim payments for freestanding HHAs to approximate reimbursable costs (Standard 3=15 points) (Quality).

• Collect Provider Overpayments timely (Standard 4=22 points) (Timeliness).

• Submit timely cost report data for the Hospital Cost Report Information System (HCRIS) (Standard 5=5 points) (Timeliness).

• Submit accurate cost report data for HCRIS (Standard 6=3 points) (Quality).

11. Management of Change Criterion (Total Points=95)

An intermediary must take measures to protect the Medicare program and the public interest. It must effectively manage Federal funds for both program payments and cost of administration in accordance with HCFA instructions. We will evaluate an intermediary's management of change with the following FY 1988 standards:

• Implement Priority I critical tasks accurately (Standard 1=25 points) (Quality).

• Implement Priority I critical tasks timely (Standard 2=35 points) (Timeliness).

• Implement "other tasks" from the Contractor Workload Management

Report accurately (Standard 3=10 points) (Quality).

• Implement "other tasks" from the Contractor Workload Management Report timely (Standard 4=10 points) (Timeliness).

• Comply with RO requests and instructions timely (Standard 5=15 points) (Timeliness).

E. Criteria and Standards for Carriers

We will use ten criteria to evaluate overall carrier performance during FY 1988. They are: (1) Unit Cost; (2) Process Claims; (3) Medical Review; (4) Medicare Secondary Payer; (5) Pricing and Coding; (6) Financial Management; (7) Beneficiary and Provider Services; (8) Reporting; (9) Fraud and Abuse; and (10) Management of Change. The ten criteria contain a total of 69 standards. There are three for unit cost, 12 for processing claims, four for medical review, one for Medicare secondary payer, eight for pricing and coding, five for financial management, 12 for beneficiary and provider services, 14 for reporting, five for fraud and abuse, and five for management of change.

1. Unit Cost Criterion (Total Points=95)

A carrier must process all claims at an acceptable unit cost.

• Process claims at an acceptable unit cost (Standard 1=75 points) (Cost).

• Process reviews, reopenings, and inquiries at an acceptable unit cost (Standard 2=10 points) (Cost).

• Process hearings at an acceptable unit cost (Standard 3=10) (Cost).

2. Process Claims Criterion (Total Points=160)

A carrier must process Part B Medicare claims to determine allowance or disallowance in accordance with general instructions. For FY 1988 we will use the following 12 standards to assess carriers' claim processing performance. The carrier is required to:

• Pay clean participating physician claims within mandated timeframes (Standard 1=25 points) (Timeliness).

• Pay other clean claims within mandated timeframes (Standard 2=25 points) (Timeliness).

• Pay all claims within 60 days (Standard 3=12 points) (Timeliness).

• Pay all claims within 90 days (Standard 4=8 points) Timeliness).

• Control payment of interest on clean claims (Standard 5=20 points) (Timeliness).

• Maintain satisfactory underpayment deductible error rate (Standard 6=25 points) (Quality).

• Maintain satisfactory overpayment deductible error rate (Standard 7=25 points) (Quality).

• Prepare payment record tapes accurately (Standard 8=5 points) (Quality).

• Submit payment records in accordance with HCFA requirements (Standard 9=3 points) (Timeliness).

• Correct payment record rejects timely (Standard 10=2 points) (Timeliness).

• Generate Explanation of Medicare Benefits (EOMBs) properly (Standard 11=5 points) (Quality).

• Ensure Regional Office (RO) approval of special messages (Standard 12=5 points) (Quality).

3. Medical Review Criterion (Total Points=125)

A carrier must perform necessary medical review activities in accordance with HCFA instructions accurately, timely, and in a cost-effective manner. The carrier is required to:

• Make accurate coverage decisions based on Carriers' Guidelines (Standard 1=60 points) (Quality).

• Administer a cost effective Medical Review (MR) program (Standard 2=30 points) (Cost).

• Conduct an effective postpayment program (Standard 3=20 points) (Quality).

• Apply appropriate HCFA MR policies (Standard 4=15 points) (Quality).

4. Medicare Secondary Payer Criterion (Total Points=80)

A carrier must administer the Medicare program in a manner which achieves maximum savings and cost avoidance to the Medicare trust funds. We will use the standards below to evaluate a carrier's administration of the Medicare Secondary Payer provisions. The carrier is required to:

• Achieve Medicare Secondary Payer (MSP) savings goal (Standard 1=80 points) (Cost).

5. Pricing and Coding Criterion (Total Points=100)

A carrier must accurately determine the amount of program payments allowed for covered services. For FY 1988 we will use the following eight standards to assess a carrier's pricing and coding performance. The carrier is required to:

• Install and implement appropriate pricing accurately for Medicare covered new and cross referenced HCFA's Common Procedure Coding System (HCPCS) codes (Standard 1=10 points) (Quality).

• Implement HCFA's Common Procedure Coding System (HCPCS) annual update timely (Standard 2=10 points) (Timeliness).

• Perform reasonable charge determinations accurately (Standard 3=15 points) (Quality).

• Update reasonable charges and install by due date (Standard 4=20 points) (Timeliness).

• Install correction of reasonable charge screens by RO due date (Standard 5=15 points) (Timeliness).

• Comply with manual requirements on inherent reasonableness accurately (Standard 6=10 points) (Quality).

• Compute Maximum Allowable Actual Charges (MAACs) accurately (Standard 7=10 points) (Quality).

• Make MAACs available to providers by due date (Standard 8=10 points) (Timeliness).

6. Financial Management Criterion (Total Points=65)

A carrier must take measures to protect the Medicare program and the public interest. It must manage Federal funds for both program payments and the cost of administration in accordance with its agreement with the Secretary, the Federal Acquisition Regulations (Title 48, Chapter 1), the HHS Acquisition Regulations (Title 48, Chapter 3), and HCFA instructions. We will use the standards below to evaluate the criterion in FY 1988. The carrier is required to:

• Ensure that costs are allowable, allocations are consistent (provide reasonable assurance that comparable transactions are treated alike) and chargeable to a particular cost objective in accordance with the relative benefits received or other equitable relationship (Standard 1=15 points) (Quality).

• Control administrative funds drawn to the quarterly limit on the Notice of Budget Approval (NOBA) and in line with actual expenditures (Standard 2=15 points) (Quality).

• Control actual expenditures to the latest approved budget (Standard 3=13 points) (Quality).

• Manage the benefit and time accounts properly and in accordance with the Medicare bank agreement (Standard 4=8 points) (Quality).

• Ensure proper expenditure of Payment Safeguard Funds (Standard 5=14 points) (Quality).

7. Beneficiary and Provider Services Criterion (Total Points=150)

A carrier must ensure that, in Medicare matters, beneficiaries and providers are treated according to law, regulations, and general instructions covering areas such as responding to correspondence, issuing notices of determinations, and providing impartial

reviews. The carrier is responsible to meet the following standards:

• Maintain proper level of telephone service (Standard 1=25 points) (Timeliness).

• Respond timely to telephone inquiries (Standard 2=5 points) (Timeliness).

• Complete reviews accurately (Standard 3=30 points) (Quality).

• Furnish readable notice to beneficiary of review determinations (Standard 4=10 points) (Quality).

• Complete reviews timely (Standard 5=20 points) (Timeliness).

• Respond accurately to correspondence (Standard 6=25 points) (Quality).

• Furnish readable response to beneficiary correspondence (Standard 7=10 points (Quality).

• Respond timely to all correspondence (Standard 8=10 points) (Timeliness).

• Sent out letters timely to physicians and suppliers offering them the opportunity to become a Medicare participant (Standard 9=5 points) (Timeliness).

• Prepare MEDPARD timely (Standard 10=5 points) (Timeliness).

• Determine liability and properly dispose of beneficiary overpayment cases (Standard 11=5 points) (Quality).

• Complete carrier hearings timely (Standard 12=0 points) (Timeliness).

8. Reporting Criterion (Total Points=60)

A carrier must manage Federal funds for both program payments and cost of administration in accordance with its agreement with HHS and HCFA. We will use the 14 standards below to assess a carrier's reporting function in FY 1988. The carrier is required to:

• Submit accurate Plan of Expenditure Reports (POEs) and Variance Analyses (Standard 1=6 points) (Quality).

• Submit timely Plan of Expenditure Reports (POEs) and Variance Analyses (Standard 2=6 points) (Timeliness).

• Submit accurate Interim Expenditure Reports (IERs) (Standard 3=5 points) (Quality).

• Submit Interim Expenditure Reports (IERs) timely (Standard 4=5 points) (Timeliness).

• Submit the Final Administrative Cost Proposal (FACP) accurately (Standard 5=2 points) (Quality).

• Submit the Final Administrative Cost Proposal (FACP) timely (Standard 6=2 points) (Timeliness).

• Submit an accurate budget request (Standard 7=2 points) (Quality).

• Submit the budget request timely (Standard 8=2 points) (Timeliness).

• Submit Carrier Performance Report (HCFA-1565) and Quarterly Supplement (HCFA-1565A) timely (Standard 9=9 points) (Timeliness).

• Submit accurate Quarterly Medical Review Reports (Standard 10=2 points) (Quality).

• Submit Quarterly Medical Review Reports timely (Standard 11=1 points). (Timeliness).

• Submit Quality Assurance Program (QAP) Reports timely (Standard 12=7 points) (Timeliness).

• Submit timely physician/supplier overpayment data (Standard 13=4 points) (Timeliness).

• Submit Part B Medicare (BMAD) files timely (Standard 14=7 points) (Timeliness).

9. Fraud and Abuse Criterion (Total Points=70)

A carrier must administer the program in a manner that achieves maximum savings and cost avoidance for Medicare trust funds. We will use the following standards to evaluate a carrier's efforts to identify and develop fraud and abuse situations. The carrier is required to:

• Detect fraud and abuse situations (Standard 1=20 points) (Quality).

• Develop potential fraud and abuse cases (Standard 2=20 points) (Quality).

• Ensure that no payments are made to excluded physicians/suppliers (Standard 3=10 points) (Quality).

• Monitor Participating Physician Agreement violations (Standard 4=10 points) (Quality).

• Monitor nonparticipating physician Minimum Allowable Actual Charge (MAAC) violations (Standard 5=10 points) (Quality).

10. Management of Change Criterion (Total Points=95)

A carrier must take measures to protect the Medicare program and the public interest. It must effectively manage Federal funds for both program payments and cost of administration in accordance with HCFA instructions. We will evaluate a carrier's management of change with the following FY 1988 standards:

• Implement Priority I critical tasks accurately (Standard 1=25 points) (Quality).

• Implement Priority I critical tasks timely (Standard 2=35 points) (Timeliness).

• Implement "other tasks" from the Contractor Workload Management Report accurately (Standard 3=10 points) (Quality).

• Implement "other tasks" from the Contractor Workload Management Report timely (Standard 4=10 points) (Timeliness).

• Comply with RO requests and instructions timely (Standard 5=15 points) (Timeliness).

F. DEFRA Methodology

For FY 1988, the methodology for separately identifying Part A and Part B contractors for replacement under section 2326 of DEFRA will be as follows:

• Performance, as measured by the Secretary's criteria and standards, will be considered for the 3 fiscal years 1986, 1987, and 1988.

• Each year's overall performance will be captured in the form of an unweighted, base efficiency rating—points earned as a percentage of points available, as determined by the performance criteria and standards.

• Each year's efficiency rating will be weighted to provide extra emphasis for the most recent performance. The weights, to be multiplied by each year's efficiency rating, are:

Year	Weight
1988	3
1987	2
1986	1

• Each year's weighted efficiency rating will be summed and the contractors ranked (Part A and Part B separately) from highest points to lowest points.

• Careful study of the bottom 20th percentile of contractors will be undertaken to fully assess considerations such as performance that is improving/deteriorating, factors beyond the contractor's control, and other factors pertinent to a particular territory.

G. Regulatory Impact Statement

1. Executive Order 12291

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

based enterprises in domestic or export markets.

We do not expect this notice to meet any of these criteria. Preliminary analyses reveal that the FY 1988 CPEP may reduce, by almost 30 percent, the Federal resources required to administer these criteria and standards. These resource savings are primarily a result of increased focus on results and output-oriented measures. Further, more efficient evaluation methodologies are being used. We expect little, if any, impact on contractor costs since the criteria and standards measure functional responsibilities that the contractor must be performing anyway as a Medicare contractor.

We also expect the effects on both competition and productivity to be favorable, not adverse, and the effects, if any, on employment, investment, and innovation to be negligible. For these reasons, we have determined that a regulatory impact analysis is not required.

2. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a notice such as this would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, intermediaries and carriers are not small entities, although we treat all providers and suppliers as small entities.

The direct effect of this notice is on our intermediaries and carriers. Since they are not small entities, even though we expect this notice to have an effect on contractor operations, an analysis of that impact is not required. However, it is clear that many standards, such as those governing bill processing, beneficiary services, and provider services, will have indirect effects on a substantial number of providers and suppliers. Therefore, in order to verify that a regulatory flexibility analysis is not required, we assessed whether the indirect impact on those small entities will be significant.

Generally, the operations to which the standards of the intermediary and carrier performance criteria refer are required by law, other regulations, contract, or other program instructions. These criteria provide an evaluation process and do not in themselves require the performance of the operations they evaluate. The most important indirect effect on providers and suppliers is to ensure that they are paid timely and accurately. We do not expect these criteria and standards to have any indirect adverse effects on them. Therefore, we have determined that the evaluation process in and of itself will not have a significant impact on providers and suppliers.

For these reasons, we have determined, and the Secretary certifies, that this notice would not have a significant economic impact on a substantial number of small entities, and we have therefore not prepared a regulatory flexibility analysis.

3. Paperwork Reduction Act

This notice contains no information collection requirements subject to EOMB approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

(Sec. 1102, 1816, 1842, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395h, 1395u, and 1395hh))

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance)

Dated: August 3, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 87-23231 Filed 10-5-87; 8:53 am]

BILLING CODE 4120-01-M

Medicaid Program; Hearing; Reconsideration of Disapproval of Two Illinois State Plan Amendments

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

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on November 18, 1987 in Chicago, Illinois to reconsider our decision to disapprove Illinois State Plan Amendments 86-15, 87-12.

Closing Date: Requests to participate in the hearing as a party must be received by the Docket Clerk on or before October 22, 1987.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, Hearing Staff, Bureau of Eligibility, Reimbursement and Coverage, 300 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 594-8261.

SUPPLEMENTARY INFORMATION:

This notice announces an administrative hearing to reconsider our decision to disapprove two Illinois State Plan Amendments.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues which will be considered at the hearing, we will also publish that information in a notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The issue in this matter is whether the two Illinois State plan amendments (SPAs) violate the requirements of sections 1905(a)(16) and 1905(h), section 1905(a)(14), and paragraph (B) following 1905(a)(21) of the Social Security Act and Federal regulations at 42 CFR Parts 440 and 441 and 42 CFR 440.140.

The State of Illinois submitted SPA 86-15 which would allow coverage of substance and alcohol abuse treatment services under the optional rehabilitative services benefit. These services would be provided in licensed freestanding alcohol and drug abuse treatment centers and would include short-term inpatient residential services for detoxification and rehabilitation for individuals up to age 21 and over 64; short-term rehabilitation in an intensive outpatient setting; other outpatient services, and psychiatric diagnostic services. Illinois 87-12 is identical in substance to SPA 86-15 except that it would expand eligibility for short-term residential recipients between the ages of 21 and 65.

HCFA disapproved those portions of Illinois SPA 86-15 and 87-12 which relate to short-term residential rehabilitation services because they would involve the provision of inpatient care not covered under the Medicaid statute. Medicaid payment can only be made for services provided in facilities which meet the Medicaid definition of hospitals, skilled nursing facilities, and intermediate care facilities. Moreover, in order for services for individuals up to age 21 and over 64 to be covered they must meet the statutory and regulatory requirements relating to inpatient psychiatric services for individuals under age 22 (sections 1905(a)(16) and 1905(h) of the law and regulations at 42 CFR Parts 440 and 441) and IMD

services for individuals over age 65 (section 1905(a)(14) of the law and regulations at 42 CFR 440.140. These provisions of law require, inter alia, that services to individuals under age 22 must be provided in a facility which is a psychiatric hospital as defined in section 1861(f) (section 1905(h)(1)(A) of the Act); that services to individuals over age 65 must provided in facilities which meet the requirements for psychiatric hospitals at 42 CFR 482.60.

Also, HCFA has determined that the inpatient services the additional individuals (i.e., individuals between the ages of 22 and 65) would receive under proposed Illinois SPA 87-12, could not be covered under Medicaid for another reason. HCFA has determined Illinois SPA 87-12 violates the Medicaid statutory prohibition (in paragraph (B) following section 1905(a)(21) of the Social Security Act) against payment on behalf of individuals between the ages of 22 and 65 who are in institutions for mental diseases (IMDs). HCFA has determined that the inpatient facilities described in the SPA are institutions "primarily engaged in providing diagnosis, treatments, or care of individuals with mental diseases, including medical care, nursing care and related services" (42 CFR 440.140(a)(2)). Thus, they meet the Medicaid definition of institutions for mental diseases.

The notice to Illinois announcing an administrative hearing to reconsider the disapproval of its State plan amendments reads as follows:

Mr. Edward L. Duffy
Director, Illinois Department of Public Aid, Jesse B. Harris Building, 100 South Grand Avenue East, Springfield, Illinois 62762

Dear Mr. Duffy: This is to advise you that your request for reconsideration of the decision to disapprove Illinois State Plan Amendment (SPA) 86-15 and 87-12 was received on August 27, 1987.

Illinois SPAs 86-15 and 87-12 propose to offer, as rehabilitative services under the State plan, inpatient and outpatient treatment for alcohol and substance abuse patients. Illinois SPA 87-12 alters that proposal by including in it inpatient residential services for individuals from the ages of 21 to 65.

There are two issues in this matter. The first issue concerns the need to determine whether Illinois' proposed amendments are consistent with the law and regulations governing inpatient care (section 1905(a)(16) and 1905(h) and section 1905(a)(14) of the Social Security Act and Federal regulations at 42 CFR Parts 440 and 441). Specifically, a determination needs to be made as to whether Illinois' proposed amendments are consistent with those provisions of law which require, inter alia, that services to individuals under age 22 be provided in a facility which is a psychiatric hospital as defined in section 1861(f) of the Act (section 1905(h)(1)(A)); and that services to individuals over age 65 must be provided in facilities which meet requirements for psychiatric hospitals at 42 CFR 482.60. The second issue concerns the need to determine whether the inpatient facilities described in Illinois 87-12 meet the definition of institutions for mental diseases in 42 CFR 440.140(a)(2) therefore violating the statutory prohibition in paragraph B following section 1905(a)(21) of the Social Security Act against payment on behalf of individuals between the ages of 22 and 65 who are in institutions.

I am scheduling a hearing on your request to be held on November 18, 1987 at 10:00 a.m. in Suite 835-A Conference Room, 175 W. Jackson Boulevard, Chicago, Illinois. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties.

I am designating Mr. Albert Miller as the presiding official. If these arrangements present any problems, please contact the Docket Clerk. I order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 594-8261.

Sincerely,

William L. Roper,
Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. 1316))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: September 25, 1987.

William L. Roper,
Administrator, Health Care Financing Administration.

[FR Doc. 87-23200 Filed 10-6-87; 8:45 am]
BILLING CODE 4120-03-M

National Institutes of Health

National Institute on Aging; Board of Scientific Counselors; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Board of Scientific Counselors, National Institute on Aging (NIA), October 26-28, 1987, which was published in the **Federal Register** on Thursday, September 3, (52 FR 33476).

The Board was to have convened for three days on October 26, 27 and 28, but has been rescheduled to meet on Monday, October 26, and Tuesday, October 27, at the Gerontology Research Center, Baltimore, Maryland.

The meeting will be open to the public on October 26 and 27 from 9:30 a.m. until approximately 4:00 p.m. The meeting will be closed to the public on October 26 and 27 from 4:00 p.m. until adjournment each day.

Ms. June C. McCann, Committee Management Officer, NIA, Building 31, Room 5C05, National Institutes of Health, Bethesda, Maryland 20892, (telephone: 301/496-9322) will provide a summary of the meeting and a roster of committee members. Dr. Richard C. Greulich, Scientific Director, NIA, Gerontology Research Center, Baltimore City Hospitals, Baltimore, Maryland 21224, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.866, Aging Research, National Institutes of Health)

Dated: September 30, 1987.

Betty J. Beveridge,
Committee Management Officer, National Institutes of Health.

[FR Doc. 87-23197 Filed 10-6-87; 8:45 am]
BILLING CODE 4140-01-M

Advisory Committee to Director; Meeting

Notice is hereby given that the National Institutes of Health (NIH) will hold the third and fourth meetings of a series of seven regional public briefing meetings to be conducted under the auspices of the Advisory Committee to the Director, NIH, on "The Health of Biomedical Research Institutions." The purpose of the meetings is two-fold:

(1) To provide current information concerning the activities of the NIH by describing the broad political context in which the NIH operates, discussing the Federal budget process as it affects the formulation of the NIH budget, demonstrating recent trends in the funding of NIH programs, discussing the broad strategies adopted by NIH to meet emerging needs, and describing new NIH policies and programs designed to achieve program objectives; and

(2) To solicit through public testimony the views of biomedical researchers, university faculty and administrators, representatives of professional societies, and other interested parties concerning the impact of the Federal system of sponsored research on the health of biomedical research institutions.

The third meeting will be held on Thursday, December 3, 1987, from 8:30 a.m. to 5:00 p.m. at New York University. The fourth will be held on December 4, 1987, from 8:30 a.m. to 5:00 p.m. at the Forsyth Dental Center, Boston, Massachusetts. Notice of the time and location of additional meetings will be published later.

Following presentations by the Director, NIH, and his senior staff, a panel comprised of members of the Advisory Committee to the Director, NIH; representatives of NIH national advisory councils; and senior NIH staff will spend the remainder of the day

receiving testimony from public witnesses. Each witness will be limited to a maximum of ten minutes. Attendance and the number of presentations will be limited to the time and space available. Consequently, all individuals wishing to attend or to present a statement at this public meeting should notify, in writing, Jay Moskowitz, Ph.D., Executive Secretary, National Institutes of Health, Shannon Building, Room 137, Bethesda, Maryland 20892. Those planning to make a presentation should file a one-page summary of their remarks with Dr. Moskowitz by October 30, 1987; a copy of the full text of these remarks should be submitted for the record at the time of the meeting. Please indicate which of the two meetings you plan to attend. Additional information may be obtained by calling Mr. Edward Lynch, Division of Program Analysis, Office of Program Planning and Evaluation, National Institutes of Health, at (301) 496-1454.

Dated: September 29, 1987.

James B. Wyngaarden,

Director, National Institutes of Health.

[FR Doc. 87-23148 Filed 10-6-87; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WYO60-07-4322-12]

Casper District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: District Grazing Advisory Board meeting.

SUMMARY: The Casper District Grazing Advisory Board will meet at 10:00 a.m. on November 9, 1987. The meeting will convene at the BLM Casper District Office, 1701 East "E" Street, Casper, Wyoming. The agenda will include: (1) Discussion of past resolutions; (2) range improvement projects and allotment management plans; (3) new business; and (4) a public comment period.

DATE: November 9, 1987; 10:00 a.m.

ADDRESS: To request summary minutes or time on the agenda, contact: Bureau of Land Management, Casper District Office, 1701 East "E" Street, Casper, WY 82601.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with Section 3, Executive Order 12548 of February 14, 1986. The meeting is open to the public. Time will be available for public statements to the Board. Interested persons may testify or submit written statements for Board consideration. Anyone wishing to make an oral statement should notify the district manager by November 9, 1987. Depending on the number of persons wishing to make statements, a per-person time limit may be imposed by the district manager.

Summary minutes of the Board meeting will be maintained in the district office and be available for public inspection within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: Kate DuPont, (307) 261-5557.

James W. Monroe,

District Manager

September 29, 1987.

[FR Doc. 87-23140 Filed 10-6-87; 8:45 am]

BILLING CODE 4310-22-M

Eugene District Advisory Council; Meeting

Notice is hereby given in accordance with Section 309 of the Federal Land Policy and Management Act of 1976 that a meeting of the Eugene District Advisory Council will be held on November 13, 1987, at 9:00 a.m., Pacific Standard Time, in room 227, Federal Building, 211 E. 7th, Eugene, Oregon.

The main agenda item will be an update on the Eugene District's progress in completing its 10-year management plan.

The meeting is open to the public. Interested persons may make oral statements to the Council at the end of the meeting or file written satements for the Council's consideration. Anyone desiring to make an oral statement must notify the District Manager, Bureau of Land Management, 1255 Pearl St., Eugene, Oregon 97401, by November 12, 1987. A per-person time limit may be established by the District Manager, depending on the number of persons wanting to address the Council.

Summary minutes of the Council meeting will be maintained in the District Office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

Melvin D. Clausen,

District Manager.

[FR Doc. 87-23141 Filed 10-6-87; 8:45 am]

BILLING CODE 4310-33-M

[CA-940-07-4220-10; CA 20624]

California; Filing of Withdrawal Application

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of withdrawal application.

SUMMARY: On July 23, 1987, the Regional Forester, Pacific Southwest Region, Forest Service, U.S. Department of Agriculture, filed an application under the provisions of section 204 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1714) to withdraw the following described national forest land from appropriation under the general mining laws (30 U.S.C., Ch. 2), subject to valid existing rights:

Mount Diablo Meridian, California

Plumas County

Plumas National Forest

T. 25, N., R. 9 E.,
Sec. 15, W½NE¼SW¼, NE¼SW¼SW¼, NW¼SE¼SW¼, W½NE¼SE¼SW¼, E½NW¼SW¼, W½E½NE¼SW¼, S½SE¼SW¼, and SE¼SW¼ SW¼NW¼.

Containing 82.50 acres.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, California State Office, (916) 978-4815.

The purpose of the withdrawal application is for the development of a 39-unit campground, group camp, day use area, and amphitheater. During the segregation period the land will be managed for dispersed recreation uses.

The application and the case file pertaining to it are available for public inspection at the California State Office, Bureau of Land Management, E-2841 Federal Office Building, 2800 Cottage Way, Sacramento, California 95825.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections concerning the proposed withdrawal may present their views, in writing, to the undersigned officer, at the above address.

Notice is hereby given that all persons who desire that a public meeting be held must submit a written request to the undersigned officer at the above address within 90 days from the date of publication of this notice. If the State Director, Bureau of Land Management, determines that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days prior to the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in Part 2300 of Title 43, Code of Federal Regulations.

The publication of this notice in the **Federal Register** shall segregate the lands described in the application to the extent that they shall not be subject to

appropriation under the general mining laws (30 U.S.C., Ch. 2), for a period of 2 years from the date of publication in the **Federal Register**, unless the application is allowed or denied or cancelled, in whole or in part, prior to the expiration of the 2-year period. The 2-year segregative period does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

Inquiries concerning the land should be addressed to the Forest Supervisor, Plumas National Forest, 159 Lawrence Street, Quincy, California 95971.

Dated: September 28, 1987.

Nancy J. Alex,

Acting Chief, Branch of Adjudication & Records.

[FR Doc. 87-23142 Filed 10-6-87; 8:45 am]

BILLING CODE 4310-40-M

Fish and Wildlife Service

[FES 87-44]

Availability of Final Environmental Impact Statement; Tetlin National Wildlife Refuge, Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Availability of a final environmental impact statement for the proposed Comprehensive Conservation Plan and Wilderness Review for Tetlin National Wildlife Refuge, Alaska.

SUMMARY: The U.S. Fish and Wildlife Service has prepared a Final Comprehensive Conservation Plan, Environmental Impact Statement, and Wilderness Review (plan) for the Tetlin National Wildlife Refuge, Alaska, pursuant to sections 304(g)(1), 1008, and 1317 of the Alaska National Interest Lands Conservation Act of 1980 (Alaska Lands Act); section 3(d) of the Wilderness Act of 1964; and section 102(2)(C) of the National Environmental Policy Act of 1969. The final plan describes five alternatives for managing the refuge and the environmental consequences of implementing each alternative. The document also reviews the suitability of all the federal lands in the refuge for possible wilderness designation and inclusion in the National Wilderness Preservation System.

DATE: A Record of Decision will be issued no sooner than November 15, 1987.

FOR FURTHER INFORMATION CONTACT: William Knauer, Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786-3399.

SUPPLEMENTARY INFORMATION: A summary of the final plan has been prepared and will be sent to all persons and organizations who participated in any part of the planning process, such as scoping meetings, workshops, or in other types of communication with the planning team. Copies of the complete final plan will be sent to federal and state agencies, regional and village Native corporations, local governments, and other organizations and individuals who have already requested copies. A limited number of copies of both documents are available upon request from Mr. Knauer.

Copies of the complete final plan are available at the office of the Regional Director, at the above address; at the Tetlin National Wildlife Refuge Office, P.O. Box 155, Tok, Alaska 99780, and at the following locations:

U.S. Fish and Wildlife Service, Division of Refuge Management, U.S. Department of the Interior Bldg., 18th & C Streets NW., Washington, DC 20240

U.S. Fish and Wildlife Service, Refuges and Wildlife, 500 NE Multnomah Street Suite 1692, Portland, OR 97232

U.S. Fish and Wildlife Service, Refuges and Wildlife, 500 Gold Avenue SW., Room 1306, Albuquerque, NM 87103

U.S. Fish and Wildlife Service, Refuges and Wildlife, Federal Building, Fort Snelling, Twin Cities, MN 55111

U.S. Fish and Wildlife Service, Refuges and Wildlife, Richard B. Russell Federal Building, 75 Spring Street, Atlanta, GA 30303

U.S. Fish and Wildlife Service, Refuges and Wildlife, One Gateway Center, Suite 70, Newton Corner, MA 02158

U.S. Fish and Wildlife Service, Refuges and Wildlife, 134 Union Blvd., Lakewood, CO 80225

Date: September 29, 1987.

Bruce Blanchard,

Director, Environmental Project Review.

[FR Doc. 87-23118 Filed 10-6-87; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Outer Continental Shelf Development Operations Coordination Document; Kerr-McGee

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Kerr-McGee has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4412, Block 2, East Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Grand Chenier, Louisiana.

DATE: The subject DOCD was deemed submitted on September 29, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of title 30 of the CFR.

Date: September 30, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-23137 Filed 10-6-87; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf Development Operations Coordination Document; Hall-Houston Oil Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Hall-Houston Oil Company has submitted a DOCD describing the activities it proposes to conduct on

Lease OCS–G 5726, Block 243' Main Pass Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on September 28, 1987. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie O. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this notice is to inform the public, pursuant to § 930.61 of title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of title 30 of the CFR.

Date: September 29, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87–23138 Filed 10–6–87; 8:45 am]

BILLING CODE 4310–MR–M

Outer Continental Shelf Development Operations Coordination Document; Taylor Energy Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Taylor Energy Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 1189, Block 29, South Marsh Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on September 28, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of title 30 of the CFR.

Date: September 29, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87–23139 Filed 10–6–87; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Shell Offshore Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5426, Block 223, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an offshore base located at Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on September 23, 1987. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the

Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: September 28, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-23146 Filed 10-6-87; 8:45 am]

BILLING CODE 4310-MR-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202-395-7340.

Title: 30 CFR Part 780—Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operations Plan

Abstract: This information is needed to fulfill the requirements of sections 507, 508 and 515 of Pub. L. 95-87 and is used by the regulatory authority in determining whether the applicant can meet the performance standards of the regulations and the environment protection standards of the regulatory program.

Bureau Form Number: None.

Frequency: On occasion.

Description of Respondents: Coal Mining Operators.

Annual Responses: 2,000.

Annual Burden Hours: 790,360.

Bureau clearance officer: Darlene Grose-Boyd, (202) 343-5447.

Date: September 15, 1987.

Donald Hinderliter,

Acting Assistant Director, Budget and Administration.

[FR Doc. 87-2319 Filed 10-6-87; 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-242]

Import Investigation; Errata To Commission Action and Order; Certain Dynamic Random Access Memories, Components Thereof and Products Containing Same

On September 21, 1987, the Commission issued an Action and Order in the above-captioned investigation, disposing of the issues on review and issuing a limited exclusion order prohibiting the entry of infringing DRAMs of 64 and 256 kilobits (and any combination thereof such as 128 kilobits) manufactured by Samsung Company, Ltd. and/or Samsung Semiconductor & Telecommunications Co., Ltd., whether assembled or unassembled. The Commission's order also prohibits the entry of infringing DRAMs of 64 or 256 kilobits (and any combination thereof such as 128 kilobits) manufactured by Samsung Company, Ltd., and/or Samsung Semiconductor & Telecommunications Co., Ltd., incorporated into a carrier of any form, including Single-Inline-Packages and Single-Inline-Modules, or assembled onto circuit boards of any configuration. The Commission has also determined to prohibit the entry of computers (such as mainframe, personal, and small business computers), facsimile equipment, telecommunications switching equipment, and printers containing infringing DRAMs of 64 or 256 kilobits (and any combination thereof such as 128 kilobits) manufactured by Samsung Company, Ltd. and/or Samsung Semiconductor & Telecommunications Co., Ltd.

It has come to the Commission's attention that there is a typographical error in paragraph 8 of the Commission's Order, which may lead to confusion in the application of the bonding provision of the Order, since it refers to the wrong paragraph of the Order (i.e., paragraph 6 rather than paragraph 7) in establishing the amount of the bond. Therefore, the Commission is issuing this errata. Paragraph 8 of the Commission's September 21, 1987, Order is corrected to read as follows:

8. Products identified in paragraphs (2), (3), (4), or (5) of this Order are entitled to entry into the United States from the day after this Order is received by the President, pursuant to subsection (g) of section 337 of the Tariff Act of 1930, until such time as the President notifies the Commission that he approves or disapproves this action, but no later than 60 days after the date of receipt of this Order by the President, under bond in the amounts identified in paragraph (7) of this Order. Persons importing such products shall certify to the best of their knowledge the number of DRAMs subject to this Order contained in such products, pursuant to procedures to be specified by the U.S. Customs Service;

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: October 1, 1987.

[FR Doc. 87-23206 Filed 10-6-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-272]

Import Investigation; Commission Decision to Review and Affirm With Modification an Initial Determination Terminating Two Respondents and Adding One Respondent; Certain Electronic Crime Modules

AGENCY: International Trade Commission.

ACTION: Determination to review and affirm with modification an initial determination terminating two respondents and adding one respondents.

SUMMARY: Notice is hereby given that the Commission has determined to review and affirm with modification an initial determination (ID) (Order No. 1) issued by the presiding administrative law judge (ALJ) in the above-captioned investigation. The ID granted the motion (Motion No. 272-1) of respondents Invotec Instrument, Inc. (Invotec) and Invotec Instruments, Inc., Invotronics Division (Division) to dismiss them as respondents and add Aimco, Inc. (Aimco) as a proper respondent.

SUPPLEMENTARY INFORMATION: On July 30, 1987, the Commission voted to institute this investigation and named as respondents Modu-Tronics, Inc., Invotec, and Division. On August 20, 1987, respondents Invotec and Division moved to be dismissed from the investigation because they were improperly named as respondents.

Invotec and Division also moved to have Aimco substituted for them as the proper respondent. The motion was unopposed by complainant Lectron Products, Inc.

On August 31, 1987, the presiding ALJ issued an ID granting the respondent's motion. No petitions for review of the ID or Government agency comments were received. As Order No. 1 did not state that the complaint and notice of investigation were amended to reflect the termination of Invotec and Division as respondents and the addition of Aimco as a respondent, the Commission has ordered that the ID be amended to include such amendment.

The authority for the Commission's disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in §§ 210.53, 210.55, and 210.56 of the Commission's rules (19 CFR 210.53, 210.55, and 210.56).

Copies of the ID and all other nonconfidential documents on the record of the investigation are available for public 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 202-523-0471. Hearing-impaired individuals are advised that information concerning this investigation can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: September 29, 1987.

[FR Doc. 87-23207 Filed 10-6-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-254]

Decision To Review Initial Determination and To Extend Deadline for Completion of Investigation; Certain Small Aluminum Flashlights and Components Thereof

AGENCY: International Trade Commission.

ACTION: Review of initial determination (ID) and extension of deadline for completion of the investigation.

SUMMARY: Notice is given that the Commission has determined to review the ID of the presiding administrative law judge (ALJ) that there is no violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the above-captioned investigation. Further, the Commission has determined to extend the deadline for completion of the investigation until December 10, 1987. These actions are taken pursuant to Commission rules 210.53-210.56, 210.59 (19 CFR §§ 210.53-210.56, 210.59).

FOR FURTHER INFORMATION CONTACT: Jack M. Simmons III, Esq., Office of the General Counsel, telephone 202-523-0493. Hearing-impaired persons may contact the Commission's TDD terminal at 202-724-0002.

SUPPLEMENTARY INFORMATION: On August 11, 1987, the ALJ issued an ID finding no violation of section 337 on the grounds, *inter alia*, that the patent in controversy was invalid and unenforceable and that the asserted common-law trademark had not been established.

Having examined the record in this investigation, including the ID, the petitions for review, and the responses thereto, the Commission has concluded that review of the ID is warranted. Specifically, the Commission will review the issues of patent validity, patent enforceability, patent infringement, trademark infringement, and injury. The Commission does not require further written submissions from the parties regarding the merits of the ID and the determination of whether there is a violation of section 337.

If the Commission finds that a violation of section 337 has occurred, it may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that 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 that address the form of remedy, if any, that 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 on the public interest. The factors that the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the U.S. production of the articles that 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 receiving written submissions that 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 therefore interested in receiving written submissions concerning the amount of the bond that should be imposed.

Written Submissions

While the Commission has determined that no hearing will be held in this investigation and no written submissions are ncessary regarding the ID, the parties to the investigation and interested Government agencies are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Complainant and the Commission investigative attorney are also requested to submit a proposed exclusion order and/or proposed cease and desist orders 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. Written submissions on remedy, the public interest, and bonding, must be filed by October 16, 1987, and shall not exceed 20 pages. Reply submissions on remedy, the public interest, and bonding, must be filed by October 23, 1987, and shall not exceed 10 pages. All submissions shall be double-spaced and shall otherwise conform with all applicable rules.

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 of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. 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.

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.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: October 2, 1987.

[FR Doc. 87-23208 Filed 10-6-87; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-18 (Sub-95X)]

Railroad Operations; Abandonment Exemption in Miami County, IN; Chesapeake and Ohio Railway Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts The Chesapeake and Ohio Railway Company from the requirements of 49 U.S.C. 10903, *et seq.*, to abandon an 8.42-mile line of railroad in Miami County, IN, subject to: (1) The standard employee protective conditions; and (2) the condition that prior to salvage operations applicant consult with (a) the United States Army Corps of Engineers for construction permits under 33 U.S.C. 403 and 33 U.S.C. 11344, and (b) the Indiana Departments of Environmental Management and Natural Resources to ensure compliance with Indiana statutes.

DATES: This exemption will be effective on November 5, 1987. Petitions to stay must be filed by October 21, 1987, and petitions for reconsideration must be filed by November 2, 1987.

ADDRESSES: Send pleadings referring to Docket No. AB-18 (Sub-No. 95X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

and

(2) Petitioner's representatives: Lawrence H. Richmond, Peter J. Studtz, 100 North Charles Street, Baltimore, MD 21201

Patrica Vail, Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245, TDD for hearing impaired: (202) 275-1721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 202-289-4357 (assistance for the hearing impaired is available through TDD services (202) 275-1721) or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters.

Decided: September 22, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Vice Chairman Lamboley dissented with a separate expression. Commissioner Simmons would have set this exemption request for notice and comments.

Noreta R. McGee,

Secretary.

[FR Doc. 87-22926 Filed 10-6-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

The National Cooperative Research Act of 1984—Corporation for Open Systems International

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), the Corporation for Open Systems International ("COS") has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission on July 23, 1987 disclosing a joint development agreement between COS and the National Computing Centre Limited of Manchester, England. The additional written notification was filed for the purpose of exending the protections of Section 4 of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On May 14, 1986, COS filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 11, 1986, 51 FR 21260. On August 6, 1986, September 30, 1986, January 2, 1987, March 24, 1987, and June 12, 1987, COS filed additional written notifications. The Department published notices in the **Federal Register** in response to these additional notifications on September 4, 1986 (51 FR 31735), on October 28, 1986 (51 FR 39434), February 13, 1987 (52 FR 4671), April 24, 1987 (52 FR 13769), and on July 21, 1987 (52 FR 27473), respectively.

On May 19, 1987, The Corporation for Open Systems International entered into a written joint development agreement with the National Computing Centre Limited, a United Kingdom company, the purpose of which is to jointly develop a File Transfer Access Management test system.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 87-23210 Filed 10-6-87; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 86-77]

Denial of Application; Kasparian Pharmacy

On September 19, 1986, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued to Kasparian Pharmacy (Respondent) of 196 South Yonge Street, Ormond Beach, Florida 32074, an Order to Show Cause proposing to deny the Respondent's application, executed on March 1, 1986, for registration as a retail pharmacy under 21 U.S.C. 823(f). The basis for the proposed denial was that such registration would be inconsistent with the public interest as evidenced by, but not limited to, the following: (1) Kasparian Pharmacy was previously registered by the Drug Enforcement Administration under DEA Certificate of Registration AKO188703. Nazar Kasparian was then the owner and registered pharmacist at Kasparian Pharmacy; (2) in and about March 1983, Investigators of the Florida Department of Professional Regulation, having received information indicating excessive purchases of controlled substances by Kasparian Pharmacy, conducted an in-depth investigation of the pharmacy's dispensing of controlled substances.

An audit of Kasparian Pharmacy's prescription files revealed that the pharmacy had filled 224 prescriptions pursuant to which it had dispensed over 22,000 dosage units of Schedule III and IV controlled substances and almost 200 ounces of a Schedule V preparation containing codeine. Each of the aforementioned prescriptions was allegedly authorized by one of four physicians. The investigation revealed that none of the physicians had authorized any of the prescriptions attributed to him and that under the circumstances, Nazar Kasparian knew, or should have known, that he was not

filling the legitimate orders of registered practitioners; (3) on March 8, 1984, the Florida Board of Pharmacy revoked Kasparian Pharmacy's permit for one year and, on May 26, 1984, Nazar Kasparian surrenedered the pharmacy's DEA registration; and (4) Nazar Kasparian's conduct, as owner and managing pharmacist of Kasparian Pharmacy, evidences a disregard for the public health and safety, and for the responsibilities imposed by DEA registration.

On October 20, 1986, Respondent, proceeding through counsel, timely filed a request for a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Francis L. Young. On February 10, 1987, following prehearing procedures, a hearing was held before Judge Young in Miami, Florida. On May 22, 1987, Judge Young issued his opinion and recommended ruling, findings of fact, conclusions of law, and decision. On June 11, 1987, Respondent filed exceptions to the Administrative Law Judge's recommended decision and, on June 29, 1987, the Administrative Law Judge transmitted the record of these proceedings, including Respondent's exceptions, to the Administrator. The Administrator has considered the record in its entiretly and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that in March 1983, the Florida Department of Professional Regulation (DPR) received information that Kasparian Pharmacy was ordering what appeared to be excessive quantities of controlled substances, taking into consideration the size of the pharmacy and the community it served. Kasparian Pharmacy is located in the Daytona Beach suburb of Ormond Beach, Florida. On March 14, 1983, two DPR investigators conducted an audit of controlled substances purchased by Respondent for the period July 1, 1982, to March 14, 1983. Due to Respondent's lack of a current biennial inventory, a zero beginning balance was used for substances audited although Respondent may actually have had quantities on hand on that date. Of the eighteen substances audited, shortages were found in Respondent's accountability for eight drugs.

The shortages were as follows: Valium, 5 mg. tables-718 tablets (6.6%); Phenergan w/codeine-23.5 pints (24%); Tylenol #3 tablets-3,211 tablets (11.7%); Librium, 10 mg. tablets-2,800 tablets (50.9); Phentermine, 30 mg. tablets-478 tablets (6.4%); Restorial, 30 mg. tablets-265 tablets (13.25%); Tylenol #4 tablets-244 tablets (3.4%); Dexedrine, 10 mg. spansules-241 spansules (48%).

The remaining ten substances showed overages. Use of a zero figure for a starting inventory will result in an overage if there was stock on hand. Use of a zero inventory will make shortages that much more significant.

While conducting the audit, the investigators noticed that Respondent's prescription files contained what appeared to be an excessive number of telephone, or "callin" prescriptions for Schedule III and IV drugs, when viewed in comparison with other pharmacies of similar size. Mr. Kasparian told investigators that each of those prescriptions had been phoned in by a physician and reduced to writing by Mr. Kasparian. However, when investigators removed 350 of the telephoned prescriptions from the files and questioned four physicians who purportedly authorized them, Mr. Kasparian's story proved to be false. A total of 224 of the prescriptions were shown to the physicians and, in each case, the physician stated, and executed a sworn statement to the effect that he had not authorized the prescriptions attributed to him.

The information revealed by the DPR investigation resulted in the filing of separate administrative complaints against Nazar Kasparian and Kasparian Pharmacy by the Florida Department of Professional Regulation. The Pharmacy Board found that, in addition to several prescriptions found to have been lacking one or more elements of required information, approximately 224 "call-in" prescriptions for controlled substances in Schedules III and IV had, in fact, not been called in or authorized by the physician. The Board revoked the permit of Nazar Kasparian to operate a pharmacy in the State of Florida and suspended Mr. Kasparian's personal license to practice pharmacy for a period of two years. The suspension of Mr. Kasparian's license to practice was held in abeyance subject to certain conditions, one of which was that he not act as a managing pharmacist during the period of his suspension.

On May 26, 1984, Mr. Kasparian surrendered DEA Certificate of Registration AK0188703. On or about March 1, 1986, as the two-year state-ordered ban on his being a managing pharmacist drew to an end, Nazar Kasparian submitted the application for DEA registration that is the subject of this final order.

Judge Young found that Respondent failed to maintain a complete and accurate record of all controlled substances he received, sold, delivered or otherwise disposed of in violation of 21 CFR 1304.21(a), 21 U.S.C. 827(a)(3). 21 U.S.C. 842(a)(5) and section 893.07(1)(b), Florida statutes. Mr. Kasparian did not contest that his pharmacy's record showed in 1984 that he had unlawfully dispensed hundreds of dosage units of controlled substances over a period of many months. Furthermore, Respondent failed to make and keep a biennial inventory of controlled substances on hand as required by 21 U.S.C. 827(a)(1), 21 CFR 1304.12(b) and section 893(1)(a), Florida statutes. The maintenace of reasonably accurate records of these drugs is essential for the prevention of their diversion into illicit channels. The Administrative Law Judge concluded that Mr. Kasparian has shown that he was unable or unwilling to keep the required records. Furthermore, the Administrator concludes that all of the drugs dispensed other than pursuant to a physican's lawful prescription were illegally distributed.

The Administrative Law Judge found that the record did not permit a conclusion that Mr. Kasparian is fit to handle controlled dangerous drugs as the unsupervised proprietor of an independent pharmacy. To grant Kasparian Pharmacy a DEA registration would be inconsistent with the public interest. 21 U.S.C. 823 (f) (2), (4), and (5). Accordingly, Judge Young concluded that there is a lawful basis for the denial of Respondent's application and recommended that the application for registration executed by Respondent be denied.

The Administrator has considered the entire record in this matter, and hereby adopts the Administrative Law Judge's recommended findings of fact and conclusions of law in their entirety.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that the application for a DEA Certificate of Registration executed by Nazar Kasparian on behalf of Kasparian Pharmacy be, and it hereby is, denied. The Administrator further orders that any other pending applications for registration be, and they hereby are, denied. This order is effective November 6, 1987.

Date: October 2, 1987.

John C. Lawn,

Administrator.

[FR Doc. 87-23194 Filed 10-6-87; 8:45 am]

BILLING CODE 4410-09-M

Revocation of Registration; Everette L. Taylor, M.D.

On July 6, 1987, the Administrator of the Drug Enforcement Administration (DEA) issued an Order to Show Cause and Immediate Suspension of Registration to Everette L. Taylor, M.D. of P.O. Box 129, Sparta, North Carolina, immediately suspending DEA Certificate of Registration AT3180635, and proposing to revoke the same registration on the ground that his continued registration was inconsistent with the public interest, as evidenced by, but not limited to, the following: (1) Between January 1986 and June 1987, Dr. Taylor ordered and received excessive quantities of controlled substances; these controlled substances were received by Dr. Taylor at an unregistered location; (2) in June 1987, an audit of Dr. Taylor's controlled substance stock revealed a shortage of more than 480,000 dosage units; (3) after the audit was conducted, Dr. Taylor attempted to acquire additional controlled substances; and (4) on numerous occasions, Dr. Taylor dispensed controlled substances to himself, friends and family members for other than accepted medical use outside the scope of his professional practice.

The Order to Show Cause was personally served on Dr. Taylor on July 8, 1987. At that time, DEA Diversion Investigators and North Carolina State Bureau of Investigation (SBI) Agents seized Dr. Taylor's DEA Certificate of Registration, unused order forms and all controlled substances remaining in Dr. Taylor's possession. Dr. Taylor has not responded to the Order to Show Cause. Therefore, the Administrator concludes that Dr. Taylor has waived his opportunity for a hearing on the issues raised in the Order to show Cause, and enters this final order based upon the record as it now appears. 21 CFR 1301.54(d) and 1301.54(e).

The Administrator finds that between January 1986 and June 1987, Dr. Taylor ordered excessive quantities of various controlled substances, including approximately 110,000 dosage units of diazepam products, 423,000 dosage units of phentermine products and 28,000 dosage units of codeine-based products. The ordering of such large quantities of controlled substances would be considered excessive even for a practitioner operating a busy practice. Dr. Taylor admitted that he did not maintain a medical practice during the period of time he ordered such large quantities of controlled substances. Based upon the fact that Dr. Taylor was not operating a medical practice, there is no justification for ordering excessive quantities of controlled substances. Dr. Taylor's controlled substance ordering patterns raise serious concerns about his intended use of the drugs.

The Administrator also finds that Dr. Taylor was receiving, storing and dispensing controlled substances at an unregistered location in violation of 21 CFR 1301.23(a).

The Administrator futher finds that during an interview on June 19, 1987, with DEA Diversion Investigators and North Carolina SBI Agents, Dr. Taylor admitted that he ordered large quantities of hydrocodone products and other controlled substances for his own personal use. He also claimed that he was stockpiling anorectic drugs, such as phentermine, for a future bariatric practice. In addition, he admitted to supplying friends and relatives with various controlled substances. During the interview, Dr. Taylor also stated he did not maintain an active medical practice. Further, he explained that he did not maintain dispensing records for the large quantities of controlled substances he ordered and received.

On June 22, 1987, North Carolina SBI Agents and DEA Diversion Investigators seized approximately 80,000 dosage units of controlled substances from Dr. Taylor's residence. At that time, Dr. Taylor claimed he did not possess any other controlled substances. During the Seizure, Dr. Taylor also alleged that he had stored the controlled substances in the basement of his residence and that sometime between March 29, 1987, and May 30, 1987, some of the drugs were stolen from that location. Dr. Taylor failed to provide any substantial information regarding the alleged theft, nor did he report any such theft to any police agency or to the Drug Enforcement Administration. Based upon Dr. Taylor's failure to report the alleged theft of controlled substances from his basement and his failure to provide sufficient information regarding the incident, the Administrator doubts seriously that any such theft occurred. Instead, it appears that Dr. Taylor attempted to justify the obvious shortages of controlled substances by fabricating a theft story.

A cursory audit of Dr. Taylor's purchase records and the controlled substances seized from him on June 22, 1987, revealed an unexplained shortage of more than 480,000 dosage units of controlled substances from Dr. Taylor's controlled substance stock. Almost immediately after controlled substances were seized from Dr. Taylor, he attempted to order additional controlled substances from a registered distributor.

Based upon Dr. Taylor's controlled substance ordering and dispensing practices, on July 2, 1987, the North Carolina Board of Medical Examiners recommended that the Drug Enforcement Administration immediately suspend Dr. Taylor's controlled substance handling privileges.

On July 8, 1987, when DEA Diversion Investigators and North Carolina SBI Agents seized Dr. Taylor's DEA Certificate of Registration, they also discovered and seized an additional 1,200 dosage units of controlled substances which Dr. Taylor presumably obtained following the earlier seizure of controlled substances from his residence.

After control consideration of the information described above, the Administrator can only conclude that Dr. Taylor willfully diverted almost one-half million dosage units of controlled substances for other than legitimate medical purposes; and that even after he became aware that his controlled substance handling practices were being scrutinized by the Drug Enforcement Administration and the North Carolina State Police, he continued to order additional quantities of controlled substances. The Administrator also concludes that there is no evidence that Dr. Taylor maintained a legitimate medical practice during the entire investigation period. Dr. Taylor deliberately violated Federal and State controlled substances laws and regulations by ordering and dispensing excessive quantities of controlled substances for other than legitimate medical purposes. This behavior constituted an imminent threat to the public health and safety.

Therefore, the Administrator finds that Dr. Taylor can no longer be entrusted with the controlled substance privileges and responsibilities bestowed upon DEA registrants. Thus, his DEA Certificate of Registration must be revoked. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AT3180635, previously issued to Everette L. Taylor, M.D., be, and it hereby is, revoked. It is further ordered that any pending applications for renewal of said

registration be, and they hereby are, denied.

This order is effective, November 6, 1987.

John C. Lawn,

Administrator.

Dated: October 2, 1987.

[FR Doc. 87-23193 Filed 10-6-87; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Pension and Welfare Benefit Programs

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to section 512 of the Employee Retirement Income Security Act of 1974 (ERISA) 29 U.S.C. 1142, a meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on Thursday, November 12, 1987, in Room S-4215C U.S. Department of Labor Building, Third and Constitution Avenue NW., Washington, DC.

The purpose of the meeting, which will begin at 9:30 a.m., is to consider items listed below and to invite public comment on any aspect of the administration of ERISA.

1. General business of the Advisory Council.

2. Status report and recommendations for continuing work by the various Council work groups as follows:

(i) Retiree Health.

(ii) Fiduciary Liability

(iii) Employee Stock Option Plans (ESOP)

3. Presentation and consideration of recommendations by the Work Group on ESOP participation in leveraged buyouts involving multiple investors, including statements from the public.[1]

4. Other statements from the Public.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before November 6, 1987, to Charles W. Lee, Jr., Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N-5677, 200 Constitution Avenue NW., Washington, DC 20210. Individuals wishing to address the Advisory Council should forward their request to the Executive Secretary or telephone (202) 523-8753. Oral presentations will be limited to ten minutes, but an extended statement may be submitted for the record.

Signed at Washington, DC, this 1st day of October 1987.

David M. Walker,

CPA, Assistant Secretary-Designate for Pension and Welfare Benefit Programs.

[FR Doc. 87-23150 Filed 10-6-87; 8:45 am]

BILLING CODE 4510-29-M

[1] Interested parties should contact the Executive Secretary of the ERISA Advisory Council on or after November 6, 1987 for confirmation of this agenda item.

NUCLEAR REGULATORY COMMISSION

Bi-weekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (Pub. L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. Pub. L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from September 14, 1987, through September 25, 1987. The last biweekly notice was published on September 23, 1987 (52 FR 35784).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resource Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 6, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in

the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, La Salle County Station, Unit Nos. 1 and 2, La Salle County, Illinois

Date of application for amendments: July 28, 1987

Description of amendments request: The proposed amendments to Operating License No. NPF-11 and Operating License No. NPF-18 would revise the LaSalle Units 1 and 2 Technical Specifications to clarify the requirements for the frequency of fast starting and loading of the diesel generators from ambient conditions. Technical Specifications 4.8.1.1.2.a.4 and 4.8.1.1.2.a.5 require a fast start and loading of the diesel generators on a monthly basis. A footnote was added to the Unit 1 Technical Specifications (Amendment 16) and to the Unit 2 Technical Specifications (prior to licensing) to relax these requirements so that a fast start would only be required once every 6 months (184 days). The balance of the monthly tests would include a warmup period, as recommended by the manufacturer, to minimize the mechanical stress and wear caused by fast starting and loading of the diesel generators. The concern is with the ambiguity in the wording of the footnote which could be interpreted to apply the relaxation to the 13 second start requirement in Technical Specification 4.8.1.1.2.a.4 only, and not to the 60 second load requirement in Technical Specification 4.8.1.1.2.a.5. The station has always applied the footnote to both surveillance requirements.

On December 9, 1983, Commonwealth Edison requested that the Unit 1 Technical Specifications be amended to allow a relaxation of the diesel generator fast start requirements. This proposed amendment was based on the investigation and analysis performed by the NRC. The submittal stated that it was the intention of LaSalle Station to apply the footnote to both the 13 second start requirement and the 60 second load requirement. The proposed amendment was approved by the NRC in Amendment 16 to the Unit 1 Technical Specifications and the amendment was also mentioned in the LaSalle SSER 7. The amendment to the Unit 2 Technical Specifications was approved prior to licensing. Based on this discussion, it is proposed that the Unit 1 (NPF-11) and Unit 2 (NPF-18) Technical Specifications be revised to clarify the intent of the footnote as follows:

- Revise the footnote so that it is clear that it applies to the requirements of both Technical Specifications 4.8.1.1.2.a.4 and 4.8.1.1.2.a.5.
- Revise the Technical Specification Bases to more accurately describe the intent of the footnote.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed

amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined, and the NRC staff agrees, that the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of accident previously evaluated because this proposed amendment is an administrative change intended to clarify the requirements for fast start of the diesel generators. This proposal does not change the intent of the Technical Specifications, as defined in the Bases and in LaSalle SSER 7 (NUREG-0519) page 16-1.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because this proposed amendment is an administrative change intended to clarify the requirements for fast start of the diesel generators. This proposal does not change the intent of the Technical Specifications as defined in the Bases and in LaSalle SSER 7 (NUREG-0519) page 16-1.

3. Involve a significant reduction in the margin of safety because this proposed amendment is an administrative change intended to clarify the requirements for fast start of the diesel generators. This proposal does not change the intent of the Technical Specifications as defined in the Bases and in LaSalle SSER 7 (NUREG-0519) page 16-1.

Accordingly, the Commission proposes to determine that the proposed changes to the Technical Specifications involve no significant hazards considerations.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Attorney to licensee: Isham, Lincoln and Burke, Suite 840, 1120 Connecticut Avenue, NW., Washington, DC 20036.

NRC Project Director: Daniel R. Muller

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: July 17, 1987

Description of amendment request: The proposed amendment would revise the Technical Specifications to permit an Integrated Leakage Rate Test (ILRT) duration of less than 24 hours in accordance with an NRC approved methodology. An ILRT is performed periodically to provide a current assessment of potential leakage from the containment.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided the following analysis:

... consistent with the Commission's criteria in 10 CFR 50.92, we have determined that the proposed change does not involve a significant hazards consideration because the operation of Indian Point Unit No. 2 (IP-2) in accordance with this change would not:

(1) involve a significant increase in the probability or consequences of an accident previously evaluated, since the acceptance values for containment leakage under the reduced duration methodology remain unchanged. The proposed amendment will allow use of the NRC approved Bechtel Topical Report, BN-TOP-1, or other NRC accepted methods which demonstrate that sufficient data can be collected during the ILRT to permit performance of a reliable test in less than 24 hours. Maintaining containment leakage within acceptable limits provides assurance that the consequences of a potential accident can be effectively mitigated.

(2) create the possibility of a new or different kind of accident from any previously evaluated, since ILRT methods and results relate to accident mitigation, event sequences and accident analyses are not affected. The proposed amendment involves more realistic methods for testing potential containment leakage. Maintaining containment leakage within acceptable limits provides assurance that the consequences of a potential accident can be effectively mitigated. Therefore, the possibility of a new or different kind of accident is not created.

(3) involve a significant reduction in the margin of safety, since the proposed change allows use of a methodology for conducting an ILRT with reduced duration that is equivalent to the 24 hour duration test. Under the new methodology, acceptance values for containment leakage remain unchanged and therefore do not significantly reduce the margin of safety.

Based upon the above considerations, the staff proposes to determine that the proposed changes do not constitute a significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003

NRC Project Director: Robert A. Capra, Acting Director

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: September 1, 1987

Description of amendment request: This amendment would revise the Technical Specifications to permit movement of heavy loads into the cask laydown area of the spent fuel pool, consolidate Technical Specification requirements regarding heavy loads and require compliance with the guidelines of NUREG-0612.

Basis for proposed no significant hazards consideration determination: The licensee has performed an analysis regarding the issue of no significant hazards consideration using the standards of 10 CFR 50.92 as follows:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The only accident involved is that of a load drop. Since the load drops postulated in accidents previously evaluated have not changed, the consequences of a previously evaluated accident have not increased. The probability of a load drop is decreased when the guidelines of NUREG-0612 are followed.

(2) Create the possibilty of a new or different kind of accident from any accident previously evaluated.

The changes proposed in this change request do not introduce the use of different load handling equipment than previously evaluated. The only types of accident involved are those of heavy load drops.

They have been evaluated against applicable existing criteria. Thus, the possibility of a new or different kind of accident is not created.

(3) Involve a significant reduction in a margin of safety.

The proposed changes decrease the probability of an accident by requiring compliance with the intent of the guidelines of NUREG-0612 and by prohibiting the movement of heavy loads over fuel stored in the main pool zone. Thus, the margin of safety would not be reduced.

The Commission's staff agrees with this analysis and therefore proposes to determine that the proposed amendment

involves no significant hazards consideration.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Judd L. Bacon, Esq., Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: Martin J. Virgilio.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: September 11, 1987

Description of amendment request: This amendment request involves the correction of a Technical Specification by deleting a footnote from Table 4.2.1 involving sampling frequency of a Safety Injection Tank that pertained to Cycle 5 operation which ended a few years ago.

Basis for proposed no significant hazards consideration determination: The licensee has provided an analysis on the issue of no significant hazards consideration using the standards of 10 CFR 50.92 as follows:

This change is administrative. It deletes an out-of-date footnote that provided an alternative action for one of four similar components during a previous operating cycle. The proposed administrative change does not impact on plant design or operation in a manner different than previously evaluated; hence the probability or consequences of previously evaluated accidents are unaltered. Because this change does not introduce any new equipment or modes of operation, it will not create the possibility of a new or different kind of accident from that which was previously evaluated. The margin of safety is not being compromised because the original Technical Specification surveillance interval is being maintained. The deletion of a more frequent surveillance interval for one specific component was established by previous Amendment as a result of reduced concentration limits which are no longer applicable to the operation of the plant. Therefore, this administrative change involves no significant hazards consideration. Furthermore, this change fits example (i) of the types of amendments that are considered not likely to involve significant hazards considerations published in the Federal Register on March 6, 1986 (51FR7751), in that it represents a purely administrative change, i.e., a correction of an error since the footnote no longer applies to current operating cycles.

The Commission's staff agrees with this analysis and therefore proposes to determine that this amendment request involves no significant hazards consideration.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Judd L. Bacon, Esq., Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: Martin J. Virgilio.

Florida Power and Light Company, Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of amendment request: August 25, 1987

Description of amendment request: The amendment would revise several valve tag numbers, penetration numbers, and valve types in the St. Lucie Unit 1 Technical Specification Table 3.6-1, "Containment Leakage Path" and Table 3.6-2, "Containment Isolation Valves." Certain valve tag numbers are currently listed with generic valve numbers, not the actual valve tag numbers. The proposed amendment would change the generic valve numbers to the actual valve numbers. Also, several valve tag numbers do not include the seismic qualification identifier or are shown as incorrect valve types. The seismic qualification identifier will be added where necessary, and the correct type of valve will be listed. Lastly, the penetration numbers for several penetrations are missing the alphabetic identification; this will also be corrected.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee addressed the above three standards in the amendment application. In regard to the first standard, the licensee provided the following analysis.

Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change corrects valve tag and penetration numbers found to be incorrectly or incompletely listed in the St. Lucie Unit 1 Technical Specifications Table 3.6-1[,] "Containment Leakage Paths" and Table 3.6-2[,] "Containment Isolation Valves". Since no change to the facility is proposed, the probability or consequences of an accident previously evaluated would not increase.

In connection with the second standard, the licensee stated:

Use of the modified specification would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change corrects incorrectly or incompletely listed valve and penetration numbers in Table 3.6-1[,] "Containment Leakage Paths" and Table 3.6-2[,] "Containment Isolation Valves". This administrative/editorial change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

With regard to the third standard, the licensee provided the following rationale:

Use of the modified specification would not involve a significant reduction in a margin of safety.

The proposed change involves correcting valve tag and penetration numbers which are currently incorrectly or incompletely listed in Table 3.6-1[,] "Containment Leakage Paths" and Table 3.6-2[,] "Containment Isolation Valves" of the St. Lucie Unit 1 Technical Specifications and will not reduce [a] margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination analysis. Based upon this review, the staff believes that the licensee has met the three standards. However, it should be noted that there are four cases in which a gate valve is being relisted as a globe valve. These valves are associated with penetrations 52d and 52e, which are Integrated Leak Rate Test (ILRT) penetrations. These four cases are not strictly administrative/editorial changes, as specified by the licensee. However, the staff believes that this proposed change meets the three standards of 10 CFR 50.92(c) as discussed above.

Based upon the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-321, Edwin I. Hatch Nuclear Plant, Unit 1, Appling County, Georgia

Date of amendment request: May 4, 1984 as revised September 12, 1984, and further revised August 19, 1987

Description of amendment request: The amendment would change the Technical Specifications to expand the present definition of operability to explicitly include functionality of support equipment, redundant trains and electric power supplies. The amendment would also add provisions to the Technical Specifications to allow a system, subsystem, train, component or device to be considered Operable under certain conditions when the normal or emergency power source providing power to the system, subsystem, etc. is Inoperable.

The present definition of operable requires only that a system or component be capable of performing its intended function in its required manner in order to be considered operable.

The proposed change was submitted in response to an April 10, 1980, NRC request that the licensees submit proposed Technical Specifications concerning the definition of the term "Operable" that conform with Model Technical Specifications included with the April 10, 1980 request. A notice of the receipt of this amendment request was previously published in the **Federal Register** on November 21, 1984 (49 FR 45951).

Basis for proposed no significant hazards consideration determination: he Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (51 FR 7744). One of the examples of actions involving no significant hazards considerations relates to a change that constitutes an additional limitation, restriction or control not presently in the Technical Specifications (Example (ii)).

The proposed change would add additional limitations and is, therefore, similar to this example.

The Commission, therefore, proposes to determine that this action involves no significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Attorney for licensee: Bruce W. Churchill, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Kahtan N. Jabbour, Acting

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-424, Vogtle Electric Generating Plant, Unit 1, Burke County, Georgia

Date of amendment request: August 26, 1987

Description of amendment request: The proposed amendment would revise the action requirement for inoperable Fuel Handling Building Post-Accident Ventilation System (FHBPAVS) actuation instrumentation. Specifically, the action requirement for Functional Unit 11 of Table 3.3-2 will be revised by removing the reference to the 7-day period for restoration of the inoperable channel. The action requirement will be changed to refer directly to specification 3.9.12 whereby operations within or over the storage pool must be suspended until at least one Fuel Handling Building Post-Accident Ventilation System is returned to operable status.

Basis for proposed no significant hazards consideration determination: he Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR Part 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's request and has determined that should this request be implemented, it would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change achieves consistency within the Technical Specifications between Table 3.3-2 and specification 3.9.12 and does so in a conservative manner by deleting the option of potentially performing operations involving movement of fuel within the storage pool or crane operations with loads over the storage pool for up to 7 days with either no manual or automatic actuation of the FHBPAVS. The proposed change modifies the action statement to directly invoke specification 3.9.12 thereby prohibiting such operations until at least one FHBPAVS is operable.

Also, the licensee's proposed changes would not (2) create the possibility of a new or different kind of accident from any accident previously evaluated because no new or novel features would be added to plant design. Finally, the licensee's proposed changes would not (3) involve a significant reduction in a margin of safety because the revised action requirement achieves consistency with specification 3.9.12.

Accordingly, the Commission proposes to determine that the proposed change involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 4th Street, Waynesboro, Georgia 30830

Attorney for licensee: Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Candler Building, Suite 1400, 127 Peachtree Street, N.E., Atlanta, Georgia 30043

NRC Project Director: Kahtan N. Jabbour, Acting

Indiana and Michigan Electric Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendments request: December 8, 1986 supplemental on August 7, 1987.

Description of amendments request: The proposed amendment would revise the Technical Specifications by replacing the liquid radwaste effluent line monitor designated as R-18 with a new monitor designated as RRS-1001. The amendment also would add periodic Channel Functional Tests as a surveillance requirement and a footnote to allow R-18 to meet the Technical Specification requirements until the new monitor, RRS-1001, is operable.

Basis for proposed no significant hazards consideration determination: he Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The new monitor will be able to support current requirements and includes several enhancements over the old monitor. Design of the new monitor provides solutions to difficulties encountered with the old monitor. An additional surveillance is proposed and is commensurate with the design of the new monitor. Therefore, the proposed change will not involve a significant increase in the probability or consequences of an accident previously analyzed.

The proposed change will not place the plant in a new or unanalyzed condition; therefore, it will not create

the possibility of a new or different kind of accident from any accident previously analyzed or evaluated.

Since the new monitor is a better design, solves difficulties with the old monitor, and new surveillance requirements are added, the proposed change will not involve a significant reduction in a margin of safety.

Therefore, the staff proposes to determine that the changes do not involve a significant hazards consideration.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: David L. Wigginton, Acting.

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: August 28, 1987.

Description of amendment request: The proposed changes would revise Technical Specification Limiting Condition for Operation (LCO) 3.7.10.2 and its associated Surveillance Requirement 4.7.10.2. The reason for these changes is to implement operability and surveillance requirements for the newly-installed fire suppression equipment in Waterford 3's charcoal filtration systems.

LCO 3.7.10.2 currently specifies the number and location of fire protection sprinkler and spray systems that must be maintained in an operable condition. The proposed changes would add the newly installed charcoal filter spray systems to the LCO. In addition, the proposed changes would add surveillance requirement 4.7.10.2d, which requires an air flow test through each open head spray or sprinkler system every three years to verify that the spray nozzles are unobstructed. A provision has been made for an equivalent demonstration that the spray nozzles are unobstructed by conducting a visual inspection. However, since the spray nozzles in charcoal filter units can be accessed only when the charcoal has been removed, a note has been added to the proposed surveillance requirement indicating that for open nozzles in charcoal filter units, the surveillance will be performed each time the charcoal is changed.

Basis for proposed no significant hazards consideration determination: he NRC staff proposes that the proposed changes do not involve a significant hazards consideration because, as required by the criteria of 10 CFR 50.92(c), operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in the margin of safety. The basis for this proposed finding is given below.

(1) The charcoal filter units in the Shield Building Ventilation System (SBVS) are used to adsorb iodine and other radionuclides that leak into the reactor annulus building following a LOCA. Similarly, the charcoal filter units in the Controlled Ventilation Area System (CVAS) are used to adsorb iodine and other radionuclides that leak from the safety-related equipment used to mitigate the consequences of a LOCA (primarily high pressure safety injection (HPSI) pumps during the recirculation phase). The operability of at least one SBVS train and one CVAS train is required to meet the offsite dose criteria established by 10 CFR Part 100. The addition of fire suppression equipment specifically designed to extinguish fires in these two filtration systems increases the probability that the SBVS and CVAS will be able to perform their design function following a LOCA. Therefore, the proposed changes will not involve a significant increase in the probability or consequences of any accident previously evaluated.

(2) New fire suppression equipment has been added to increase the overall level of fire protection at Waterford 3 and the proposed change implements the operability and surveillance requirements necessary to ensure the equipment remains functional. Since the new equipment is designed to protect portions of the SBVS and CVAS and these systems are required only during post accident conditions, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The intent of these Technical Specifications is to ensure that adequate fire suppression capability is available to confine and extinguish fires occurring in any portion of the facility where safety-related equipment is located. Since the addition of fire suppression equipment in the charcoal filtration systems will add to the capability of extinguishing fires in the SBVS and CVAS, the proposed changes will result in an increase in the margin of safety.

The Commission has provided guidance concerning the application of standards for determining whether a significant hazards consideration exists by providing certain examples (51 FR 7751) of amendments that are considered not likely to involve significant hazards consideration. Example (ii) relates to a change that constitutes an additional limitation, restriction or control not presently included in the Technical Specifications (e.g., a more stringent surveillance requirement).

In this case the proposed changes are similar to Example (ii) in that they impose additional operability and surveillance requirements for the newly-installed fire suppression equipment which is not now a part of the Technical Specifications.

The staff has reviewed the licensee's no significant hazards consideration analysis. Based on the review and above discussions the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Jose A. Calvo

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: August 28, 1987.

Description of amendment request: The proposed change would revise Technical Specification 3.2.7, Power Distribution Limits - Axial Shape Index (ASI). The reason for this change is to clarify the relationship between the axial shape monitoring limits described in the Technical Specifications and the axial shape assumptions that were used in the Cycle 2 safety analysis. In addition, the proposed change will provide increased ASI operating space at lower core power levels.

Technical Specification 3.2.7 currently states that the ASI shall be maintained between -0.23 and +0.22 when Core Operating Limits Supervisory System (COLSS) is out of service and the Core Protection Calculators (CPCs) are used for ASI monitoring. These limits were based on the non-LOCA safety analysis which assumed an ASI range of -0.30 to +0.30, the LOCA safety analysis which assumed an ASI range of -0.25 to +0.30, and estimated ASI monitoring

uncertainties of ±0.02 for COLSS and ±0.08 for the CPCs.

Although the current Technical Specification is based on the Cycle 2 safety analyses, it does not reflect a re-evaluation of the LOCA that was performed at initial core power levels below 70% nor the actual ASI monitoring uncertainty associated with COLSS. (It should be noted, however, that the COLSS software was changed prior to the Cycle 2 startup to ensure that the actual COLSS ASI monitoring uncertainty (±0.026) was properly accounted for.) In order to restore a more direct relationship between the ASI limits assumed in the safety analyses and the ASI monitoring limits in the Technical Specifications (and to provide additional ASI operating space at lower core power levels), LCO 3.2.7 is being revised to be power dependent and to account for the actual COLSS ASI monitoring uncertainty.

The proposed change would revise LCO 3.2.7a (COLSS operable) to impose ASI limits of -0.22 and +0.27 for the core power levels equal to or greater than 70% and ASI limits of -0.27 and +0.27 for core power levels less than 70%. The proposed change would also revise LCO 3.2.7b (COLSS out of service) to impose ASI limits of -0.17 and +0.22 for core power levels equal to or greater than 70% and ASI limits of -0.22 and +0.22 for core power levels less than 70%. Although this change is being proposed to clarify the relationship between Technical Specification 3.2.7 and the Cycle 2 safety analyses, it is anticipated that the proposed change will remain bounding for Cycle 3 and subsequent cycles as well.

Basis for proposed no significant hazards consideration determination: The NRC staff proposes that the proposed change does not involve a significant hazards consideration because, as required by the criteria of 10 CFR 50.92(c), operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of any accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in the margin of safety. The basis for this proposed finding is given below.

(1) The Cycle 2 non-LOCA safety analysis was performed assuming an ASI range of -0.30 to +0.30 while the Cycle 2 LOCA safety analysis was performed assuming an ASI range of -0.25 to +0.30. In order to translate these safety analysis assumptions on ASI into an actual range of values that can be monitored by the plant operators, the ASI range assumed in the safety analyses must be narrowed to account for uncertainties in the ASI monitoring instrumentation. For Waterford 3 both the COLSS and the CPCs can be used for ASI monitoring. An uncertainty analysis performed concurrent with the Cycle 2 safety analyses determined that the COLSS ASI monitoring uncertainty was less than ±0.03 and the CPC ASI monitoring uncertainty was less than ±0.08. Thus, in order to ensure that the Cycle 2 safety analyses remain bounding, the proposed change will require the COLSS-indicated ASI to be maintained between -0.22 and ±0.27 and, if COLSS is out of service, the CPC-indicated ASI be maintained between -0.17 and -0.22. The range of acceptable ASI values discussed above is based on the LOCA safety analysis since these events are analyzed over a more narrow ASI range than the non-LOCA events. However, an evaluation of the LOCA events has determined that if the core power level is less than 70%, the beneficial effects of the lower initial core power level will compensate for the potentially more severe axial power shapes that could result from the wider ASI range assumed for the non-LOCA events; i.e., if the core power is less than 70% both the LOCA and non-LOCA events have been shown to have acceptable consequences over an ASI range of +0.30 to -0.30. Thus, when core power is less than 70%, the COLSS-indicated ASI must be maintained between -0.27 and +0.27 and, if COLSS is out of service, the CPC-indicated ASI must be maintained between -0.22 and +0.22. These ASI limits plus maintaining the core power below 70% ensure that the Cycle 2 safety analysis will remain bounding. Therefore, since the proposed change imposes ASI limits that are directly related to the Cycle 2 safety analyses and the results of safety analyses are acceptable, the proposed change will not result in a significant increase in the probability or consequences of any accident previously evaluated.

(2) The spectrum of axial shapes that was considered during the Cycle 2 safety analysis envelopes the range of ASI values that is allowed by the proposed change. There has been no physical change to plant systems, structures or components nor has there been any change in the manner in which the plant is operated. The only change to plant procedures will be to reflect the new ASI limits in the routine daily logs recorded by the plant operators. Thus, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The intent of Technical Specification 3.2.7 is to ensure that the actual value of ASI is maintained within the range of values that was assumed in the Cycle 2 safety analysis. The ASI is one of several parameters that must be within a specified range in order to ensure that the peak linear heat rate and minimum DNBR remain within their respective safety limits during an anticipated operational occurrence. Since the range of values that is being proposed by this change has been used as a direct input to the Cycle 2 safety analysis and since the Cycle 2 safety analysis has shown acceptable results for all events, the proposed change will not result in a significant reduction in the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration analysis. Based on the review and above discussions the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: E. L. Blake, Shaw, Pittman, Potts and Trowbridge, 2300 N St., NW., Washington, DC 20037

NRC Project Director: Jose A. Calvo

Mississippi Power & Light Company, System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: September 10, 1987

Description of amendment request: The amendment would change the System Energy Resources, Inc. (SERI) offsite organization, which is included in the Technical Specifications (TSs), by transferring administrative support functions to a new support services group.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from

any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis of significant hazards consideration in its request for a license amendment. The licensee has concluded, with appropriate bases, that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards considerations.

The licensee's analysis is reproduced below.

1. The proposed organization changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because they involve only a shift in the responsibility for administrative support services within the SERI corporate offices. Because of the administrative nature of the proposed changes[,] the probability or consequence[s] of an accident are not affected.

2. The proposed organization changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed shift in administrative responsibility will have no affect on the design, construction, or operation of safety[-]related systems or components.

3. The proposed organization changes do not involve a reduction in a margin of safety because they involve only the realignment of administrative responsibilities. The proposed changes [will] more effectively and efficiently utilize existing administrative resources within the SERI corporate offices.

The NRC staff has made a preliminary review of the licensee's analysis and agrees with the licensee's conclusions that the three standards in 10 CFR 50.92 are met for the proposed changes in the TSs for the Grand Gulf Nuclear Station, Unit 1.

Accordingly, the Commission proposes to determine that the requested changes to the TSs do not involve significant hazards considerations.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154

Attorney for licensee: Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of amendment request: August 17, 1987

Description of amendment request: This amendment would revise the Technical Specifications by increasing minimum required condensate storage tank volume from 225,000 gallons of water to 250,000 gallons to provide a ten hour source of water for decay removal.

Basis for proposed no significant hazards consideration determination: The licensee has reviewed the proposed changes pursuant to 10 CFR 50.59 and has determined that they do not constitute an unreviewed safety question. The probability of occurrence of the consequences of an accident or malfunction of equipment important to safety previously evaluated in the Final Safety Analysis Report have not been increased. The possibility for an accident or malfunction of a different type than any evaluated previously in the FSAR has not been created. There has not been a reduction in the margin of safety as defined in the basis for any Technical Specification. The increased minimum condensate storage tank (CST) water inventory level will not affect the operability of existing plant systems.

The licensee reviewed the proposed changes, in accordance with 10 CFR 50.92, and has concluded that they do not involve a significant hazards consideration in that these changes would not:

(1) Involve a significant increase in the probability or consequences of an accident previously analyzed. The proposed change will ensure that more water is available for core cooling via feedwater coolant injection (FWCI) than was previously required. Therefore, the impact of this change on accidents mitigated by FWCI operating would be favorable.

(2) Create the possibility of a new or different kind of accident from any previously analyzed. The increased minimum water volume is well within the total holding capacity of the CST (approximately 460,000 gallons). Thus, no new failure modes or accidents are introduced by this change.

(3) Involve a significant reduction in a margin of safety. The effects of these changes will not impact plant protective boundaries. Also, the proposed basis revision represents additional conservatism.

The Commission has provided guidance concerning the applications of standards in 10 CFR 50.92 by providing examples (51 FR 7751, March 6, 1986). The changes proposed herein most closely resemble example (ii), a change that constitutes an additional control not presently included in the Technical Specifications, e.g., a more stringent requirement. The increase in minimum CST inventory represents a more stringent condition of operation.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry, & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: Cecil O. Thomas.

Portland General Electric Company et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: January 20, 1987, as supplemented July 2, 1987

Description of amendment request: This amendment proposes to revise Trojan Technical Specification (TS) Section 4.5.1.C, Emergency Core Cooling System Accumulators, to permit verification that power to the isolation valves operators is disconnected without requiring the removal of the breaker from the circuit. The current TS surveillance requirement states that the breaker must be removed from the circuit. It is proposed that power to these valves be removed by the use of a lockout switch.

Basis for proposed no significant hazards consideration determination: 10 CFR 50.92 states that a proposed amendment will not involve a significant hazards consideration if the proposed amendment does not: (i) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (ii) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (iii) Involve a significant reduction in a margin of safety.

The Licensee has evaluated the proposed amendment against the standards of 10 CFR 50.92 as follows:

1. Does the proposed license change involve a significant increase in the probability or consequences of an accident?

This proposed change does not involve a significant increase in the probability or consequences of an accident.

The surveillance requirement for the safety injection accumulator isolation valves ensures the operability of the accumulators in the event of an accident. As part of the Emergency Core Cooling System, the function of the accumulators is to mitigate the consequences of an accident. Thus, the operability of the accumulators does not affect the probability of an accident.

The accumulators mitigate the consequences of an accident by delivering a specified volume of borated water into the Reactor Coolant System. As long as the volume of water delivered to the Reactor Coolant System is unchanged and the time for delivery is not increased, then the consequences of an accident are not affected.

Surveillance Requirement 4.5.1.c prevents the undesired mechanical motion of the accumulator isolation valves by disconnecting power to the electrical control

system for the valve operators while in Modes 1, 2, or 3*. This action ensures the availability of a flowpath from the accumulators to the Reactor Coolant System and conforms with guidance provided in Branch Technical Position Instrumentation and Control Systems Branch (ICSB) 18 [Power Systems Branch (PSB)], "Application of the Single Failure Criterion to Manually Controlled Electrically Operated Valves." The proposed change to Technical Specification 4.5.1.c does not alter this requirement for disconnecting power, only the requirement that this be accomplished by removal of the breaker from the circuit.

An alternative method is to disconnect power to the valve operator control circuit through a lockout feature on the control switch. Lockout is achieved by pulling out on the switch handle while in the "normal" (12 o'clock) position. In this position, all rotary action of the switch is inhibited, and both the hot and neutral leads of the control circuit are opened. This halts any valve action in progress and precludes any manual or automatic valve actuation. Inadvertent pushing of the handle is prevented by placing a blocking collar over the switch operating shaft when it is pulled out.

Use of a lockout feature on the control switch of these valves does not affect the operation of any other system. Similarly, none of the existing interlocks, setpoints, alarms or operating parameters associated with the valves are changed. Conformance with guidance provided in Branch Technical Position ICSB-4 (PSB), "Requirements on Motor-Operated Valves in the ECCS Accumulator Lines" remains unchanged.

2. Does the proposed license change create the possibility of a new or different kind of accident from any accident previously evaluated?

Changing this surveillance requirement for accumulator isolation valves to allow use of the lockout feature does not create the possibility of a new or different kind of accident. Demonstration of operability for each accumulator remains a requirement.

The control/lockout switches are fully qualified for Nuclear Class 1E applications and preclude any manual or automatic actuation of the valves when placed in lockout. No other system is affected by the change.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Since the requirement to demonstrate operability of each accumulator remains, there is no significant reduction in the margin of safety. Use of the lockout feature may actually increase the margin of safety since valve position indication is retained and remote valve control can be returned more expeditiously. The volume of water provided by the accumulators and the time for delivery is not affected by this change.

The staff has reviewed the licensee's no significant hazards analysis and concurs with their conclusions. As such, the staff proposes to determine that the requested changes do not involve a significant hazards consideration.

Local Public Document Room location: Branford Price Millar Library, Portland State University, 731 S. W. Harrison Street, Portland, Oregon 97207.

Attorney for licensee: J. W. Durham, Esq., Portland General Electric Company, 121 S. W. Salmon Street, Portland, Oregon 97204

NRC Project Director: George W. Knighton

Portland General Electric Company et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: June 22, 1987

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Table 3.3-1, "Reactor Trip System Instrumentation" and Table 4.3-1, "Reactor Trip System Instrumentation Surveillance Requirements" regarding the operability requirements for the reactor trip breakers (RTBs) and the surveillance requirements for the manual reactor trip, reactor trip breakers, and reactor trip bypass breakers. More specifically:

a. Table 3.3-1 will reference a new Action Statement 12 to Item 21, "Reactor Trip Breakers." The new Action Statement 12 clarifies the operability status of the RTBs with either the undervoltage or shunt trip attachment inoperable.

b. Table 4.3-1 will reference a new Note 13 to Item 1, "Manual Reactor Trip," and a new Note 14 to Item 21, "Reactor Trip Breaker." A new Item 23, "Reactor Trip Bypass Breaker" will be added to the Table, and will reference new Notes 15 and 16.

New Notes 13 through 16 prescribe requirements for the testing of the RTBs, bypass breakers, and manual reactor trip function.

Basis for proposed no significant hazards consideration determination: 10 CFR 50.92 states that a proposed amendment will not involve a significant hazards consideration if the proposed amendment does not: (i) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (ii) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (iii) Involve a significant reduction in a margin of safety. The Commission has also provided guidance concerning the application of these standards by providing certain examples (March 6, 1986, 51 FR 7751). An example of an amendment that is considered not likely to involve significant hazards considerations is Example (ii) A change which constitutes an additional limitation, restriction or control not presently included in the technical specifications, e.g., a more stringent surveillance requirement.

The licensee has evaluated the proposed amendment against the standards of 10 CFR 50.92, and has determined the following:

The proposed revisions follow the sample TS changes included with Generic Letter 85-09, with one exception. The testing required for the reactor trip bypass breakers will be performed on the same frequency as the reactor trip breakers, ie, each train tested every other month (Table 4.3-1, Note 7). Testing each train every 62 days on a staggered test basis is consistent with recommendations in the Westinghouse Standard Technical Specifications (NUREG-0452, Revision 4) for reactor trip breaker testing.

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident. The proposed change adds new testing requirements to help ensure the functioning of the reactor trip system when needed. The change is intended to reduce the frequency of postulated Anticipated Transients Without Scram (ATWS) events.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change adds new testing requirements intended to reduce the frequency of postulated ATWS events.

3. The proposed changes do not involve a significant reduction in a margin of safety. The proposed changes add additional testing requirements which effect an increase in the margin of safety.

The proposed changes are similar in nature to the Example (ii) provided by the Commission. The changes to the TS add a new TS requiring that: (1) an inoperable undervoltage or shunt trip attachment of the reactor trip breaker shall be restored to operability within 48 hours, (2) the channel functional test shall independently verify the operability of the undervoltage and shunt trip circuits for the manual reactor trip function, and (3) the undervoltage and shunt trip attachments of the reactor trip breakers shall be independently verified for operability. These proposed changes introduce additional controls not presently in the TS and, therefore, involve no significant hazards consideration.

The staff has reviewed the licensee's no significant hazards analysis and concurs with their conclusions. As such, the staff proposes to determine that the requested changes do not involve a significant hazards consideration.

Local Public Document Room location: Branford Price Millar Library,

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Attorney for licensee: J. W. Durham, Senior Vice President, Portland General Electric Company, 121 S. W. Salmon Street, Portland, Oregon 97204

NRC Project Director: George W. Knighton

Portland General Electric Company et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: July 14, 1987

Description of amendment request: The proposed amendment would revise Section 3.11.3.2.b of Technical Specification (TS) 3/4.11.3, "Solid Radioactive Waste," by deleting the reference to a nonexistent TS Section 6.9.1.9.b.

Basis for proposed no significant hazards consideration determination: 10 CFR 50.92 states that a proposed amendment will not involve a significant hazards consideration if the proposed amendment does not: (i) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (ii) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (iii) Involve a significant reduction in a margin of safety. The Commission has also provided guidance concerning the application of these standards by providing certain examples (March 6, 1986, 51 FR 7751). An example of an amendment that is considered not likely to involve a significant hazards considerations is Example (i) A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature. The removal of a nonexisting reference in the TS is a correction of an error, and is considered an editorial change which falls within the scope of the above cited Example. As such, the staff proposes to determine that the requested change does not involve a significant hazards consideration.

Local Public Document Room location: Branford Price Millar Library, Portland State University, 731 S. W. Harrison St., Portland Oregon 97207

Attorney for licensee: J. W. Durham, Esq., Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204

NRC Project Director: George W. Knighton

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: August 12, 1987

Description of amendment request: The current Technical Specification requires an emergency diesel generator starting air receiver minimum pressure of 380 psig. The proposed amendment would change this minimum required pressure to 325 psig. The licensee states in its request:

The present Technical Specification Section 4.8.1.1.2.a.7 minimum value of 380 PSIG was erroneously selected as the minimum air start receiver pressure. The limit selected should have been the low pressure alarm setpoint of 325 PSIG, as described in the FSAR, not the compressor normal cycling setpoint of 380 PSIG.

It also states:

FSAR Section 9.5.6 (Reference 2) describes the Starting Air System as capable of performing its function (in conformance with Standard Review Plan Section 9.5.6 and IEEE Standard 387 criteria) when the starting air receiver pressure is at the low pressure alarm setpoint of 325 PSIG. The FSAR statements pertaining to the Starting Air System were verified during the Hope Creek Preoperational Test Program.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of its standards set forth in 10 CFR 50.92 by providing certain examples (51 FR 7744). An example of an amendment that is not likely to involve a significant hazards consideration is "(vi) A change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan..." The acceptance criteria related to the minimum required pressure of the starting air receivers are stated in items 4g and 4h of Standard Review Plan Section 9.5.6 "Emergency Diesel Engine Starting System." These are:

g. As a minimum, the air starting system should be capable of cranking a cold diesel engine five times without recharging the receiver(s). The air starting system capacity should be determined as follows: (1) each cranking cycle duration should be approximately 3 seconds; (2) consist of two to three engine revolutions; or (3) air start requirements per engine start provided by the engine manufacturer; whichever air start requirement is larger.

h. Alarms should be provided which alert operating personnel if the air receiver pressure falls below the minimum allowable value.

The licensee states in its request:

The margin of safety which forms the basis for this technical specification is the ability to provide sufficient air pressure for Emergency Diesel Generator starting as described in FSAR Section 9.5.6.2 and in PSE&G's response to FSAR Question 430.122. The proposed correction to the Technical Specification limit agrees with FSAR statements regarding system design which have been demonstrated during preoperational testing. Therefore, no reduction in the margin of safety which forms the basis for the technical specification is involved in this proposed change.

Hope Creek FSAR Section 9.5.6.2 states:

Each air receiver can supply starting air for a minimum of five consecutive engine starts with a beginning receiver pressure at the low pressure alarm setpoint.

The starting air low pressure alarm is set at 325 psig.

On the basis of the above information, we conclude that the proposed change meets the acceptance criteria of Section 9.5.6 of the Standard Review Plan and is similar to example (vi) as stated above.

Therefore, the staff has made a proposed determination that the application for amendment involves no significant hazard considerations.

Local Public Document Room location: Pennsville Public library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: August 18, 1987

Description of amendment request: The proposed amendment would revise License Condition 2.C(13) to extend the required date for adding four parameters to the Safety Parameter Display System (SPDS) and having them operational from "prior to restart following the first refueling outage" to "prior to the earlier of 90 days after restart from the first refueling outage or July 12, 1988." Plant shutdown for the first refueling is currently scheduled to begin on February 1, 1988.

The licensee plans to meet this requirement for adding parameters by replacing the existing system with a new computer system that, in addition to meeting this requirement for providing the four additional parameters, will have additional capacity for future needs. It is necessary to perform some tests on the new system while the plant

is shutdown and others while the plant is in operation after the outage. Therefore, the licensee has requested the schedular extension in order to perform the tests that must be conducted following restart.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has stated that it has determined that the proposed change does not constitute a significant hazards consideration and has addressed each of the above three standards as follows:

The proposed change does not significantly increase the probability or consequences of an accident previously evaluated. The SPDS system is not a control system and serves only in an advisory capacity to the Operations staff. Additionally, the existing system will be operational until the new system is fully checked out and operational. Therefore, the proposed change does not affect the probability or consequences of previously evaluated accidents.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. Although a new system is being installed, it is similar in design to the existing system. As stated before, the SPDS does not control operation in the reactor in any way and serves only as a source of information. The system is designed to be isolated from any safety related system. The isolation system for the new SPDS system will use appropriately qualified optical isolation devices. The existing system will be functional during the schedular extension necessary to make the new system operational. Therefore, the proposed change does not create a new or different kind of accident.

The proposed change does not significantly reduce the margin of safety. The schedular extension will not reduce the margin of safety in that the existing SPDS will remain operational during installation of the new system. The new system represents an improvement in the margin of safety by providing increased capabilities over the old system and is necessary to install the additional parameters as required by License Condition 2.C.(13). The extension does not represent a significant reduction in the margin of safety since the existing SPDS system was found to not constitute a safety concern as stated in Section 18.2 of Supplement 5 to NUREG-1048. The extension is necessary to upgrade to fully meet the guidance of Supplement 1, to NUREG-0737. Thus, the proposed change does not significantly reduce the margin of safety.

The NRC staff has reviewed the proposed amendment and agrees with the licensees' evaluation and determination. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner and Wetterhahn, 1747 Pennsylvania Avenue, N.W., Washington, DC 20006

NRC Project Director: Walter R. Butler

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: September 2, 1987

Description of amendment request: The proposed amendment would revise the Technical Specification requirement for channel functional tests of the rod block monitor (RBM) to require that the tests be performed prior to exceeding 30% of rated thermal power.

The current Technical Specification requires that the RBM be operable when thermal power is greater than or equal to 30% of rated thermal power; it also requires that the channel functional tests for the RBM be performed within 24 hours prior to startup. These two differing requirements are confusing. The proposed change will eliminate this confusion by making the requirement for performing the functional tests consistent with the requirement for operability. The change will also provide greater operational flexibility by allowing the additional time between startup and reaching 30% power to perform the test.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. In accordance with 10 CFR 50.92 the licensee has reviewed the proposed change and has concluded that they do not involve a significant hazards consideration in that the change:

(1) Does not involve a significant increase in the probability or consequences of an accident previously analyzed. Technical Specification 3/4.1.4.3 specifies that the RBM shall be Operable whenever Thermal Power is greater than or equal to 30% of Rated Thermal Power. Below 30% of Rated Thermal Power the RBM system is automatically bypassed; therefore, whether or not the system has a Channel Functional Test performed prior to startup is immaterial so long as Thermal Power is below 30% of Rated Thermal Power. Hence, it can be concluded that the proposed change does not significantly increase the probability or consequences of an accident previously analyzed because the change only revises when a test for Operability is to be performed, not the fact that such a test will be performed.

(2) Does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change does not involve a modification to the RBM system, including when the system is required to be functional. The proposed change only involves planning considerations and hence it can be concluded that the proposed change does not create the possibility of a new or different kind of accident than any previously analyzed.

(3) Does not involve a significant reduction in a margin of safety. Once again the Technical Specification power limit of 30% of Rated Thermal Power for Operability of the RBM is not changing, nor is the actual requirement to perform a Channel Functional Test prior to reaching 30% of Rated Thermal Power. Therefore the safety margins for the RBM are still maintained and it can be concluded that the proposed change does not involve a reduction in the margin of safety.

The staff reviewed the licensee's determination that the proposed license amendment involves no significant hazards consideration and agrees with the licensee's analyses. Accordingly, the staff proposes to determine that the proposed license amendment does not involve a significant hazards consideration.

Local Public Document Room location: Pennsville Public library, 190 S. Broadway, Pennsville, New Jersey 08070

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NRC Project Director: Walter R. Butler

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: July 24, 1987

Description of amendment request: The proposed amendment request would revise the Technical Specification Bases, Section 2.2.1 Limiting Safety System Settings, "Reactor Coolant Pump Breaker Position Trip", and Table 3.3-1, Reactor Trip System Instrumentation, Functional Unit 20 "Reactor Coolant Pump Breaker Position Trip" to change the (1/4) RCP breaker open position anticipatory reactor trip logic above power level P-8 into (2/4) RCP breaker open position reactor trip logic above power level P-7. This modification removes a potential source of single failure unit trips and provides a reduction in challenges (e.g. spurious trips) to the Reactor Protection System. This modification is provided as a standard feature or as a retrofit option for all Westinghouse PWR units. All domestic Westinghouse PWR units supplied subsequent to Three Mile Island (TMI) incorporate this change.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's request and concurs with the following basis and conclusions provided by the licensee in its July 24, 1987 submittal.

The proposed changes to the Salem Technical Specifications do not significantly increase the probability or consequences of a previously evaluated accident. UFSAR Section 15.2.5, "Partial Loss of Forced Reactor Coolant Flow" describes the low primary coolant flow reactor trip as providing the required protection against a partial loss of coolant flow accident. Three redundant flow channels are provided in each loop for the low flow reactor trip. Above power level P-8, the loss of flow in any one loop, as sensed by two of the three channels will actuate the low flow reactor trip. The existing (1/4) RCP breaker open position anticipatory reactor trip functions to backup the low flow reactor trip. This same analysis assumes a worst case scenario (e.g. four loops initially operating, two pumps coasting down). UFSAR Section 15.2.5.5 concludes that the DNBR will not decrease below the limiting value of 1.30 at any time during such a transient thus the core safety limit is not breeched. The anticipatory time delay (e.g. the time difference between the initiations of an RCP breaker open position reactor trip and a low primary coolant flow reactor trip) is not significant since the original transient analysis is based on low primary coolant flow. Therefore, the UFSAR Section 15.2.5.5 "Conclusions" bounds the consequences of deleting the (1/4) RCP breaker open position anticipatory reactor trip above power level P-8 and hence the proposed modification does not increase the probability or consequences of this previously evaluated accident scenario.

The proposed changes to the Salem Technical Specifications do not create the possibility of a new or different kind of accident than any previously evaluated. In the event of a single loop loss of flow, the low primary coolant flow reactor trip is the design protection and it meets the design requirement of maintaining the minimum DNBR above the 1.30 limiting value. If credit is not taken for the low primary coolant flow reactor trip, then a reactor trip on either overtemperature or overpower Delta-T will terminate the accident before DNB occurs in the core (UFSAR Section 7.2.3.1). Westinghouse analysis indicates that the hot spot clad temperature (on the inner clad surface) will remain well below the melting point (reference Attachment 2). For all non-LOCA safety analyses, the logic change which results in the deletion of a reactor trip on a single RCP breaker open position above power level P-8 is acceptable since UFSAR Sections 15.2.5.5 and 15.3.4.4 "Conclusions" bound the consequences. The diversity and redundancy of the Reactor Protection System are maintained for a single loop loss of flow.

The proposed changes to the Salem GS Technical Specifications do not involve a significant reduction in the margin of safety. The RCP breaker position reactor trip is modified to actuate on the opening of any two breakers above the P-7 interlock setpoint. This modification only affects the coincidence logic of the Solid State Protection System (SSPS). The existing (2/4) coincident reactor trip logic functions (e.g. the opening of an RCP breaker in any one loop coincident with low flow in a second loop or low flow in any two loops simultaneously) will remain unchanged. This specific modification has undergone Westinghouse analysis and review in accordance with the general requirements of 10 CFR Part 50 Appendix B and the specific requirements of IEEE-279-1971 and does not degrade either its performance or conformance to system design requirements. Two independent RCP breaker open position interlocks are provided to the SSPS logic cabinets to develop the RCP breaker position reactor trip logic (independent interlocks for trains "A" and "B"). The single failure criterion requirement for independence and redundancy of the (2/4) RCP breaker open position reactor trip above power level P-7 is not changed as a result of this modification thus UFSAR Section 7.2.2.2 "Design Basis for Protection Circuits" is not changed and the existing margins of safety are retained. Based on the preceding evaluations, PSE&G concludes that the proposed change to the Salem Technical Specifications does not involve a significant hazards consideration.

Therefore, on the basis of the licensee's evaluations and conclusions with which the staff agrees, the Commission proposes to determine that the proposed changes involve no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

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NRC Project Director: Walter R. Butler

Southern California Edison Company, et al, Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment request: July 3, 1987 (Reference PCN-236)

Description of amendment request: The proposed change would revise Technical Specification (TS) 6.9.1.14, "Hazardous Cargo Traffic Report". The existing reporting requirements in this TS specify that the hazardous cargo traffic on Interstate 5 (I-5) and the AT&SF railway shall be monitored and the results submitted to the NRC Regional Administrator once every three years. The origin of these requirements is the San Onofre Units 2 and 3 Safety Evaluation Report (SER), NUREG-0712. In the SER, the NRC staff concluded that the risks due to potential explosions or toxic gas releases (with the provisions for protecting against the specific toxic gases described) are acceptably low and meet the criteria described in the Standard Review Plan (SRP), Section 2.2.3. [The toxic gas isolation system (TGIS) currently is designed to isolate the control room air intake upon detection of the presence of Ammonia, Chlorine, Butane and Propane]. The SER conclusion was based in part on the knowledge of present sizes and frequencies of hazardous cargo shipments going past the San Onofre site. However, it was noted by the NRC Staff that significant changes over the lifetime of the plant in traffic density, transportation conditions, cargo composition, size and frequency could have a significant effect on the risk estimates. Therefore, the staff required that the hazardous cargo traffic on I-5 and the AT&SF railway be monitored and the results periodically reported to the staff.

The proposed change would remove from TS 6.9.1.14 the requirement to monitor and report the toxic gas cargo

traffic on I-5. The requirement to monitor and report explosive and flammability hazard cargo on Interstate Route 5 and hazardous cargo traffic on the AT&SF railway would remain in effect.

Basis for proposed no significant hazards consideration determination: The NRC staff proposes to determine that the proposed amendment does not involve a significant hazards consideration because, as required by the criteria of 10 CFR 50.92(c), operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The following is a discussion of these three criteria and how the proposed change meets each criterion.

1. The NRC staff proposes to determine that operation of the facility in accordance with the proposed amendment does not involve a significant increase in the probability or consequences of any accident previously evaluated for the reasons given below.

Previously analyzed accidents include the release of toxic gases from an accident on Interstate Route 5 (I-5) which would potentially cause the San Onofre Units 2 and 3 control room to become uninhabitable. In the SER, the NRC staff concluded (based upon prior analyses performed by the licensee) that the risks due to toxic gas releases, when coupled with the provisions for control room isolation, were acceptably low. However, the NRC staff required that hazardous cargo traffic (explosive hazards and hazards from toxic gases) be monitored and the results periodically reported.

The licensee has performed an additional analysis of the toxic gas hazard shipments along I-5. This analysis demonstrates that the combined risk associated with the composite toxic gas hazard from shipments on I-5 is acceptably low and meets the acceptance criteria of Standard Review Plan (SRP) Section 2.2.3. The analysis further demonstrates that this risk will remain acceptably low throughout the time period prior to expiration of the operating licenses for San Onofre Units 2 and 3 (the operating licenses expire on October 18, 2013).

The proposed change does not alter the configuration of the plant or its operation. The proposed change, based upon the results of the analysis, deletes the requirement to monitor toxic gas hazardous cargo along I-5 and report the results to the NRC. Since the risk from toxic gas shipments along I-5 has been demonstrated to be and to remain acceptably low, operation of the facility in accordance with this proposed change will not involve a significant increase in the probability or consequences of accidents previously evaluated.

2. The NRC staff proposes to determine that operation of the facility in accordance with the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed amendment would not change the configuration of the plant, or its manner of operation. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The NRC staff proposes to determine that operation of the facility in accordance with the proposed amendment does not involve a significant reduction in a margin of safety.

Based upon the licensee's analysis, the risk to control room habitability from toxic gas shipments along I-5 has been demonstrated to be and to remain acceptably low for the duration of the operating licenses for San Onofre Units 2 and 3. Elimination of the requirements to monitor and periodically report this traffic is not needed to assure the habitability of the San Onofre Units 2 and 3 control room. Therefore, operation of the facility in accordance with this proposed change will not involve a significant reduction in a margin of safety.

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NRC Project Director: George W. Knighton

Southern California Edison Company, et al, Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment request: August 5, 1987 and September 18, 1987 (Reference PCN-237)

Description of amendment request: The proposed change would revise Technical Specification (TS) 3/4.2.7, "Axial Shape Index" and its associated basis. Notice of this action was previously published in the **Federal Register** on September 23, 1987 (52 FR 35807). The licensee has revised the original submittal. This notice supersedes the previous notice.

Technical Specification 3.2.7 is provided to ensure that the actual value of the axial shape index (ASI) is maintained within the range assumed as an initial condition in the safety analyses. The safety analyses assume that ASI is between -0.3 and +0.3. ASI is the power generated in the lower half of the core less the power generated in the upper half of the core divided by the sum of these powers. The ASI can be calculated utilizing either the Core Operating Limit Supervisory System (COLSS) or any operable Core Protection Calculator (CPC) channel. The real time monitoring capability and accuracy of COLSS allows COLSS to monitor power limit margins closely (using incore, self-powered, rhodium detectors).

The proposed change to this specification is required to support Cycle 4 operation (24 month cycle versus the current 18 month cycle). Analysis of COLSS uncertainties has shown that the axial shape uncertainty for Cycle 4 increases from ±0.02 ±0.03. This is due primarily to the effect of increased cycle length on the measurement uncertainties associated with the incore detectors.

Technical Specification 3.2.7 currently requires that the ASI be maintained within the COLSS Operable limits (ASI between -0.28 and +0.28) or the COLSS Out Of Service (CPC) limits (ASI between -0.20 and +0.20). The current COLSS Operable limits for the ASI are based on the value assumed in the safety analyses (ASI between -0.30 and +0.30) taking into account the axial shape uncertainty (±0.02). For Cycle 4 operation, the axial shape uncertainty increases to ±0.03. Therefore, the COLSS ASI alarm limit will be changed from ASI between -0.28 and +0.28 to ASI between -0.27 and +0.27.

Surveillance Requirement 4.2.7 will also be revised. Currently, Section 4.2.7 only requires that ASI be determined to be within its limits once per 12 hours when COLSS is in service or out of service. The proposed change will take advantage of the fact that COLSS continuously monitors ASI when it is in service. Specifically, ASI will be required to be continuously monitored and determined to be within its limit with COLSS in service. With COLSS out of service, the surveillance requirement

will be unchanged. That is, ASI will be required to be verified to be within its limit at least once every 12 hours using any operable CPC channel.

The basis for this specification will be expanded to include discussions of the 20% minimum power limitation in Mode 1, what ASI is and the two methods by which this parameter is calculated. The basis currently states that this specification ensures that the actual value of the ASI is maintained within the range of values used in the safety analyses.

Basis for proposed no significant hazards consideration determination: The NRC staff proposes to determine that the proposed amendment does not involve a significant hazards consideration because, as required by the criteria of 10 CFR 50.92(c), operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The following is a discussion of these three criteria and how the proposed change meets each criterion.

1. The NRC staff proposes to determine that operation of the facility in accordance with the proposed amendment does not involve a significant increase in the probability or consequences of any accident previously evaluated for the reasons given below. The proposed change would decrease the range of the ASI limits from ±0.28 to ±0.27, due to an increase in uncertainty factor from ±0.02 to ±0.03. Thus, the proposed change still requires that ASI be maintained within the ASI range assumed in the safety analyses, ±0.30. Further, the proposed change requires continuous monitoring of ASI when COLSS is in service. This is more restrictive than the current TS which requires monitoring once every 12 hours. Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. The NRC staff proposes to determine that operation of the facility in accordance with the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed amendment would not change the configuration of the plant, or its manner of operation. The LCO for ASI will be changed from ±0.28 to ±0.27 when COLSS is in service. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The NRC staff proposes to determine that operation of the facility in accordance with the proposed amendment does not involve a significant reduction in a margin of safety. The proposed change will would revise the range of the ASI limit to be more restrictive when COLSS is in service. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

Local Public Document Room location: General Library, University of California at Irvine, Irvine, California 92713.

Attorneys for licensee: Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P. O. Box 800, Rosemead, California 91770 and Orrick, Herrington & Sutcliffe, Attn.: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111.

NRC Project Director: George W. Knighton

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: July 31, 1987

Description of amendment request: The proposed amendment would revise the plant heatup and cooldown curves, revise the maximum allowable power operated relief valve (PORV) setpoint curve, and revise the reactor vessel surveillance capsule removal schedule.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has provided the following analysis of no significant hazards considerations, using the Commission's standards.

This Technical Specification change is being requested to incorporate information gained from surveillance capsule U which was removed during first refueling. These curves also incorporate the effects of a low leakage fuel and plant uprated conditions. The modifications of the plant heatup, cooldown and PORV setpoint curves (Figures 3.4-2, 3.4-3, and 3.4-4) are to incorporate the reference nil-ductility temperature (RT_{NDT}). Table 4.4-5 is being modified to incorporate the new recommended withdrawal schedule. The changes being made are jointly considered in this evaluation for significant hazards.

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The revision being made is to merely ensure that the acceptable range of operation is clearly defined using conservative and validated data obtained from the analysis of surveillance capsule U which was withdrawn during the first refueling.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. This is based on the fact that the method and manner of plant operation are unchanged.

The proposed change does not involve a significant reduction in a margin of safety. This is based on the fact that the change only revises the heatup and cooldown limitation curves and surveillance program table to reflect operational parameters based on surveillance capsule data as applied to Vantage 5 fuel and uprated conditions. The recalculated limit curves have the same degree of conservatism as the original curves, since they are based on the most limiting values of the nil-ductility reference temperature which includes the radiation induced shift (delta RT_{NDT}) as determined by the surveillance capsule analysis.

Based on the above discussions, the licensee concluded that the proposed amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated; does not create the possibility of a new or different kind of accident from any accident previously evaluated; does not involve a reduction in the required margin of safety.

The staff has reviewed the licensee's no-significant-hazards-consideration determination and agrees with the licensee's analysis. The staff, therefore, proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker

and Lindell Boulevards, St. Louis, Missouri 63130.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Project Director: David L. Wigginton, Acting.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D. C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Projects.

Alabama Power Company, Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Unit 1 and 2, Houston County, Alabama.

Dates of application for amendments: December 19, 1986, supplemented May 4, July 10, and August 25, 1987.

Description of amendments: Technical Specification (TS) 3/4.4.6 is revised to allow the use of an approved steam generator tube sleeving technique in lieu of plugging defective tubes. The Safety Evaluation that was issued with this amendment is proprietary. A non-proprietary version is being prepared.

Date of issuance: September 18, 1987

Effective date: September 18, 1987

Amendment Nos.: 72 and 63

Facility Operating License Nos. NPF-2 and NPF-8. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** June 17, 1987 (52 FR 23094). The July 10, and August 25, 1987 supplements made clarifying statements, but did not change the findings in the original notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 18, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303

Alabama Power Company, Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Unit 1 and 2, Houston County, Alabama.

Dates of application for amendments: December 19, 1986, supplemented May 4, July 10, and August 25, 1987.

Description of amendments: Technical Specification (TS) 3/4.4.6 is revised to allow the use of an approved steam generator tube sleeving technique in lieu of plugging defective tubes. The Safety Evaluation that was issued with this amendment is proprietary. A non-proprietary version is being prepared.

Date of issuance: September 18, 1987

Effective date: September 18, 1987

Amendment Nos.: 72 and 63

Facility Operating License Nos. NPF-2 and NPF-8. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** June 17, 1987 (52 FR 23094) The July 10, and August 25, 1987 supplements made clarifying statements, but did not change the findings of the original notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 18, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303

Alabama Power Company, Docket No. 50-364, Joseph M. Farley Nuclear Plant, Unit 2, Houston County, Alabama.

Date of application for amendment: May 4, 1987

Brief description of amendment: Technical Specifications 3/4.4.6 were modified for surveillance and reporting requirements for testing of the steam generator tubes in the tubesheet region. Plugging or repairing of tubes in the tubesheet region below F* (F-star) are deleted, but reporting indications in the F* region is required.

Date of issuance: September 21, 1987

Effective date: September 21, 1987

Amendment No. 64

Facility Operating License No. NPF-8. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 17, 1987 (52 FR 23093) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 21, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Dates of application for amendments: August 28, 1985, as supplemented May 15, 1987.

Description of amendments: Amends the Technical Specifications for Brunswick, Units 1 and 2, by changing the required power level for rod block monitor operation.

Date of issuance: September 24, 1987

Effective date: September 24, 1987

Amendments Nos.: 112 and 139

Facility Operating License Nos. DPR-71 and DPR-62. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** July 29, 1987 (52 FR 28373) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 24, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall

Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: June 1, 1987

Brief description of amendment: During the 1987 outage, new motor-operated valves were installed into the existing emergency core cooling systems (ECCS) to assure the capability of adequate core cooling over the entire spectrum of postulated pipe breaks. This license amendment provides (1) new periodic surveillance requirements to ensure correct valve position, (2) post-maintenance surveillance requirements for throttle valves, and (3) new valve and ECCS retest requirements following modifications to any ECCS subsystem that would alter ECCS flow characteristics.

Date of issuance: September 9, 1987

Effective date: September 9, 1987

Amendment No. 93.

Facility Operating License No. DPR-61. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 1, 1987 (52 FR 24545). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 9, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 124 Broad Street, Middletown, Connecticut 06457.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: June 1, 1987

Brief description of amendment: The license amendment revises the heat-up rate curve (Figure 3.4-8) and also provides a larger interval for which the low-temperature pressurization protection system (LTOPS) must be placed into operation. More specifically, the proposed heat-up rate change results in a pressure/temperature limit curve shift. This shift increases the temperature range over which the LTOPS can effectively be placed into operation and decreases the probability of operator error during plant heat-up and cooldown operations.

Date of issuance: September 10, 1987

Effective date: September 10, 1987

Amendment No. 94.

Facility Operating License No. DPR-61. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 1, 1987 (52 FR 24545). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 10, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 124 Broad Street, Middletown, Connecticut 06457.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: June 1, 1987

Brief description of amendment: This license amendment revises Technical Specifications (TS) 3.19 and 4.13 pertaining to snubbers by replacing the existing TS with technical specifications which are largely consistent with the NRC model standard technical specifications (STS) and which are more consistent with current industry guidelines such as NRC Generic Letter 84-13.

Date of issuance: September 23, 1987

Effective date: September 23, 1987

Amendment No. 95.

Facility Operating License No. DPR-61. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 29, 1987 (52 FR 28373). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 23, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 124 Broad Street, Middletown, Connecticut 06457.

Dairyland Power Cooperative, Docket No. 50-409, LaCrosse Boiling Water Reactor, LaCrosse, Wisconsin

Date of application for amendment: June 19, 1987

Brief description of amendment: This amendment: (1) revises the Technical Specifications (TS) to state that the reactor will not be operated; (2) deletes TS requirements for reactor nuclear instrumentation channels to be in operation; and (3) deletes TS requirements to perform inservice inspection of high pressure primary systems and the TS requirements to use NUREG-0313, Revision 1, to govern repair and replacement of piping.

Date of issuance: September 15, 1987

Effective Date: September 15, 1987

Amendment No.: 57

Provisional Operating License No. DPR-7. This amendment revises the license.

Date of initial notice in **Federal Register:** August 12, 1987 (52 FR 29913). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 15, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: La Crosse Public Library, 800 Main Street, La Crosse, Wisconsin 54601.

Duquesne Light Company, Docket No. 50-412, Beaver Valley Power Station, Unit 2, Shippingport, Pennsylvania

Date of application for amendment: July 14, 16, 22, 31, September 14 (3 letters), 17 and 18, 1987.

Brief description of amendment: The amendment changed the license for Beaver Valley Unit 2 to allow sale and leaseback transactions by each of the four owners (Duquesne Light Company, Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company).

Date of issuance: September 23, 1987

Effective date: September 23, 1987

Amendment No. 1

Facility Operating License No. NPF-73. Amendment revised the license.

Date of initial notice in **Federal Register:** August 12, 1987 (52 FR 29915) The September 14 (3 letters), 17 and 18, 1987 letters provided additional clarifying information and did not change the findings of the initial notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 23, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Florida Power and Light Company, Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of application of amendment: October 10, 1986, as supplemented January 9, 1987.

Brief description of amendment: The amendment revised the Unit No. 1 technical specifications that deal with containment air locks, and made them consistent with the Unit No. 2 technical specifications. The associated exemption to 10 CFR Part 50, Appendix J was issued on August 19, 1987.

Date of Issuance: September 15, 1987

Effective Date: September 15, 1987

Amendment No.: 85

Facility Operating License No. DPR-67: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 25, 1987 (52 FR 9567). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 15, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virgina Avenue, Ft. Pierce, Florida.

Florida Power and Light Company, et al., Docket No. 50-389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of application of amendment: December 2, 1986, as supplemented February 3, 1987

Brief description of amendment: The amendment reduced the steam generator water level setpoints for reactor trip and auxiliary feedwater initiation. The water level for reactor trip was reduced from 39.5% to 20.5%. The water level for auxiliary feedwater initiation was reduced from 20.6% to 19.0%.

Date of Issuance: September 24, 1987

Effective Date: September 24, 1987

Amendment No.: 23

Facility Operating License No. NPF-16: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 11, 1987 (52 FR 4407) Additional information was provided by the licensee by letter dated February 3, 1987. The additional information did not change the initial determination of no significant hazards consideration as published in the **Federal Register.** The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 24, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Ft. Pierce, Florida.

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of application for amendment: September 12, 1986.

Brief description of amendment: The amendment changes the trip setpoints, allowable values, and footnotes for the main steam line flow-high and the reactor core isolation cooling (RCIC) steam line flow-high; and changes a footnote for the residual heat removal (RHR)/RCIC steam line flow-high.

Date of issuance: September 23, 1987.

Effective date: September 23, 1987.

Amendment No. 11

Facility Operating License No. NPF-47. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 29, 1987 (52 FR 28377). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 23, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: March 26, 1987, as supplemented by letters dated May 15, July 24 and August 24, 1987.

Brief description of amendment: The amendment changed the Technical Specifications by revising the surveillance requirements associated with demonstrating operability of the emergency diesel generators in order to minimize engine stress and wear in response to Generic Letter 84-15.

Date of issuance: September 22, 1987.

Effective date: September 22, 1987.

Amendment No.: 23

Facility Operating License No. NPF-38. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 17, 1987 (52 FR 23100) The July 24 and August 24, 1987 submittals provided additional clarifying information and did not change the finding of the initial notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 22, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Mississippi Power & Light Company, System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: June 3, 1987, as supplemented June 22, 1987

Brief description of amendment: This amendment changed the definition of core alteration in the TSs to include certain exceptions and changed footnotes in the TSs to be consistent with the new definition. This amendment also changed a snubber surveillance test sample plan in the TS by decreasing the number of additional snubbers required to be tested from 10% to 5% for each snubber in the initial test sample that failed to meet specified functional test criteria.

Date of issuance: September 10, 1987

Effective date: September 10, 1987

Amendment No. 35

Facility Operating License No. NPF-29. This amendment revised the Technical Specifications

Date of initial notice in **Federal Register:** July 15, 1987 (52 FR 26589) and July 29, 1987 (52 FR 28380) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 10, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: July 9, 1987.

Brief description of amendment: The amendment changes the Technical Specifications to include local leak rate test acceptance criteria for primary containment airlock doors.

Date of issuance: September 9, 1987.

Effective date: September 9, 1987.

Amendment No.: 110

Facility Operating License No. DPR-62. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 11, 1987 (52 FR 29922).

The amendment was inadvertently issued two days prior to expiration of the 30-day comment period specified by 10 CFR 50.91(a)(2)(iii). However, due to the fact that no comments or requests for hearing have been received as of September 15, 1987, the staff has determined that the amendment need not be reissued with a revised date.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 9, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: February 17, 1987, as revised by letters dated April 6, May 4 and August 3, 1987.

Brief description of amendment: The amendment changes the Physical

Security Plan to reflect changes to the intrusion detection system.

Date of issuance: September 17, 1987.

Effective date: September 17, 1987.

Amendment No.: 111

Facility Operating License No. DPR-62. Amendment revised the license.

Date of initial notice in **Federal Register:** June 17, 1987 (52 FR 23103). The Commission's related evaluation of the amendment is contained in a letter dated September 17, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of application for amendment: January 21, 1987

Brief Description of amendment: The amendment deletes the limiting conditions for operation (LCO) and the surveillance requirements for the switchyard batteries from the technical specifications since the maintenance responsibility belongs with the New London Substation Maintenance Department.

Date of issuance: September 1, 1987

Effective date: September 1, 1987

Amendment No. 10.

Facility Operating License No. DPR-21. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 26, 1987 (52 FR 5863). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 1, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Northeast Nuclear Energy Company, et al., Docket No. 50-245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of application for amendment: April 28, 1987.

Brief description of amendment: This amendment revises technical specification Table 3.7.1, Primary Containment Isolation, to reflect plant modifications and to increase the scope of the table to include not only valves which receive a containment isolation signal, but also check valves and valves open during power operation for testing and/or sampling purposes.

Date of issuance: September 8, 1987

Effective date: September 8, 1987

Amendment No.: 11.

Facility Operating License No. DPR-21. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 3, 1987 (52 FR 20802). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 8, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: March 28, 1986 as supplemented April 9, 1986, March 13 and June 22, 1987.

Brief description of amendment: The amendment incorporates revised Surveillance Requirements for the diesel generators in accordance with Generic Letter 84-15 entitled, "Proposed Staff Actions to Improve and Maintain Diesel Generator Reliability."

Date of issuance: September 24, 1987.

Effective date: 30 days from the date of issuance.

Amendment No.: 111

Facility Operating License No. DPR-40. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 21, 1986 (51 FR 18689). Since the date of initial notice, the licensee submitted additional information dated April 9, 1986, March 13 and June 22, 1987. This information was substantial enough to warrant renoticing of the requested amendment on August 12, 1987 (52 FR 29924). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 24, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: November 25, 1985

Brief description of amendments: The amendments require a program to ensure that (1) the position of the containment polar cranes will preclude jet impingement from a postulated pipe rupture and (2) the operation of the turbine building cranes is consistent with the seismic analysis of the turbine building.

Date of Issuance: September 18, 1987

Effective date: September 18, 1987

Amendment Nos: 21 and 20

Facility Operating Licenses Nos. DPR-80 and DPR-82: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 12, 1986 (51 FR 8598) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 18, 1987

No significant hazards consideration comments received: No

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: April 13, 1987

Brief description of amendments: These amendments revised the Susquehanna Steam Electric Station Units 1 and 2 Technical Specifications for surveillance of the Standby Gas Treatment System Exhaust Radiation-High instrumentation.

Date of issuance: September 14, 1987

Effective date: September 14, 1987

Amendment Nos.: 70 and 39

Facility Operating License Nos. NPF-14 and NPF-22. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 15, 1987 (52 FR 26594) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 14, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket No. 50-277, Peach Bottom Atomic Power Station, Unit No. 2, York County, Pennsylvania

Date of application for amendments: January 9, 1987, as supplemented by letters dated February 6, March 24, and May 13, 1987

Brief description of amendments: This amendment revised the Technical

Specifications (TSs) to: (1) incorporate the operating limits for all fuel types for Cycle 8 operation, (2) incorporate a change in slope of the flow biased Average Power Range Monitor (APRM) scram and rod block setpoints for extended power-flow operating regions, (3) correct five typographical errors, (4) clarify a definition of Average Planar Linear Heat Generation Rate (5) clarify several notes in the TSs and (6) make various changes to the Bases discussing core reloads.

Date of issuance: September 11, 1987

Effective date: Prior to startup of Unit 2 in Cycle 8.

Amendment No.: 123

Facility Operating License No. DPR-44: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** (52 FR 7693) March 12, 1987 The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 11, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Philadelphia Electric Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: December 17, 1986

Brief description of amendments: These amendments made changes to Technical Specification page 207 to reflect the addition of a radwaste treatment sub-system to treat and filter chemical and oily wastes and also to make related editorial and format changes.

Date of issuance: September 22, 1987

Effective date: September 22, 1987

Amendments Nos.: 124 and 127

Facility Operating License Nos. DPR-44 and DPR-56: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 17, 1987 (52 FR 23105) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 22, 1987.

No significant hazards consideration comments received: In response to the NRC staff's consultation with the Commonwealth of Pennsylvania several potential concerns were identified. These concerns, as discussed in the Commission's Safety evaluation, were discussed with the Commonwealth representative, the licensee and the NRC staff. The Commonwealth representative found the information supporting the amendment application to be acceptable and indicated that there were no further concerns with the amendment. The staff did not identify any information which impacts its previous proposed determination of no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Public Service Electric & Gas Company, Docket No. 50-272, Salem Nuclear Generating Station, Unit No. 1, Salem County, New Jersey

Date of application for amendment: October 3, 1986

Brief description of amendment: The amendment replaced the Fxy limits in the Technical Specifications with statements referring to the Radial Peaking Factor Limit Report.

Date of issuance: September 23, 1987

Effective date: September 23, 1987

Amendment No.: 82

Facility Operating License No. DPR-70. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 1, 1987 (52 FR 24556) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 23, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: May 18, 1987, as supplemented on June 4, 1987

Brief description of amendments: The amendment revises Section 6 - Administrative Controls to reflect the new plant organization, a restructuring of the Independent Safety Engineering Group, and change to the Plant Organization Review Committee responsibilities. The proposed changes to the existing requirements for Temporary Changes to Procedures in which the intent of the procedure is changed have been denied. A separate notice of denial will be published in the **Federal Register.** Minor changes were made to proposed Specifications 6.5.1.7.a and 6.5.1A.1.b for consistency to clarify these Specifications.

Date of issuance: September 10, 1987

Effective date: September 10, 1987, and shall be fully implemented within 60 days

Amendment Nos.: 58, 50

Facility Operating Licenses Nos. DPR-77 and DPR-79. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 1, 1987 (52 FR 24561). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 10, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: December 17, 1986 (TS 76)

Brief description of amendments: The amendments change the Technical Specifications to increase the loading sequence delay for the containment spray pumps by 150 seconds.

Date of issuance: September 18, 1987

Effective date: September 18, 1987

Amendment Nos.: 59, 51

Facility Operating Licenses Nos. DPR-77 and DPR-79. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 1, 1987 (52 FR 24559) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 18, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: March 30, 1987.

Brief description of amendment: The amendment revised the requirements for reporting iodine spiking from a short-term report to an item which is to be included in the Annual Report, and eliminated the requirement to shut down the plant after 800 hours of operation with a dose equivalent I-131 valve of 1 microcurie/gram or greater.

Date of issuance: September 21, 1987

Effective date: September 21, 1987

Amendment No.: 27

Facility Operating License No. NPF-30. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 20, 1987 (52 FR 18970 at 18989). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 27, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: June 24, 1987, as supplemented by letter dated August 11, 1987.

Brief description of amendment: The amendment revises the Technical Specifications for Cycle 13 operation of the nuclear reactor.

Date of issuance: September 18, 1987

Effective date: September 18, 1987

Amendment No.: 100

Facility Operating License No. DPR-28: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 12, 1987 (52 FR 29934). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 18, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Dated at Bethesda, Maryland this 1st day of October, 1987.

For the Nuclear Regulatory Commission

Dennis M. Crutchfield,

Director, Division of Reactor Projects - III, IV, V & Special Projects

Office of Nuclear Reactor Regulation

[FR Doc. 87-23048 Filed 10-6-87; 8:45 am]

BILLING CODE 7590-01-D

POSTAL SERVICE

Stamps By Phone Program

AGENCY: Postal Service.

ACTION: Notice of stamps by phone program with request for comments.

SUMMARY: On September 1, 1987, the Postal Service initiated a test of a Stamps By Phone program at selected cities. This program will permit postal customers to purchase stamps by telephone, with payment made by credit card. Comments are requested concerning this program.

DATE: The Stamps By Phone program began on September 1, 1987. Comments must be received on or before January 31, 1988.

ADDRESS: Written comments should be directed to the General Manager, Retail and Customer Services Clerical Operations Division, United States Postal Service, Room 7226, 475 L'Enfant Plaza West SW., Washington, DC 20260-7225. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday at room 7226 at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Hughes, (202) 268-3547.

SUPPLEMENTARY INFORMATION: Under 39 U.S.C. 404(a)(4), the Postal Service is directed "to provide and sell postage stamps and other stamped paper, cards, and envelops * * * as may be necessary or desirable." Consistent with this responsibility, the Postal Service employs a wide variety of means to sell postage to its customers, including sales at postal facilities, operation of vending machines, sales through rural carriers, a stamps by mail program, and consignment of stamps for sale by private parties.

For the further convenience of its customers, the Postal Service has initiated a test of a new means to distribute postage, a Stamps By Phone program. Under this new program, customers may use a toll-free "800" telephone number to order postage, with payment to be made by either a VISA or Mastercard credit card. Others may be placed 24 hours per day, seven days per week. The following products will be offered:

Three books (20 stamps to a book) of 22¢ stamps	$13.20
Sheet (50 stamps) of 22¢ stamps	$11.00
Roll (100 stamps) of 17¢ stamps	$17.00
Roll (100 stamps) of 22¢ stamps	$22.00
Roll (500 stamps) of 22¢ stamps	$110.00
Book (3 stamps) of $10.75 Express mailstamps	$32.25
Package (50 envelops) of size 6¾ stamped envelops	$13.50
Package (50 envelopes) of size 10 stamped envelopes	$13.50

A two dollar handling charge will be assessed for each order to defray Postal Service costs. Customers will be permitted to purchase an unlimited amount of these postage products in each order. Orders will be mailed from a central location, and should be delivered within five days from the date the order is placed.

The test as described above will be conducted in the following seven cities, with scheduled starting dates ranging from September 1, 1987, through October 27, 1987. These cities, and the implementation date of the program in each city are: Sacramento, California (September 1, 1987); Miami, Florida (September 15, 1987); New York, New York (September 29, 1987); Boston Massachusetts (October 13, 1987); Baltimore, Maryland (October 20, 1987); Minneapolis, Minnesota (October 27, 1987); and San Diego, California (October 27, 1987).

In two additional cities, Norfolk, Virginia (starting September 12, 1987) and Dallas, Texas (starting September 26, 1987), customers will be able to purchase stamps through telephone calls to a local telephone number. These order, which will be fulfilled locally, may also be charged to VISA and Mastercard credit cards. However, no handling charges will be assessed on these orders.

After the completion of the test in all nine cities on April 30, 1988, the Postal Service will evaluate the Stamps By Phone program and determine whether it should be continued and expanded.

The Postal Service invites comments concerning any aspect of this program.

Fred Eggleston.

Assistant General Counsel, Legislative Division.

[FR Doc. 87-23133 Filed 10-6-87; 8:45 am]

BILLING CODE 7710-12-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980. (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Supplemental Information on Accident and Insurance

(2) *Form(s) submitted:* SI-1c, SI-5 and ID-30K(1)

(3) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection

(4) *Frequency of use:* On occasion

(5) *Respondents:* Individuals or households, Businesses or other for-profit
(6) *Annual responses:* 25,600
(7) *Annual reporting hours:* 2,134
(8) *Collection description:* The RUIA provides for recovery of sickness benefits paid if the employee receives a settlement for the same injury for which benefits were paid. The collection obtains identifying information about the person or company responsible for such payments and information needed for determining the amount of the Board's entitlement.

Additional Information or Comments: Copies of the proposed forms and supporting documents can be obtained from Pauline Lohens, the agency clearance officer (312–751–4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Elaina Norden (202–395–7316), Office of Management and Budget, Room 3002, New Executive Building, Washington, DC 20503.

Pauline Lohens,

Director of Information and Data Management.

[FR Doc. 87–23145 Filed 10–6–87; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-24978; File No. SR-MSTC-87-6]

Self-Regulatory Organizations; Midwest Securities Trust Co.; Changes to MSTC's Fee Schedule Effective August 1, 1987; Filing and Immediate Effectiveness of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 21, 1987, the Midwest Securities Trust Company 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

The Midwest Securities Trust Company hereby amends its fee schedule, effective August 1, 1987, as follows:

	New fee	Old fee
Monthly Account Service		
Account Maintenance	$250	$175
Equity/Corp. Service	75	105
Municipal Bond Service	75	105
Total	$325 or $400	$280 or $385
Depository Delivery Instructions (Book-Entry Movements)		
Registered Securities	$0.65	$0.68
Bearer Securities	0.65	1.50
Safekeeping		
Registered Securities Position.	$0.58	$0.58
Thinly Held Issue Surcharge:		
Equity (5 or less Participants).	$0.22 (total $0.80).	-0-
Corp/Muni Bond (2 or less Participants).	$0.42 (total $1.00).	-0-
Bearer Securities Position.	$1.10	$1.25
Thinly Held Issue Surcharge:		
2 or less Participants.	$0.65 (total $1.75).	$0.25 (total $1.50)
1 Participant	$0.09 (total $2.00).	$0.85 (total $2.10)
Dividend/Interest Collection Processing		
Cash Dividend Credit	$1.40	$1.00
Stock Dividend Credit	4.00	1.00
Registered Bond Interest Credit.	1.50	1.00
Bearer Bond Interest Credit.	3.00	1.50
Deposits		
Registered Securities	$1.00	$0.95
Next Day	$1.50	$1.40
Same Day (7:30-11:00)	15.00	12.00
Last Minute (11:00-11:30).	9.00	7.50
Communications (Rebilled Expense)		
Participants Using Shared Leased Lines.	$0.40/mi	$0.18/mi

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) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the changes to MSTC's fee schedule is to more accurately cover the cost of providing the various services to MSTC Participants.

The proposed rule change is consistent with section 17A of the Securities Exchange Act of 1934 in that it provides for the equitable allocation of reasonable dues, fees, and other charges among MSTC's Participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Securities Trust Company does not believe that the proposed rule change will impose any burdens on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

In response to an MSTC Administrative Bulletin dated August 5, 1987, which described the proposed fee changes, MSTC received four comment letters and approximately ten telephone calls. This represents approximately 4% of all MSTC Participants. In most instances the Participant requested clarification on the fee changes. Each letter and call was replied to by phone and through letters. Each Participant was advised why the increases were recommended and was further provided with an analysis of the overall effect on the individual firm's total costs for depository services. In all cases, once the total cost effect was understood and an explanation of the reasons for the increases were discussed, the Participants indicated that the fee changes were acceptable. The cost effect for most Participants was to increase total depository costs between 1.5% to approximately 3%.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed

rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number (File No. SR-MSTC-87-6) and should be submitted by October 28, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 1, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-23213 Filed 10-6-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24971; File No. PHLX 87-32]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; to its Options Position Limit Rule Providing for a Hedge Exemption

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 24, 1987 the Philadelphia Stock Exchange, Inc. filed with 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

The Philadelphia Stock Exchange, Inc. ("PHLX" of the "Exchange") submits as a proposed rule change an amendment to its options position limit rule providing for a hedge exemptions for options positions that are offset by positions in the underlying stock. The following is the full text of the proposed rule change (additions italicized; deletions bracketed).

OPTIONS RULES

* * * * *

Position Limits

Rule 1001. No change.

* * * Commentary

.01 through .06 No change.

.07 For purposes of position limits for stock options only, the following positions, where each options contract is "hedged" by 100 shares of stock or, in the case of an adjusted option, the same number of shares at options, shall be exempted from established limits: (i) long call and short stock; (ii) short call and long stock; (iii) long put and long stock; and (iv) short put and short stock. In no event may position limits for any call of stock options exceed twice the limits established under Rule 1001 and Commentary .05 above.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

Position limits circumscribe the amount of options on the same side of the market (*i.e.*, short calls and long puts or long calls and short puts) that an investor may control. Position limits for equity options are determined in accordance with a three-tiered system (*i.e.*, 3,000, 5,500, or 8,000 contracts) based on the underlying stock's trading volume and/or the number of outstanding shares that are publicly held.

The proposed amendment is designed to allow a limited, automatic exemption from equity option *position and exercise limits* for accounts that have established one of the four most commonly used hedged positions consisting of stock and equity options on a 1-for-1 basis, i.e., 100 shares of stock for each option contract.

The exemption is to be automatic and no request or application need be made by a market participant to utilize the exemption. The exemption is intended to apply to exercise limits as well as position limits.[1] Therefore, accounts will be allowed to exercise, during any five consecutive business days, the same number of contracts set forth as the position limit for that option, including those that are hedged. The exempted hedged positions are: (i) long call and short stock, (ii) short call and long stock, (iii) long put and long stock and (iv) short put and short stock. In no event, however, would the maximum position limit (including the allowed exemptions) exceed twice the present position limit.

Utilizing the proposed exemption would afford investors the opportunity to hedge twice the amount of underlying shares of stock without increasing the possibility for manipulation in such securities.

The Exchange believes that this proposal will increase the depth and liquidity of equity options trading. Therefore, the proposed amendment is consistent with the provisions of the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, with section 6(b)(5) of the Act. By limiting the exemption to hedged positions, the proposal is designed to prevent fraudulent and manipulative acts and practices by enhancing the ability of investors to use options for investment and particularly for hedging purposes. It is designed to protect investors and promote the public interest.

B. Self-Regulatory Organizations Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Options Committee, a committee of the PHLX Board of Governors comprised of members and representatives of member firms, has endorsed the proposed rule change. No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and

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[1] PHLX Rule 1002 relating to exercise limits incorporates the position limits rule by reference, so this proposal also would result in the doubling of exercise limits.

arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 28, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 30, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-23214 Filed 10-6-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16025; 811-3471 and 811-3598]

Declaration of Deregistration; American Money Plan, Inc.

October 1, 1986.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Delcaration of Deregistration under the Investment Company Act of 1940 (the "1940 Act").

Registrant: American Money Plan Inc. ("Registrant")

Relevant 1940 Act Section: Section 8(f).

Summary of Notice: The SEC proposes to declare by order on its own motion that Registrant has ceased to be an investment company.

Hearing on Notification of Hearing: If no hearing is ordered, the motion will be granted. Any interested person may request a hearing on this motion, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on October 26, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Registrant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Registrant, 1939A Berryman Street, Berkely, CA 94709.

FOR FURTHER INFORMATION CONTACT: Paul J. Heaney, Financial Analyst (202) 272-2847 or Brion R. Thompson, Special Counsel (202) 272-3016 (Division of Investment Management).

Statement of Facts

1. Registrant is an open-end, non-diversified management investment company which filed a Form N-8A to register under the 1940 Act on May 25, 1982; Form N-1 was filed on November 12, 1982 but no additional filings have been made with the SEC since that date. Efforts made to contact Registrant and its principals have been unsuccessful.

2. Information contained in the files of the SEC indicate that Registrant has never made a public offering of its securities, has not more than 100 securityholders, has no assets, and is not a party to any litigation or administrative proceeding. Thus it appears that Registrant is not currently engaged in the business of an investment company.

For the SEC, by the Division of Investment Management, under delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-23215 Filed 10-6-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16024; File No. 812-6855]

Application for Exemption; FBL Variable Insurance Series Fund

October 1, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicant: FBL Variable Insurance Series Funds ("Fund" or "Applicant").

Relevant 1940 Act Sections: Exemption requested under section 6(c) of the 1940 Act from sections 9(a), 13(a), 15(a) and 15(b) of the Act and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder.

Summary of Application: Applicant seeks an order to the extent necessary to permit shares of the Fund to be sold to and held by variable annuity and variable life insurance separate accounts of both affilitated and unfaffiliated life insurance companies.

Filing Date: August 28, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on October 26, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notifications of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. FBL Variable Insurance Series Fund, 5400 University Avenue, West Des Moines, Iowa 50265.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Ulness, Attorney, at (202) 272-2026 or Lewis B. Reich, Special Counsel, at (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

Applicants' Representations

1. The Fund is a Massachusetts business trust seeking registration under the 1940 Act as an open-end diversified investment company. The Fund currently consists of six Portfolios: the Money Market Portfolio, the Growth Common Stock Portfolio, the Aggressive Growth Common Stock Portfolio, the High Quality Bond Portfolio, the High Yield Bond Portfolio, and the Managed Portfolio. Additional Portfolios may be created in the future.

2. The Fund intends to offer shares of its existing and future Series to separate accounts of any interested insurance company in order to fund variable annuity contracts and variable life insurance contracts (collectively referred to herein as "variable contracts"). Insurance companies whose separate account(s) owns shares of the Fund are referred to herein as "participating insurance companies." It is anticipated that participating insurance companies will rely on Rules 6e-2 or 6e-3(T) under the Act, Although some may rely on individual exemptive orders as well, in connection with variable life insurance contracts. The

use of a common management company as the underlying investment medium for both variable annuity and variable life insurance separate accounts is commonly referred to, and is referred to herein, as "mixed funding." The use of a common management company as the underlying investment medium for separate accounts of unaffiliated insurance companes is referred to herein as "shared funding."

3. Rules 6e-2 and 6e-3(T) under the Act provide certain exemptions from the Act in order to permit insurance company separate accounts to issue variable life insurance. Rule 6e-2(b)(15), however, precludes mixed and shared funding and Rule 6e-3(T)(b)(15) precludes shared funding. Applicant has requested exemptive relief to the extend necessary to permit shares of the Applicant to be sold for mixed funding and shared funding. Applicant proposes that the requested relief extend to a class consisting of life insurers and variable life separate accounts investing in Applicant (and principal underwriters and depositors of such separate accounts) which would otherwise be precluded from investing in Applicant by virtue of Applicant offering its shares to variable annuity separate accounts or unaffiliaged separate accounts.

4. Applicants state that permitting mixed and shared funding will facilitate the establishment of additional portfolios serving diverse goals. The applicant also states that the broader base of contract owners can be expected to provide economic justification for the creation of additional portfolios with a greater variety of investment objectives and policies. Further, use of the Fund as a common investment medium for variable contracts would encourage more insurance companies to offer variable contracts. Applicant believes that this will result in increased competition with respect to both variable contract design and pricing, and that this can be expected to result in more product variation and lower charges. Applicant also believes that mixed and shared funding should benefit variable contract owners by eliminating a significant portion of the costs of establishing and administering separate funds and that granting the requested relief should result in an increased amount of assets available for investment by the Fund which in turn may benefit variable contract owners by promoting economies of scale, by permitting greater safety through greater diversification, or by making the addition of new Portfolios of the Fund more feasible. Applicant represents that the Fund will not be managed to favor or disfavor any particular insurer of type of insurance product. Applicant believes that mixed and shared funding will have no adverse federal income tax consequences.

Disqualification

5. Section 9(a) of the Act provides that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in sections 9(a) (1) or (2). Rules 6e-2(b)(15) (i) and (ii), and 6e-3(T)(b)(15) (i) and (ii), provide exemptions from section 9(a) under certain circumstances, subject to limitations on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying management company.

6. The partial relief granted in Rules 6e-2(b)(15) and 6e-3(T)(b)(15) from the requirements of section 9 in effect limits the amount of monitoring necessary to ensure compliance with section 9 to that which is appropriate in light of the policy and purposes of section 9. Applicant believes that it is necessary to apply section 9(a) to the many thousands of individuals in various unaffiliated insurance companies (or affiliated companies of participating insurance companies) that may utilize the Fund as the funding medium for variable contracts, and alleges that there is no regulatory purpose in extending the monitoring requirements because of mixed or shared funding. Applicant states that, on the other hand, the increased monitoring costs would reduce the net rates of return realized by contract owners.

Voting

7. The language of Rules 6e-2(b)(15)(iii) and 6e-3(T)(b)(15)(iii) assumes the existence of a pass-through voting requirement with respect to management investment company shares held by a separate account. Applicant states that pass-through voting privileges will be provided with respect to all variable contract owners.

8. Rules 6e-2(b)(15)(iii) and 6e-3(T)(b)(15)(iii) provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming the limitations on mixed and shared funding are observed. Rules 6e-2(b)(15)(iii)(A) and 6e-3(T)(b)(15)(iii)(A) provide that the insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying fund or any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of such Rules). According to Applicants, if a particular state insurance regulatory's decision conflicts with the majority of other state regulators, the affected insurer will be required to withdraw its separate account's investment in the Fund. This requirement will be provided for in agreements that will be entered into by participating insurers with respect to participation in the Fund.

Applicant's Conditions

Applicant has consented to the following conditions:

1. A majority of the Board of Trustees of the fund shall consist of persons who are not "interested persons" of the Fund, as defined by section 2(a)(19) of the Act and the Rules thereunder and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any trustee or trustees, then the operation of this condition shall be suspended (a) for a period of 45 days if the vacancy or vacancies may be filled by the Board of Trustees" (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy of vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. The Fund will comply with all provisions of the Act requiring voting by shareholders, and in particular the Fund will either provide for annual meetings or comply with section 16(c) of the Act (although the Fund is not one of the trusts described in section 16(c) of the Act) as well as with sections 16(a) and, if and when applicable, 16(b). Further, the Fund will act in accordance with the Commission's interpretation of the requirements of section 16(a) with respect to periodic elections of trustees and with whatever rules the Commission may promulgate with respect thereto.

3. The Board will monitor the Fund for the existence of any material irreconcilable conflict between the interests of the contract owners of all separate accounts investing in the Fund. An irreconcilable material conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-

action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of any series are being managed; (e) a difference in voting instructions given by variable annuity contract owners and variable life insurance contract owners; or (f) a decision by an insurer to disregard the voting instructions of contract owners.

4. Participating insurance companies and the Fund's investment adviser, FBL Investment Advisory Services, Inc. ("Adviser"), will report any potential or existing conflicts to the Board of Trustees of the Fund. Participating insurance companies and the Advisers will be responsible for assisting the Board in carrying out its responsibilities under these conditions, by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by each participating insurance company to inform the Board whenever contract owner voting instructions are disregarded. The responsibility to report such information and conflicts and to assist the Board will be contractual obligation of all insurers investing in the Fund under their agreements governing participation in the Fund and such responsibilities will be carried out with a view only to the interests of the contract owners.

5. If it is determined by a majority of the Board of Trustees of the Fund, or a majority of its disinterested trustees, that a material irreconcilable conflict exists, the relevant insurance companies shall, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested trustees), take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict, up to and including: (a) Withdrawing the assets allocable to some or all of the separate accounts from the Fund or any Portfolio and reinvesting such assets in a different investment medium, including another Portfolio of the Fund, or submitting the question whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (i.e., annuity contract owners, life insurance contract owners, or variable contract owners of one or more participating insurance companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; and (b) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of an insurer's decision to disregard contract owner voting instructions and that decision represents a minority position or would preclude a majority vote, the insurer may be required, at the Fund's election, to withdraw its separate account's investment in the Fund and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of an irreconcilable material conflict and to bear the cost of such remedial action shall be a contractual obligation of all participating insurance companies under their agreements governing participation in the Fund and these responsibilities will be carried out with a view only to the interests of contract owners. For purposes of this condition 5, a majority of the disinterested members of the Board shall determine whether or not any proposed action adequately remedies any irreconcilable material conflict, but in no event will the Fund or the Adviser be required to establish a new funding medium for any variable contract. No participating insurance company shall be required by this condition 5 to establish a new funding medium for any variable contract if an offer to do so has been declined by vote of a majority of contract owners materially adversely affected by the irreconcilable material conflict.

6. The Board's determination of the existence of an irreconcilable material conflict and its implications shall be made known promptly to all participating insurance companies.

7. Participating insurance companies will provide pass-through voting privileges to all variable contract owners so long as the Commission continues to interpret the Act as requiring pass-through voting privileges for variable contract owners. Participating insurance companies shall be responsible for assuring that each of their separate accounts participating in the Fund calculates voting privileges in a manner consistent with other participating insurance companies. The obligation to calculate voting privileges in a manner consistent with all other separate accounts investing in the Fund shall be a contractual obligation of all participating insurance companies under their agreements governing participation in the Fund.

8. The Fund will notify all participating insurance companies that prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate.

9. If and to the extent that Rule 6e-2 and Rule 6e-3(T) are amended, or Rule 6e-3 is adopted, to provide exemptive relief from any provision of the Act or the rules promulgated thereunder with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested in this Application, then the Fund and/or the participating insurance companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e-2 and 6e-3(T), as amended, and Rule 6e-3, as adopted, to the extent such rules are applicable.

10. All reports received by the Board of Trustees of potential or existing conflicts, and all Board action with regard to determining the existence of a conflict, notifying participating insurance companies of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

For the Commission, by the Division Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-23216 Filed 10-6-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24469]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

October 1, 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 October 26, 1987 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(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.

Southern Electric International, Inc.; The Southern Company (70–7150)

The Southern Company ("Southern"), 64 Perimeter Center East, Atlanta, Georgia 30346, a registered holding company, and its wholly owned marketing subsidiary, Southern Electric International, Inc. ("SEI"), 100 Ashford Center North, Atlanta, Georgia 30338, have filed a post-effective amendment to their application-declaration pursuant to sections 6(a), 7, 9(a), 10 and 12 of the Act and Rules 43, 45 and 50(a)(5) thereunder.

By order dated November 18, 1985 (HCAR No. 23911), SEI was authorized to issue and sell from time to time through October 1, 1987, pursuant to an exception from the competitive bidding requirements of Rule 50, its long-term unsecured promissory notes in an aggregate principal amount not exceeding $75 million at any one time outstanding, and Southern was authorized to acquire and/or guarantee same or all of the notes. SEI and Southern now propose to extend through December 31, 1992 the period during which the authorized transactions may occur.

Eastern Utilities Associates (70–7426)

Eastern Utilities Associates ("EUA"), P.O. Box 2333, Boston, Massachusetts 02107, a registered holding company, has filed an application-declaration pursuant to sections 6(a), 6(b), 7, 9(a), 10, 12(b), and 13(b) of the Act and Rules 43(a), 45(a), 86, 87, 90 and 91 promulgated thereunder.

EUA proposes to: (1) Organize a new subsidiary corporation ("NewCo") under the laws of the Commonwealth of Massachusetts; (2) subscribe initially to 100 shares of NewCo's initial authorized capital of 300,000 shares of common stock, $0.01 per share par value, at $10.00 per share; and (3) fund NewCo from time-to-time, directly or indirectly, by means of stock purchases, capital contributions and interest-bearing loans and open account advances, in a maximum aggregate amount of $25 million outstanding at any one time. NewCo's capitalization may also include borrowings by NewCo from third party lenders. The aggregate amount of EUA's investments in NewCo together with NewCo's borrowings from third party lenders will not exceed a maximum amount at any one time outstanding of $25 million. EUA will not guarantee any indebteness of NewCo.

NewCo proposes to participate, directly and indirectly, through transactions with affiliates or nonaffiliates, in: (1) Qualifying cogeneration facilities, as defined in the Public Utility Regulatory Policies Act of 1978, located throughout the United States; and (2) qualifying small power production facilities and nonqualifying cogeneration and small power production facilities located within (a) the service territories of EUA's two retail electric subsidiaries, Blackstone Valley Electric Company and Eastern Edison, both members of the New England Power Pool ("NEPOOL"), and (b) the service areas of other members of NEPOOL, or (c) such additional areas as may hereafter be allowed by law or applicable regulation, (collectively, "NewCo Facilities"). NewCo proposes to invest up to a maximum aggregate amount at any one time outstanding of $25 million in NewCo Facilities through the purchase of shares or other acquisitions of interests, loans, guarantee of indebtedness or other contractual arrangements. NewCo also proposes to conduct certain energy or energy conservation research and to invest, directly or indirectly, up to an aggregate of $2 million of the $25 million in such activities.

EUA Service Corporation will provide services to NewCo at cost under a service contract. Employees of other EUA system companies may be used by NewCo from time-to-time, with the cost of these services charged to NewCo.

Gulf Power Company, et al. (70–7430)

The Southern Company ("Southern"), 64 Perimeter Center East, Atlanta, Georgia 30346, and Gulf Power Company ("Gulf"), 500 Bayfront Parkway, Pensacola, Florida 32501, a subsidiary of Southern, a registered holding company, have filed a declaration pursuant to sections 6(a), 7 and 12(b) of the Act, and Rules 45, 50, and 50(a)(5) thereunder.

Gulf proposes to enter into a new coal supply contract to replace an existing contract. In connection therewith an initial payment of approximately $60 million will be required for the termination of the earlier agreement and for certain costs under a new agreement. In order to provide funds to finance the initial payment, or for other general corporate purposes including Gulf's construction program, Gulf contemplates that some combination (not to exceed $60 million) of the following will be used on or before December 31, 1992: (i) Up to $10 million in capital contributions from Southern, (ii) up to $15 million from the issuance and sale of its preferred stock, (iii) up to $60 million from the issuance of notes with maturities of up to 30 years, and (iv) up to $60 million from the issuance and sale of first mortgage bonds.

Gulf proposes to issue and sell the first mortgage bonds and/or preferred stock by competitive bidding in compliance with Rule 50. Gulf may later amend the application to seek an exception from Rule 50 pursuant to subsection 50(a)(5) for a negotiated public offering.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87–23217 Filed 10–6–87; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–16020; (812–6715)]

Application; Shearson Lehman Special Income Portfolios

September 30, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: Shearson Lehman Special Income Portfolios.

Relevant 1940 Act Sections: Amended Exemptive Order requested under section 6(c) exempting Applicant from the provisions of section 22(d) and Rule 22d–1.

Summary of Application: Applicant seeks an amended exemptive order to permit it to waive a contingent deferred sales charge currently assessed pursuant to an order granted to Applicant on September 5, 1985 (Investment Company Act Release No. 14706, amended by Investment Company Act Release No. 15005, March 19, 1986, the "1985 Order").

Filing Date: The application was filed on May 12, 1987 and amended on July 22, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on October 26, 1987. Request a hearing in writing, giving the nature of your

interest, the reason for the request, and the issues you contest. Serve the Applicant(s) with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, Two World Trade Center, New York, NY 10048.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Staff Attorney (202) 272–3046, or Curtis R. Hilliard, Special Counsel (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant is an open-end, diversified, management investment company that was organized as a business trust under the laws of the Commonwealth of Massachusetts on March 12, 1985. Applicant is a series company that is currently offering shares of nine portfolios (the "Portfolios"). Shares of all of the Portfolios are distributed by Shearson Lehman Brothers, Inc. ("Shearson Lehman"), and affiliates of Shearson Lehman serve as the investment advisers to the various Portfolios.

2. The 1985 Order exempted Applicant from (1) the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and Rules 22c–1 and 22d–1 under the Act to the extent necessary to permit Applicant to assess a contingent deferred sales charge (the "CDSC") on redemptions of the initial and future series of its shares and to permit Applicant under certain circumstances to waive or apply credits against the CDSC, and (2) the provisions of section 11(a) of the Act to permit Applicant to offer to exchange shares of each of Applicant's series for shares of any other of Applicant's series or shares of any series of Shearson Lehman Special Income Portfolios, on the basis of relative net asset values per share of the relevant series at the time of the exchange, subject to a $5.00 service charge on each exchange, which service charge is no longer assessed.

3. Applicant now proposes to waive the CDSC on redemptions effective by any shareholder who is a client of a Shearson Lehman Finanical Consultant and who purchased shares of Applicant with the redemption proceeds of shares of a registered investment company sponsored by the Financial Consultant's previous employer. Under Applicant's proposal, the CDSC would be waived only if (1) the shareholder's purchase of shares of a Portfolio was made within 90 days of the commencement of the Financial Consultant's employment with Shearson Lehman; (2) the purchase was made with proceeds of a redemption of shares of an investment company registered under the Act that was sponsored by the Financial Consultant's previous employer (the "Previous Fund"); (3) the Financial Consultant served as the shareholder's broker on the purchase of the shares of the Previous Fund; and (4) the shares of the Previous Fund were subject to a sales or redemption charge. To ensure that the shares of a Portfolio are purchased with the proceeds of a redemption of shares of a Previous Fund, the shareholder would be required to provide Shearson Lehman with a copy of a confirmation slip or customer statement evidencing the redemption.

4. Applicant requests that any exemption the Commission may grant cover not only the Portfolios, but also any additional series or classes of shares Applicant may offer in the future on substantially the same basis as Applicant offers the shares of the Portfolios.

5. Shearson Lehman believes that the purchase of shares of a Shearson Lehman fund by a client of a Financial Consultant with the redemption proceeds of a fund sponsored by the Financial Consultant's previous employer typically involves little or no selling effort by the Financial Consultant, and as a result, under Shearson Lehman's internal policies, the Financial Consultant receives no compensation with respect to the purchase.

Applicant's Legal Conclusions

1. Applicant submits that the waiver of the CDSC is consistent with the policies underlying section 22(d) of the Act, which prohibits an investment company registered under the Act from selling its redeemable securities other than at a current public offering price described in the company's prospectus. Applicant also believes that the waivers from the CDSC will not harm Applicant or its shareholders or unfairly discriminate among shareholders or purchasers. In light of the lack of selling effort involved, Applicant believes it appropriate to waive the CDSC on a redemption by a client of a Shearson Lehman Financial Consultant of shares of a Portfolio purchased with the redemption proceeds of a fund sponsored by the Financial Consultant's previous employer.

Applicant's Conditions

Applicant expressly agrees that the proposed transactions will conform to the following conditions.

1. Applicant will implement the waiver of the CDSC in accordance with the terms of Rule 22d–1 under the 1940 Act.

2. Applicant will comply with the provisions of proposed Rule 11a–3 under the 1940 Act if and when it is adopted by the Commission.

3. Applicant will comply with the provisions of Rule 12b–1 under the 1940 Act in its present form and as it may be revised in the future.

For the Commission, by the Division of Investment Management, under delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87–23143 Filed 10–6–87; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 06/06–0294]

Application for a Small Business Investment Company License; Revelation Resources, Ltd.

An application for a license to operate a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661, *et seq.*) has been filed by Revelation Resources, Ltd., (Applicant), 2929 Allen Parkway, Suite 1705, Houston, Texas 77019, with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1987).

The management and control of the Applicant are the officers and directors of Revelation Resources Management Corporation, Corporate General Partner, as follows:

Name and address	*Position*
Michael R. Walker, 15502 Congo Lane, Houston, Texas 77040.	President, Director and General Partner of Applicant.
Christopher J. Matthews, 3820 Lake Street, Houston, Texas 77098.	Vice President and Director.
Robert S. Oliver, 11827 Longleaf Lane, Houston, Texas 77024.	Vice President and Director.

The limited Partner, Darryl K. Anderson, 12 East Rivercrest, Houston, Texas 77042, will contribute approximately $900,000 and the Corporate General Partner will contribute $1,000 to the partnership capital. The Corporate General Partner

is 100 percent owned by Darryl K. Anderson.

The Applicant, Revelation Resources, Ltd., a Texas Limited Partnership, is expected to begin operations with $1,025,000 net partnership private capital. The Applicant will conduct its activities primarily in the State of Texas but will consider investments in businesses in other areas in the United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owner and management, and the probability of successful operations of the company under their management, including adequate profitability and financial soundness in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of the Notice will be published in a newspaper of general circulation in the Houston, Texas area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: October 2, 1987.

[FR Doc. 87-23223 Filed 10-6-87; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Traffic Alert and Collision Avoidance System (TCAS) Airborne Equipment, TCAS II

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of technical standard order (TSO) and request for comments.

SUMMARY: The proposed TSO-C119 prescribes the minimum performance standards that a traffic alert and collision avoidance system (TCAS) airborne equipment, TCAS II, must meet to be identified with the marking "TSO-C119."

DATE: Comments must identify the TSO file number and be received on or before January 15, 1988.

ADDRESS: Send all comments on the proposed technical standard order to:

Technical Analysis Branch, ASW-120, Aircraft Engineering Division, Office of Airworthiness—File No. TSO-C119, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591

Or deliver comments to: Federal Aviation Administration, Room 335, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Analysis Branch, AWS-120, Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administation, 800 Independence Avenue SW., Washington, DC 20591, Telephone (202) 267-9546.

Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 335, FAA Headquarters Building (FOB-10A), 800 Independence Avenue SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. All communications received on or before the closing date for comments specified above will be considered by the Director of Airworthiness before issuing the final TSO.

How to Obtain Copies

A copy of the proposed TSO-C119 may be obtained by contacting the person under "For Further Information Contact." TSO-C119 references RTCA/DO-185, dated September 1983 (and MITRE Report MTR-87W00157, Reference 10), for minimum performance standards, RTCA/DO-178A for the computer software requirements, and RTCA/DO-160B for the environmental standards. RTCA/DO-185, DO-178A, and DO-160B may be purchased from the Radio Technical Commission for Aeronautics Secretariat, One McPherson Square, Suite 500, 1425 K Street NW., Washington, DC 20005. MITRE Report MTR-87W00157 may be purchased from the MITRE Corporation, 1820 Dolley Madison Boulevard, McLean, VA 20005.

Issued in Washington, DC, on September 29, 1987.

Thomas E. McSweeny,

Manager, Aircraft Engineering Division, Office of Airworthiness.

[FR Doc. 87-23123 Filed 10-6-87; 8:45 am]

BILLING CODE 4910-13-M

VETERANS ADMINISTRATION

The Veterans' Advisory Committee on Environmental Hazards; Notice of Change of Meeting Location

The meeting of the Advisory Committee on Environmental Hazards which is scheduled for October 15 and 16, 1987, as set forth in **Federal Register** of August 27, 1987, (52 FR 32392) is being relocated and will convene in Room 119, Veterans Administration Central Office, 810 Vermont Avenue NW., Washington, DC at 9:00 a.m. instead of Room 442 of the Lafayette Building, 811 Vermont Avenue NW., Washington, DC at 9:00 a.m.

Dated: September 30, 1987.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 87-23153 Filed 10-6-87; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 194
Wednesday, October 7, 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).

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Wednesday, October 14, 1987.

PLACE: Board Room (Room 812A), Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED

1. Aircraft Accident Report: Midair Collision Involving a Sachs Electric Company Piper PA-31 and a U.S. Army Beech U-21, Lake City Army Ammunition Plant, Independence, Missouri, January 20, 1987.
2. Marine Accident Report—Grounding of the Panamanian Tankship GRAND EAGLE in the Delaware River, Marcus Hook, Pennsylvania, September 28, 1985.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382-6525.

Bea Hardesty,
Federal Register Liaison Officer.
October 2, 1987.

[FR Doc. 87-23237 Filed 10-5-87; 10:31 am]
BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of October 5, 12, 19, and 26, 1987.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of October 5

Friday, October 9

10:00 a.m.
Affirmative/Discussion and Vote (Public Meeting) (if needed)

Week of October 12—Tentative

Friday, October 16

10:00 a.m.
Briefing on Status of Rancho Seco (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of October 19—Tentative

Wednesday, October 21

10:00 a.m.
Briefing on Status of Unresolved Safety/Generic Issues (Public Meeting)
2:00 p.m.
Briefing on the Federally Funded Research Development Center (FFRDC) (Public Meeting)

Thursday, October 22

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of October 26—Tentative

Thursday, October 29

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Andrew Bates (202) 634-1410.

Andrew L. Bates,
Office of the Secretary.
October 1, 1987.

[FR Doc. 87-23338 Filed 10-5-87; 3:23 pm]
BILLING CODE 7590-01-M

federal register

Wednesday
October 7, 1987

Part II

Department of Education

National Institute on Disability and Rehabilitation Research; Fiscal Year 1988 Proposed Funding Priorities and Invitation of Applications for New Awards Under the Program of Rehabilitation Research and Training Centers; Notices

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research; Proposed Funding Priorities for Fiscal Year 1988

AGENCY: Department of Education.

ACTION: Notice of proposed funding priorities for fiscal year 1988.

SUMMARY: The Secretary of Education proposes funding priorities for some of the research activities to be supported under the Rehabilitation Research and Training Center (RRTC) program of the National Institute on Disability and Rehabilitation Research (NIDRR) in fiscal year 1988.

On June 5, 1987, NIDRR published in the **Federal Register** (FR 21350) those areas of physical restoration in which it proposes to support RRTCs in fiscal year 1988. This second notice includes other areas, such as vocational rehabilitation, community integration for individuals with developmental disabilities, rehabilitation of special populations and elderly disabled persons, research on families with disabled members, and research to make housing more accessible, that NIDRR proposes to approach through RRTCs in fiscal year 1988.

DATE: Interested persons are invited to submit comments or suggestions regarding the proposed priorities on or before November 6, 1987.

ADDRESSES: All written comments and suggestions should be sent to Betty Jo Berland, National Institute on Disability and Rehabilitation Research, Department of Education, 400 Maryland Avenue, SW., Room 3070, Switzer Building, Mailstop 2305, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Betty Jo Berland, National Institute on Disability and Rehabilitation Research (Telephone: (202) 732-1139). Deaf and hearing-impaired individuals may call (202) 732-1198 for TDD services.

SUPPLEMENTARY INFORMATION: Authority for the research program of NIDRR, formerly NIHR, is contained in section 204 of the Rehabilitation Act of 1973. Under this program, awards are made to public and private agencies and organizations including institutions of higher education, Indian tribes, and tribal organizations. NIDRR can make awards for up to sixty months.

The purpose of the awards is for planning and conducting research, demonstrations, and related activities that have a direct bearing on the development of methods, procedures, and devices to assist in providing vocational and other rehabilitation services to individuals with handicaps, especially those with the most severe handicaps. NIDRR's regulations authorize the Secretary to establish research priorities by reserving funds to support particular research activities (see 34 CFR 352.32).

NIDRR supports a program of Rehabilitation Research and Training Centers to conduct programmatic, multidisciplinary, and synergistic research, training, and information dissemination in designated areas of high priority. The following proposed priorities represent areas of research in a variety of rehabilitation areas which the Secretary believes are high priorities for RRTCs for this fiscal year. The priority may be determined on the basis of the extent and severity of the problem; the need for new knowledge to advance solutions to the problem; the appropriateness of the programmatic approach to the issues at this time; the resources and capacity of the field to provide a coordinated research approach to the problem; the level of other resources available for the problem; and other factors.

NIDRR invites public comment on the merits of the proposed priorities both individually and collectively, including suggested modifications to the proposed priorities. Interested respondents also are invited to suggest the types of expertise which would be needed for independent experts to review and evaluate applications under these proposed priorities.

The final priorities will be established on the basis of public comment, the availability of funds, and any other relevant Departmental considerations. These final priorities will be announced in a notice in the **Federal Register**. A closing date notice will be published at that time, after which application packages will be available. This Notice of Proposed Priorities does not solicit applications, and Department of Education staff will not review concept papers or other types of pre-applications. The publication of these proposed priorities does not bind the Federal Government to fund projects in any of these areas. Funding of particular projects depends on final priorities, the availability of funds, and on the quality of the applications that are received.

The following twelve proposed priorities represent areas in which NIDRR proposes to support research and related activities through cooperative agreements for one or more Rehabilitation Research and Training Centers. Rehabilitation Research and Training Centers have been established to conduct coordinated and advanced programs of rehabilitation research and to provide training to rehabilitation personnel engaged in research or the provision of services. RRTCs must be operated in collaboration with institutions of higher education and must be associated with rehabilitation service programs. Each Center conducts a synergistic program of research, evaluation, and training activities focused on a particular rehabilitation problem area. Each Center is encouraged to develop practical applications for all of its research findings as well as for related findings of other studies. Centers generally disseminate and encourage the utilization of new rehabilitation knowledge through such means as writing and publishing undergraduate and graduate texts and curricula and publishing findings in professional journals. All materials that the Centers develop for dissemination and training must be appropriately accessible to individuals with a range of handicapping conditions. RRTCs also conduct programs of in-service training for rehabilitation practitioners, education at the pre-doctoral and post-doctoral levels, and continuing education. Each RRTC will conduct an interdisciplinary program of training in rehabilitation research, including training in research methodology and applied research experience, that will contribute to the number of qualified researchers working in the area of rehabilitation research. Centers will also conduct state-of-the-art studies in relevant aspects of their priority areas. Each RRTC will also provide training to individuals with disabilities and their families in managing and coping with disabilities.

NIDRR will conduct, not later than three years after the establishment of any RRTC, one or more reviews of the activities and achievements of the Center, to include review by peers. Continued funding depends at all times on satisfactory performance and accomplishment. Each Center will be expected to provide appropriate attendees for a general grants management meeting in Washington, D.C., to be arranged by NIDRR shortly after the Center grant has been awarded.

Proposed Priorities (12)

New Directions for Rehabilitation Facilities

There are approximately 5,500 rehabilitation facilities in the United States. Facilities have traditionally served as settings for vocational training and evaluation, medical rehabilitation,

and long-term employment for individuals with disabilities. State vocational rehabilitation agencies often use contracts and service agreements with facilities for the purchase of vocational rehabilitation services. The Federal Government has provided fiscal incentives for facility expansion and guidelines for the purchase of facility-based services by agencies using Federal grant monies. Rehabilitation services are rapidly shifting from providing evaluation and training in facilities toward providing these services in regular integrated job sites. State rehabilitation agencies may use vendor payments or grant arrangements to obtain transitional employment services that provide training and follow-along services in competitive job sites. Rehabilitation facilities are the most frequent suppliers of these transitional services. At the same time, facilities are also establishing programs for public schools, for post-employment and job retention services, and to train nondisabled persons.

However, many facilities face significant challenges in expanding their expertise and redirecting their services. They are particularly likely to have difficulties organizing programs and services for "new" groups such as persons with traumatic brain injuries, severe learning disabilities, and chronic mental illness in community-based settings.

A critical element of any Center to be funded in response to this priority will be the involvement of disabled individuals in the planning, implementation, and review of the Center's activities, and specifically in the process of selecting work sites and consumer-oriented performance criteria.

An absolute priority is proposed for an RRTC to:

• Develop and evaluate model transitional employment programs, or program components, that assist vocationally limited disabled individuals to acquire and maintain competitive employment;

• Identify, assess, and disseminate new models of enclave and subcontract arrangements that can provide employment for small groups of disabled persons in integrated work settings;

• Develop, based on studies of the direct placement of disabled individuals in competitive jobs, improved techniques and related services to assist disabled individuals to obtain and maintain employment;

• Develop and disseminate new models that facilities can use to provide supportive networks for disabled persons in competitive employment;

• Develop research-based training programs to train staff of rehabilitation facilities to provide services in regular employment settings;

• Develop procedures to assess the needs of disabled youth exiting public schools, to enable communities to develop responsive employment programs;

• Assist facilities that have limited data gathering and research capacities to develop appropriate data and information systems and to participate in research efforts to improve their community-based employment programs;

• Identify and evaluate new technologies such as laser discs, computers, and robotics and provide guidelines and training for the use of such innovations by community employment programs to increase their effectiveness and efficiency in assisting disabled individuals to gain and maintain employment;

• Assess the employment-related needs of special populations of disabled individuals and identify methods by which such groups may be served more effectively by community-based employment services programs;

• Organize and direct an annual study institute on a rehabilitation topic, publish the results in a resource manual, and distribute the manual to State vocational rehabilitation programs; and

• Conduct at least one research dissemination conference to communicate the results of Center projects to rehabilitation consumers and professionals.

Enhancing Employability of Individuals with Handicaps

Approximately thirteen million people between sixteen and sixty-four years of age are work-disabled. Of the disabled population not employed, (9.5 million) an estimated 8.7 million are not seeking employment. Disabled persons, particularly persons with severe disabilities, are far more likely than nondisabled persons to be out of work. Persons with disabilities who are employed tend to work fewer hours, fewer weeks in the year, and earn less than nondisabled persons. A research and training effort is needed to develop capabilities at the national, state, and local levels to enhance employment potentials for all persons with disabilities.

Research at this Center will be concerned with both the enhancement of individual employability and the enhancement of job opportunities. Services to individuals typically include skills training, employment readiness training, and job placement. Services to employers may include increasing awareness of disability, job development, technical assistance on job modifications, and other disability services. The Center will address employability problems of disabled individuals in preparing for, obtaining, maintaining, and advancing in employment. This area of research will focus on career preparation, career initiation, and career enhancement for disabled individuals. The objective of this research will be the development of techniques whereby disabled individuals can improve their work-related skills and general employability.

A second emphasis of the research and training activities will be the development of more and better employment opportunities, primarily through enhancing employer knowledge of disability, and assisting employers to locate and hire qualified disabled workers. The Center will conduct research which will improve work settings and employer practices for workers who experience the onset of disabilities while employed. The RRTC will assist rehabilitation service delivery systems to adapt to the changing employability needs of persons with disabilities, whether by restructuring services programs, retraining staff, or adopting new service techniques.

NIDRR intends to establish one or more Centers that will be national resources for research and training to assist rehabilitation facilities to establish exemplary community-based employment programs. A critical element of any Center to be supported in response to this priority will be the involvement of individuals with disabilities in the planning, conduct, and review of the research and related activities.

An absolute priority is proposed for one or more RRTCs to:

• Develop research and training models to enhance the capabilities of disabled individuals to develop rehabilitation plans, select career goals, and match personal abilities and expectations to available vocational opportunities;

• Conduct research and training to improve the use of vocational evaluations and assessments, and develop reliable and valid assessment measures that will optimize personal choice and the range of employment opportunities for disabled individuals;

• Develop strategies and techniques that will enable special and vocational education and vocational rehabilitation agencies to work together to assist both employers and disabled youth in the transition from school to work;

• Develop technical assistance and training to enable rehabilitation agencies, business and labor associations, and consumer groups to assist employers to hire, retain, or return to work persons with disabilities;

• Investigate the efficacy of a system to facilitate contacts between disabled people seeking jobs and disabled persons who are employed in order to increase the likelihood that the former will obtain and maintain employment;

• Develop and test new approaches for consumer organizations and independent living programs to enhance employment of persons with disabilities;

• Implement and expand computer-assisted vocational rehabilitation techniques to improve the access of rehabilitation counselors to current job data and expedite employment;

• Organize and direct an annual study institute on a rehabilitation topic, publish the results, and distribute the manual to state vocational rehabilitation agencies; and

• Conduct at least one state-of-the-art study to identify current knowledge and recommend future research, and organize research and training conferences and short-term institutes to disseminate the results of Center projects to rehabilitation consumers and professionals.

Improving Supported Employment Outcomes for Developmentally and Other Severely Disabled Individuals

During the past several years, Federal legislation and various employment programs for developmentally and other severely disabled individuals have incorporated the concept of supported employment (Developmental Disabilities Act of 1984, Pub. L. 98–527, the Education of the Handicapped Act Amendments of 1986, Pub. L. 99–457, and the Rehabilitation Act Amendments of 1986, Pub. L. 99–506). Supported employment is defined as, "competitive work in integrated work settings for individuals with severe handicaps for whom competitive employment has not traditionally occurred, or for individuals for whom competitive employment has been interrupted or intermittent as a result of a severe disability, and who, because of their handicaps, need ongoing support services to perform such work." There is now substantial agreement on many of the issues involved in the administration of supported employment programs, including training needs for direct service and leadership personnel, standards for performance, and measures for the evaluation of outcomes. Preliminary indications from studies of exemplary programs illustrate that these programs can provide significant benefits for program participants at reasonable costs. Other studies have evaluated the role of specific components of supported work, such as paid work in jobs with nondisabled coworkers, behavioral techniques to teach job duties, and the involvement of parents and advocates. The rapid growth in the number and size of supported employment programs has exceeded the capacity of the resource base of trained personnel and established program operating procedures to meet the needs of those persons with more severe disabilities who require ongoing support to maintain regular employment.

Recent research efforts have examined strategies for interagency coordination to promote long-term support for persons with severe disabilities who are employed. Current activities focus on technical assistance, development of information systems, and networks to share information among supported employment programs.

The success of supported employment with developmentally and severely disabled persons has led to replications and expansions to other disability groups. Consequently, NIDRR anticipates there will be a variety of supported employment research and service activities taking place during the period of performance of this RRTC. Although the RRTC to be established under this priority will focus primarily on developmentally disabled persons, the Center will be encouraged to identify methods, techniques and models of value for other efforts in supported employment.

A critical element of any Center to be funded in response to this priority will be the involvement of disabled individuals in the planning, implementation, and review of the Center's activities, and specifically in the process of selecting work sites and consumer-oriented performance criteria. The Center will be an essential component of a national information system on supported employment. It will be expected to share reports, research findings, and program models with other programs on supported employment identified by NIDRR.

An absolute priority is proposed for an RRTC to:

• Analyze vocational assessment techniques, training methods, placement strategies, integration with nondisabled persons, followup and employer assistance, and techniques of imparting job-related social skills, in order to improve supported employment for persons with developmental and other severe disabilities;

• Identify costs and benefits of alternative supported employment models, including time-limited and long-term support programs, for various populations of disabled persons, in order to provide better estimates for planning supported employment opportunities;

• Develop new, and validate existing, approaches to enhancing productivity, wages and benefits, job security, job advancement, and career transitions to increase employment satisfaction for employees and employers in supported work settings;

• Develop and provide training to severely disabled persons, family members, counselors, and peers, to increase their awareness of supported work and to integrate supported employment with other major components of independent living, including transportation, recreation, and residing in the community;

• Analyze and organize training on regulations, employer incentives, standards, contracts, job agreements, economic development factors, and related issues to increase organizational capacities;

• Identify best practices and most effective methods including staffing requirements for large organizations to set up small supported employment units in dispersed locations;

• Conduct research on transition from school to supported employment to improve linkages among programs and to identify issues, methods, and models for both school and adult programs;

• Develop technical assistance and training to ensure that developmentally and other severely disabled youth exiting public school programs will have well-defined pathways for entry into supported employment;

• Analyze long-term funding options for supported employment for individuals who have exhausted the time-limited services provided by the vocational rehabilitation system;

• Analyze the relationship of supported employment to eligibility for income and health insurance benefits in order to inform prospective employers and disabled individuals on financial consequences of supported work;

• Conduct at least one comprehensive study of the state-of-the-art in an important area of supported employment, and serve as a national resource to disseminate information on supported employment programs;

• Provide opportunities for professional development through the temporary exchange of staff with other RRTC's, Federal, State, or local

agencies, private industry, or other relevant organizations;

• Identify and assess methods to use technology to improve supported employment; and

• Develop, evaluate, and disseminate materials to provide information, technical assistance, and motivation for supported employment programs, using various media and assuring that all materials are accessible to various persons with disabilities, and are distributed to businesses that may be interested in supported employment programs.

Improving the Management of Rehabilitation Information Systems

Access to specialized information is an essential element of all rehabilitation activities. Major strides in research and training on such severe, but low-incidence, disabilities as spina bifida, spinal cord injury, and deaf-blindness have come through the establishment of specialized information systems and data linkages among programs. Independent living and vocational and other rehabilitation programs generate and use large amounts of information. Eligibility determinations, case management requirements, organizational structures, decisions of rehabilitation professionals and clients, and client or program evaluations all require complex information systems.

In addition, broad and rapid dissemination of new knowledge requires central data depositories with access through on-line data retrieval at the point of use. The implementation and improvement of rehabilitation information systems have substantial program implications; these systems generate needs for staff competent in the use of computers, for interagency and intra-agency coordinating agreements, and for continuous review and revision of the system. Rehabilitation agencies are increasingly using information technology and various databases in all aspects of their rehabilitation programs. As a result of past research and development efforts in this area, several significant rehabilitation information bases and automated information systems are in place or under development, including Spinal Cord Injury Data Systems, Traumatic Brain Injury Systems, Independent Living Systems, the State-Federal Vocational Rehabilitation System, and the databases on the demographics of disability.

At this time, it is important to assure that current and future databases are properly integrated, maintained, and used to enhance rehabilitation practices and results. A Center working in this area must identify model linkages and other arrangements through which the operators of these information systems can cooperate on mutual program goals; develop and test methods to use specific information system components in planning, delivering, and evaluating rehabilitation services; and provide training and information exchange to improve the management of rehabilitation information systems.

A critical element of any Center to be funded in response to this priority will be the involvement of disabled individuals in the planning, implementation, and review of the Center's activities, and specifically in the process of increasing consumer access to information on rehabilitation program processes and outcomes.

An absolute priority is proposed for an RRTC to:

• Develop specific procedures and methods to enhance access to, and effective use of, disability-related information systems by rehabilitation agencies, consumers, and related organizations;

• Identify program needs, including staffing, system design, and organizational development components, and develop training programs to promote improved rehabilitation information management;

• Evaluate existing computer programs, and develop new programs where needed, to improve rehabilitation use of information systems in such areas as functional assessment, development of service plans, case management, and evaluation of rehabilitation processes and outcomes;

• Provide technical assistance to professional and consumer groups on issues related to rehabilitation information systems, with particular attention to availability of resources, avoidance of duplication of data components, methods of data analysis, and cooperation among information sources;

• Facilitate communication between research and model demonstration systems and rehabilitation service delivery agencies on issues in the management of service programs;

• Conduct conferences, presentations, short-term institutes, and other training activities to facilitate linkages among rehabilitation information systems, particularly those organized as a result of research support from NIDRR; and

• Organize at least two national state-of-the-art conferences on information management for rehabilitation research and service delivery during the period of the project.

Improving Community Integration for Persons with Mental Retardation

A basic tenet of the concept of community integration of people with mental retardation is that they live and work in non-restrictive community environments. The expressed preferences of disabled individuals and their families favor maximum community integration, living in typical residences, working in regular jobs, and using community facilities for daily living activities and recreation. Most States have closed institutions, or parts of institutions, where people with mental retardation had resided in the past, and have discharged their clients into a variety of community settings. One of the major challenges to successful deinstitutionalization is that of developing local community capacity to provide appropriate options in residences, work, education, and recreation for individuals with mental retardation. It is important to support rather than supplant families so that citizens with disabilities are not forced into institutions or other out-of-home settings. Results of previous research indicate that small-scale, normalized living arrangements are most effective in promoting successful integration into the community for most disabled populations.

Social relationships and support systems are an integral part of successful integration into community living. People with disabilities need opportunities and social skills to interact with a range of nondisabled persons in the community, including family members, neighbors, merchants and providers of community services, and other participants in job, school, or recreational settings. The involvement of parents and consumers in all aspects of the design, operation, and monitoring of community services to persons with mental retardation has increased the sensitivity of service providers.

A program of coordinated, interdisciplinary research and training is needed to develop and disseminate rehabilitation approaches that improve the social and community living skills of persons with mental retardation; enhance the available residential options; and increase the capacities of consumers, parents, and professionals to operate a program of community integration that is guided by the needs and preferences of individuals with mental retardation and their families. A critical element of any Center to be supported in response to this priority will be the involvement of disabled persons and their families in the design,

implementation, and evaluation of Center activities.

A Center in this area must serve as a national resource for information on the community integration of persons with mental retardation and maintain a database on the results of research in this area. The Center must also make a particular effort to establish linkages with other RRTC's on community integration, mental retardation, and independent living; national disability organizations; parent training projects; University Affiliated Facilities; and Developmental Disability Councils.

An absolute priority is proposed for an RRTC to:

• Identify existing housing options and document best practices to enable persons with mental retardation to reside with their families, in foster-care homes, or in other small-scale residences, and develop guidelines for effectively matching the living arrangements to the needs of the individual;

• Identify options for long-term financing of housing accommodations, recreational opportunities, health services, respite care, and other support needed by mentally retarded persons and their families, and develop and disseminate information on these options;

• Develop and evaluate new options for living arrangements, recreational activities, health services, and other community programs and services that will improve the integration of persons with mental retardation into their communities;

• Develop and evaluate strategies that will train families and service providers to help persons with mental retardation establish and maintain supportive social relationships in the community;

• Develop and evaluate strategies to train persons with mental retardation to determine their own vocational, recreational, housing, and independent living choices, and to train service providers to respond in positive ways to the choices made by persons with mental retardation; and

• Conduct at least one state-of-the-art conference on improving the community integration of persons with mental retardation in order to disseminate the research findings and to provide guidance for future research.

Access to Community Living Environments

Providing appropriate housing for severely disabled people is a major undertaking involving a complex array of individuals with various types and degrees of disability and housing needs on the one hand, and a variety of housing types and options, design challenges, financial issues, technology requirements, and statutory and administrative authorities on the other.

It is an area in which millions of dollars are spent annually, research is minimal, and useful information is difficult to find. These problems extend beyond housing alone to encompass recreational, educational, vocational, commercial, and transportation barriers that are encountered in the course of daily living.

An immediate objective is to make better use of the information that is available, including research data, models of accessible housing, and standards and guidelines that have been developed for housing construction. Over the longer term, it is important to develop better housing designs, based on field and laboratory research, and tested by disabled persons in regular use. One prerequisite to improving housing design in a permanent and comprehensive way is to make those who design, build, adapt, maintain, manage, and finance housing aware of the potential for creating more accessible environments.

A convergence of knowledge from the fields of architecture, engineering, construction, rehabilitation, independent living, and related areas is required to create appropriate housing, recreational facilities, and other environments in which disabled persons can live independently. The knowledge base must include information about modifications to existing structures and equipment, as well as design concepts that can be used to build facilities to benefit all citizens. The knowledge base must be developed from the results of research, needs assessments, and analysis of the physical capabilities of individuals with disabilities.

A Center to be funded in response to this priority must maintain liaison with the Accessibility Subcommittee of the Interagency Committee on Handicapped Research and the Architectural and Transportation Barriers Compliance Board, as well as with NIDRR-supported research projects and Centers in such areas as housing, independent living, and community integration. A critical element of any Center to be funded under this priority will be the involvement of individuals with disabilities and their families in the planning, conduct, and review of the research and related activities. The Center must form a National Advisory Committee composed of individuals with disabilities and representatives of disability-focused organizations, architects, designers, engineers, planners, builders, manufacturers, and housing providers to provide input on needs and to facilitate the evaluation and dissemination of Center products.

An absolute priority is proposed for an RRTC to:

• Analyze legal, regulatory, commercial, and financial disincentives to the development of suitable living environments for severely disabled persons and develop strategies to address those problems;

• Develop recommendations for housing adaptations appropriate for persons with hearing and vision impairments;

• Develop models of accessible environments and provide for their evaluation by disabled individuals;

• Develop, acquire, and maintain both graphic and text databases and serve as a national resource for information on standards, design criteria, plans, building products, costs, funding sources, and performance evaluations of accessible housing, providing information and referral;

• Conduct training programs to increase awareness of the concepts of accessibility and availability of adaptive environmental design for the full range of audiences concerned with accessible housing;

• Promote the concepts of accessible housing and universal adaptable design, including ideas from abroad, among schools of architecture and urban planning; and

• Conduct at least one state-of-the art study on a significant aspect of accessibility.

Improving the Community Integration of Elderly Persons with Mental Retardation and Other Developmental Disabilities

Demographers and gerontologists estimate that the population of persons over sixty-five years of age in the United States will grow from 27 million in 1983 to 67 million in 2040. In addition, they estimate that by the year 2040, twelve percent of the population will be over seventy-five years of age. The population of elderly persons with mental retardation and other developmental disabilities is of particular concern to NIDRR. There may be more than 150,000 persons over sixty years of age who have mental retardation and other developmental disabilities, and predictions are that this number will approach 600,000 within forty years.

A review of the relevant current literature reveals that services to this specific aging population, and consequently the research and training

to support such services, are very sparse. One reason for this is that neither the public nor private sectors has addressed adequately the needs of the elderly population in general or the problems of this subpopulation in particular. Although some programs have been adopted in an effort to assist elderly citizens to improve their lives, it is difficult for individuals with mental retardation and other developmental disabilities to use the generic service systems.

Only in the last twenty years has living outside of institutions, in normal community settings, been a viable option for older persons with mental retardation. Thus, any existing data about the effects of aging with mental retardation and other developmental disabilities are based on individuals residing in institutions. These data are inadequate to assess the needs of this aging subpopulation living in regular community settings. A third reason for the dearth of programs is that funds for services and research in the area of mental retardation and other developmental disabilities have been directed toward children and young people. Recent legislation pertaining to persons with these disabilities did not anticipate that improved health care, the growth of early intervention programs, improved living arrangements, and improved community-based resources would result in significantly extended lifespans for this population. There has been no organized planning to meet the current and future needs of this aging population.

Older people with and without developmental disabilities share many needs that are not now being met in their communities, and which frequently lead unnecessarily to institutionalization. Both groups require improved home care and supportive living arrangements, and often need mental health services, nutritional guidance, recreational and transportation services, legal assistance, and opportunities to socialize, as well.

A program of coordinated, interdisciplinary research and training is needed to develop and disseminate rehabilitation approaches to maintaining physical, psychological, family, and vocational functioning for aging persons who have mental retardation and other developmental disabilities. A critical element of any Center to be funded under this priority will be the involvement of individuals with developmental disabilities and their families in the planning, conduct, and review of the research and related activities.

A Center in this area must serve as a national resource for information on aging persons who have mental retardation and other developmental disabilities, and maintain information on the results of research in this area. The Center also must make particular effort to establish linkages with other Research and Training Centers focusing on community integration, mental retardation, and independent living; Centers on Aging and University Affiliated Facilities; and organizations representing disabled individuals and their families. This Center must also disseminate its research findings to a broad target audience of service providers, including health care professionals, social workers and gerontologists, attorneys and insurance carriers, rehabilitation professionals, and others.

An absolute priority is proposed for an RRTC to:

- Analyze existing services for noninstitutionalized mentally retarded and other developmentally disabled aging persons, identify those generic services that may be appropriate for this population and barriers to the use of those services, and develop strategies for more effective collaboration between Developmental Disabilities service agencies and those responsible for services to elderly persons;
- Develop and evaluate programs that will enable families and other caregivers to detect declines in behavioral and functional levels of aging persons with mental retardation and other developmental disabilities, with particular attention to persons with Down Syndrome, and to intercede to maintain maximum functional ability;
- Investigate the reactions of this population to transitional periods, such as deaths of family and friends, retirement, change in residence, and changes in physical and mental functioning, and develop effective counseling techniques matched to individual needs;
- Develop and evaluate innovative models using long-term funding streams for small-scale community living arrangements that will allow older people with mental retardation and other developmental disabilities to remain in nonrestrictive settings after their families and other primary caregivers may be unable to care for them;
- Develop and evaluate innovative strategies to provide families and other full-time caregivers with needed respite and support, in order to prevent institutionalization;
- Develop and evaluate materials to increase the awareness of individuals providing services to the general aging population about the needs of individuals with developmental disabilities;
- Conduct at least one state-of-the-art study on improving the functioning of aging persons who have developmental disabilities, to focus attention on the research findings and to provide guidance for future research.

Improving the Functioning of Families Whose Members Have Disabilities

Many of the recently acquired characteristics of American families—single parents, two working parents, geographic mobility, separation from the extended family, economic pressures, lack of leisure time, and increased stress—have particularly severe consequences for families with disabled members. Families with disabled members have the additional pressures of identifying, accessing, arranging, managing, and financing a wide range of medical, educational, rehabilitative, employment, recreation, transportation, and housing services. Families with disabled children, parents, or grandparents must also attend to the social and emotional needs of all members of the family.

Despite the magnitude of these challenges, there are many special needs families who have learned to master these complex tasks and at the same time to assist other disabled persons, raise other children, and engage in a variety of community and leisure time activities. There remain many other special needs families who have not been successful in attaining their goals of creating a balanced and rewarding family life.

The current literature, including a report from an NIDRR-sponsored conference on special needs families, indicates that one cause of inadequate family coping may be that family members, and the professionals on whom they rely, expect disability to have a negative impact on family functioning. This expectation may become a self-fulfilling prophecy which diminishes the self-esteem of the disabled person and adds unnecessary stress to the family unit. Professionals working with special needs families often approach them from a perspective of pathology, which again may undermine the ability of these families to cope constructively. The end product may be a family with low expectations, lacking a support system, unable to cope, and regarding institutionalization

of the disabled member as the only viable option.

The attitudes of society in general also affect the functioning of a family unit and the member who is disabled. Too often, society in general tends to have negative conceptions and low expectations concerning persons with disabilities. People often regard disabled persons as incapable of making decisions or as not sharing wishes, values, and goals typical of the broader society. They are often unaware of the positive contributions that disabled individuals make to their families and to society as a whole. These negative biases make it very difficult for families to find integrated schools, housing, worksites, and recreation programs, or to assist all members of the family to achieve maximum levels of functioning.

A program of coordinated, interdisciplinary research and training is needed to develop and disseminate rehabilitation strategies and information to assist families with disabled members to improve their coping skills, attitudes, and general knowledge about services. The Center must include research and training to address the needs of families whose disabled members are of various ages and have various family roles, including children disabled at birth or who incur disability later, and parents who incur disability as well as disabled persons who become parents. A critical element of any Center funded under this priority will be the involvement of individuals with disabilities and their close relatives in the planning, conduct, and review of the Center's program. These programs must be open to the involvement of diverse groups, such as single parents, members of ethnic and racial minorities, and traditionally underserved families such as those whose members have mental health impairments or are dependent on respirators.

A Center in this area must serve as a national resource for information on families whose members have disabilities and maintain a database on the results of research in this area. The Center must also make particular effort to establish linkages with other NIDRR-supported RRTCs, organizations representing disabled members and their families, independent living centers, and other agencies serving disabled people. The Center must conduct training and other activities to disseminate the results of its research to a wide range of target audiences, including disabled individuals and their families, health care professionals, educators, rehabilitation service providers, communications media, and those who provide social and community services to the general population.

An absolute priority is proposed for an RRTC to:

- Study successful family coping and develop and evaluate individualized interventions that could assist families to improve their functioning;
- Conduct research and training to enable families and their disabled members to become involved in the development, provision, and evaluation of integrated, age-appropriate, community-based services;
- Assess the impact of the attitudes of disabled individuals, the members of their families, and the general public on the functioning of the family unit;
- Evaluate the impact of the availability/unavailability of support services on family functioning, and the disincentives to raising children and maintaining adults at home;
- Develop and disseminate criteria to match disabled individuals and foster-care families, in order to promote maintenance in least restrictive environments; and
- Conduct at least two state-of-the-art studies on improving functioning in special needs families in order to focus attention on the Center's findings and to provide guidance for future research.

Rehabilitation of Economically Disadvantaged Individuals with Disabilities

While the demographic data are inadequate to make precise comparisons of the amount of disability in economically disadvantaged populations, including minorities, one general finding is that the incidence and prevalence of disability is greater in those populations. Furthermore, there is evidence that economically disadvantaged individuals are less likely than other disabled individuals to use vocational rehabilitation services. Indications are that the distribution of rehabilitation facilities and trained personnel does not meet the needs of economically disadvantaged individuals with disabilities, and there are few models of effective rehabilitation service delivery for these special populations.

Different cultures have different attitudes toward disability and different expectations for rehabilitation of persons with disabilities. There are differences in the structure and functioning of disadvantaged Asian, black, Hispanic, and white families. Support systems that often assist middle-class disabled individuals during rehabilitation may be quite different in disadvantaged communities. The willingness of the poor disabled individual to seek and accept rehabilitation differs as a function of the mores of his/her culture. Despite some efforts, the rehabilitation community has conducted insufficient research to illuminate and address effectively the rehabilitation needs of disabled economically disadvantaged individuals. There are many psychological, social, and financial barriers to the optimal rehabilitation of disadvantaged individuals. There are insufficient trained personnel working with these populations; and there is a lack of research on effective rehabilitation techniques and technology applicable to the special problems of disadvantaged disabled individuals.

NIDRR intends to initiate a program of coordinated, inter-disciplinary research and training to develop and disseminate behavioral, medical, and technological rehabilitation approaches to maximizing functional capacity of disadvantaged individuals with disabilities. This Center will serve as a national information resource on issues relating to rehabilitation of economically disadvantaged and create an accessible data base for clinicians, researchers and disabled individuals. The Center will provide, prior to the end of its period of performance, documentation of one or more rehabilitation techniques suitable for consideration for an NIDRR-sponsored consensus conference.

A critical element of any Center to be funded under this priority will be the involvement of economically disadvantaged individuals, with disabilities and their families in the planning, conduct, and review of the research and related activities. Universities and affiliated organizations with particular familiarity with problems of disabled disadvantaged and minority individuals, including historically black colleges and Universities, are encouraged to submit applications under this priority.

An absolute priority is proposed for an RRTC to:

- Conduct research on the incidence and prevalence of disabilities among economically disadvantaged populations, including minorities, to provide an information base for developing services for those populations;
- Identify the factors contributing to unemployment among disabled economically disadvantaged individuals and develop model programs to increase the rate of employment;
- Assess the availability of various technological aids and devices currently

commercially available for the purpose of improving the access of economically disadvantaged to appropriate technology;

• Conduct research on attitudinal barriers to the rehabilitation of disadvantaged individuals in order to improve rehabilitation services available for these populations;

• Identify and develop formal and informal support systems that assist economically disadvantaged disabled individuals to obtain rehabilitation services and disseminate information on ways to develop optimal systems; and

• Conduct a state-of-the-art conference on rehabilitation techniques that are effective in addressing the special problems of economically disadvantaged individuals with disabilities.

Rehabilitation of Older Persons with Disabilities

Older persons who experienced onset of disability early in life, as well as persons who incurred their disability after they became elderly, have very specific rehabilitation problems that need to be addressed through research. At least eighty percent of individuals over sixty-five years of age have one or more identifiable chronic diseases. The most common of these include arthritis, reported in more than forty percent of older people; impaired vision or hearing (twenty to thirty percent); diabetes (ten to fifteen percent); chronic heart conditions (fifteen to twenty percent); or a diminution of mental function (five percent or more). These conditions often lead to functional losses that interfere with the ordinary activities of daily living. About one-fifth of persons over seventy years of age report that they need the help of another person for at least some part of every day; this figure rises to forty percent for persons over the age of eighty. The number of older Americans with pre-geriatric onset of disability is increasing, and their number is likely to continue to increase as the life expectancies of disabled persons rise.

There are many psychological, social and financial barriers to the optimal rehabilitation of older disabled individuals. The wide range of individual differences within categories of disabling conditions makes the development of individualized treatment a difficult challenge for professionals, disabled individuals, and society. Presently, financial assistance programs facilitate institutionalization of elderly persons with disabilities, there is a lack of well-trained personnel to work in the rehabilitation of older disabled persons, and there is a paucity of research on effective rehabilitation techniques and technology applicable to elderly disabled individuals. Older disabled individuals and their families, as well as those who provide services to them, are expressing a growing preference for the development of options for older disabled persons to participate in the full range of community activities as an alternative to segregated services or institutions. At present, there are insufficient models for rehabilitation services to promote maximum independence and community-based services for older persons with disabilities.

A special emphasis of this project will be the physical and psychosocial functioning of persons with pre-geriatric onset of physical disability, such as persons with spinal cord injury, post-polio syndrome, and cerebral palsy. It is of critical importance to determine their unique rehabilitation needs in order to formulate optimum strategies for supporting individuals with these disabilities in the community. A comparative analysis should be performed on support systems needed by aging persons with both pre- and post-geriatric onset of disability.

A program of coordinated, interdisciplinary research and training is needed to develop and disseminate behavioral, medical, and technological rehabilitation approaches to maximizing the functional capacity of elderly individuals with disabilities. The Center must have a national scope, and must involve all investigators in the development of training programs that will be provided at various sites throughout the country. A critical element of any Center to be funded under this priority will be the involvement of older individuals with disabilities and their families in the planning, conduct, and review of the research and related activities. The Center will provide, prior to the end of its period of performance, documentation of one or more rehabilitation techniques suitable for consideration for an NIDRR sponsored consensus conference.

An absolute priority is proposed for an RRTC to:

• Investigate alternative methods of financing home support and community services for disabled elderly individuals in rehabilitation programs to prevent premature placement of those individuals in domiciliary care;

• Assess the effectiveness of existing rehabilitation techniques and technology in reducing such secondary complications as pressure ulcers, incontinence, depression, and memory loss among older persons;

• Conduct research comparing older disabled individuals with a pre-geriatric onset of disability and individuals who become disabled late in life in order to develop effective rehabilitation programs for both groups;

• Identify, develop, and test models that integrate long-term care facilities for older disabled individuals into community environments to improve existing facilities and develop options for new, integrated community care facilities;

• Assess the availability and effectiveness of various commercially available technological aids and devices in improving the rehabilitation of older disabled individuals;

• Study the special rehabilitation and socio-economic problems of individuals with early onset of physical disabilities, such as spinal cord injury, post-polio syndrome and cerebral palsy.

• Determine the impact, if any, of Independent Living services in providing older severely disabled individuals with the least restrictive environment and the maximum level of independence within their community.

• Develop public education materials outlining strategies for reducing secondary complications of disability.

• Conduct research on attitudinal barriers to the rehabilitation of older disabled individuals and disseminate information to reduce those barriers;

• Identify and develop formal and informal support systems to assist older disabled individuals to obtain and use rehabilitation services and disseminate information to develop effective models; and

• Conduct one state-of-the-art study on rehabilitation and community integration techniques that are effective for older individuals who were disabled early in life and one state-of-the-art study on techniques appropriate to the needs of older persons who become disabled.

Improving Rehabilitation of American Indians

American Indians are often isolated from rehabilitation services by linguistic, attitudinal, cultural, and geographic barriers which may not be evident either to the person who is disabled or to the service provider. The American Indian population with disabilities may require specialized rehabilitation services and a unique service delivery system to meet certain needs that often differ from those of other populations.

Information presently available on the incidence and prevalence of disability among American Indians is based upon

secondary analysis of data on the general population. The representation of American Indians in any general sample is inadequate to reflect accurately the presence and distribution of specific types of disabling conditions among that subgroup. There is not sufficient data on the employment histories or patterns of service use in this population to plan appropriate rehabilitation services for American Indians. However, it is known that there is a high rate of disabling conditions among American Indians and that the distribution is different from that in the general population, and that disabled American Indians are less likely than other disabled people to receive effective rehabilitation services.

A Center to address these problems must involve American Indians with disabilities in various capacities in all facets of the development and operation of the Center, and applicants must include evidence of involvement of disabled American Indians in policymaking and administration of the RRTC. The Center also must form linkages with the various service delivery systems serving American Indians, both on and off reservations. These systems should include Federal, State, regional, tribal, local, and private agencies in order to demonstrate methods for disseminating findings and for utilizing existing resources to improve service delivery.

Such a Center must provide training to rehabilitation service providers, researchers, and managers to increase their awareness of the unique rehabilitation needs of American Indians and of innovative approaches to meet these needs. This training should involve collaborative sponsorship with other Rehabilitation Research and Training Centers, as well as with public, private, and tribal rehabilitation, health, and human services agencies.

An absolute priority is proposed for an RRTC to:

- Survey American Indian populations to determine the incidence, prevalence, and demographic distribution of disability among American Indians, estimate levels of employment and unemployment for Indians with disabilities, and identify patterns of service use;
- Analyze labor market conditions on and around Indian reservations and develop model job training programs that take into account these labor market conditions;
- Develop and evaluate culturally sensitive methods for assessing rehabilitation needs of American Indians;
- Develop methods to evaluate attitudinal barriers to service delivery as a basis for designing improved models of rehabilitation service delivery;
- Identify the rehabilitation training needs and provide training to rehabilitation service providers, researchers, managers, policymakers, and American Indians with disabilities;
- Design appropriate models for career development, job enhancement, and job retention in order to improve employment opportunities and rehabilitation outcomes;
- Develop and disseminate culturally relevant informational materials to increase use of rehabilitation services by American Indians;
- Develop strategies to ensure optimal use of available rehabilitative technology by American Indians; and
- Conduct at least one state-of-the-art study in some significant aspect for improving rehabilitation services to American Indians with disabilities.

Mental Health Rehabilitation of Individuals with Deafness

An estimated fourteen million Americans, or 66 in every 1000, have significant hearing impairment. At least two million—9 in 1000—are profoundly deaf. About half a million persons became deaf before they reached age nineteen, that is, before they had established vocations. About 200,000 persons, one of every thousand Americans, became deaf before the age of three, that is, before they developed effective language. This last group, the prelingually deaf, though a small minority, requires separate attention from those deafened after the acquisition of language. This segment of the population presents a major challenge to public and private mental health rehabilitation efforts. Few skilled professionals and service programs are available to provide timely, expert mental health rehabilitation interventions. For many, satisfactory adjustment is further complicated by the presence of additional disabilities, lower levels of educational attainment, underemployment, and reduced earnings.

Research in this area is needed to identify the characteristics of effective counseling strategies and interventions matched to the characteristics of deaf individuals; to refine the quantitative and qualitative methods for assessing psychological, social, and emotional adjustment and performance; and to develop models for effective delivery of coordinated programs of mental health rehabilitation services.

A critical element of any Center to be supported under this priority will be the involvement of individuals who are deaf in the planning, conduct, and review of all Center activities. All assessment instruments, training materials and courses, databases, and technical assistance developed by the Center must be provided in formats that are fully accessible to individuals with various types of hearing impairments. This Center will develop a national data base in this field of activity and serve as a central repository of information on mental health illness of individuals with deafness.

An absolute priority is proposed for an RRTC to:

- Investigate the causes of abnormal social, emotional, linguistic, and cognitive development of people with deafness or severe hearing impairment;
- Develop assessment techniques, rehabilitation interventions, and training approaches, including interpreter training, to benefit this population;
- Develop models for clinical interventions and service delivery to improve the availability and effectiveness of mental health rehabilitation services for individuals with deafness;
- Develop and evaluate models of technical assistance to state rehabilitation agencies to improve the development and implementation of mental health rehabilitation services for deaf individuals;
- Provide advanced training in research for professional practitioners in mental health rehabilitation of persons who are deaf and hearing impaired, with an emphasis on recruiting individuals with deafness for that training;
- Explore and develop suitable visual media, appropriately captioned, to enhance the dissemination of new knowledge in this area to appropriate audiences;
- Serve as a resource for information on mental health and deafness and maintain a database on the results of research in this area; and
- Conduct at least one state-of-the art study on a significant aspect of mental health rehabilitation of individuals with deafness.

Invitation to Comment

Interested parties are invited to submit comments and recommendations regarding these priorities. All comments submitted in response to these proposed priorities will be available for public inspection during and after the comment period in Room 3070, Mary E. Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and

4:00 p.m., Monday through Friday of each week except Federal holidays.

(20 U.S.C. 761a, 762)

(Catalog of Federal Domestic Assistance No. 84.133B, National Institute on Disability and Rehabilitation Research)

Dated: September 15, 1987.

William J. Bennett,

Secretary of Education.

[FR Doc. 87-23169 Filed 10-6-87; 8:45 am]

BILLING CODE 4001-01-M

[CFDA No. 84.133B]

Invitation of Applications for New Awards Under the National Institute on Disability and Rehabilitation Research (NIDRR) Program of Rehabilitation Research and Training Centers for Fiscal Year 1988

Purpose: Provides funding through grants or cooperative agreements to institutions of higher education or to public or private agencies or organizations, including Indian tribes or tribal organizations, in affiliation with institutions of higher education, to conduct programs that meet the specifications in the proposed priorities published in this issue of the **Federal Register.**

Deadline for transmittal of applications: December 15, 1987.

Applications available: October 9, 1987.

Available funds: $7,200,000.

Estimated range of awards: $400,000–700,000 per year.

Estimated average award: $600,000 per year.

Estimated number of awards: 12.

Project period: Up to 60 months.

Applicable regulations: (a) Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78, (b) NIDRR regulations at 34 CFR 350 and 352, and (c) when adopted in final form, the annual funding priorities for this program. A notice of Proposed Annual Funding Priorities is published in this issue of the **Federal Register.** Applicants should prepare their applications on the basis of the proposed priorities. If there are significant changes in the final priorities, applicants will be given the opportunity to amend or resubmit their applications.

For applications or information contact: National Institute on Disability and Rehabilitation Research, U.S. Department of Education, 400 Maryland Avenue, SW., Switzer Building, Room 3070, Washington, DC, 20202. Telephone: (202) 732-1207, or (202) 732-1198 for TDD service.

Program authority: 29 U.S.C. 762(b)(1).

Dated: October 2, 1987.

Madeleine Will,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 87-23170 Filed 10-6-87; 8:45 am]

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federal register

Wednesday
October 7, 1987

Part III

Department of the Interior

National Park Service

36 CFR Part 28

Fire Island National Seashore, New York; Federal Zoning Regulations; Proposed Rule

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 28

Fire Island National Seashore, New York; Federal Zoning Regulations

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rulemaking is a revision of the special regulations pertaining to federal zoning standards and the development of local zoning ordinances by local authorities for land within the boundaries of the Fire Island National Seashore. The revision is necessary to comply with changes in the Seashore's enabling legislation and in response to policies developed since the existing rule was issued. The regulations provide for the protection of Seashore resources through limitations on use, location, and size of structure on public and private property; emphasize the primary role of the local governments for zoning and zoning enforcement; and lay out guidelines and procedures for application and issuance of Certificates of Exemption from Federal Condemnation. They also provide the Seashore and Fire Island residents and property owners a clear set of standards and procedures for maintenance, renovation, repair, and development of property within the Seashore.

DATE: Written comments will be accepted through November 6, 1987.

ADDRESS: Comments should be addressed to: Superintendent, Fire Island National Seashore, 120 Laurel Street, Patchogue, New York 11772.

FOR FURTHER INFORMATION CONTACT: Christopher Soller, Management Assistant, Fire Island National Seashore, 120 Laurel Street, Patchogue, New York 11772, Telephone (516) 289-4810.

SUPPLEMENTARY INFORMATION:

Background

The Secretary of the Interior is directed by the Fire Island National Seashore Act (16 U.S.C. 459e) to issue regulations, which may be amended, pertaining to federal zoning standards and the development of local zoning ordinances for local authorities within the boundaries of the Seashore. Once issued, the local authorities may submit their zoning ordinances to the Secretary for review and determination of conformity with the federal standards. If the local ordinances conform to the federal standards and are approved by the Secretary, the Secretary's authority to condemn certain property within the Seashore is suspended for property in accord with the standards.

Since the issuance of the 1980 regulations, the Seashore prepared and had approved (September 1984) a Land Protection Plan. A major plan recommendation called for review of the federal standards, and revision of certain sections. In October 1984, Congress amended the Fire Island National Seashore Act, requiring the federal standards to be based on limitations or restrictions on the size, location, or use of any structures, reconciling population density and protection of the Seashore's natural resources. The Act had previously required the standards to be based on acreage, frontage, and setback requirements. In January 1985, the Secretary approved the four local authorities' ordinances finding them in conformity with the federal standards. Two of the ordinances were approved with exceptions. With approval of the ordinances, property owners whose property conformed to the standards were eligible to receive a Certificate of Suspension of Authority for Acquisition by Condemnation for which there were no guidelines or procedures.

This proposed rule has been developed in response to the policies and directions of the Land Protection Plan and the new requirements developed by Congress and outlined in the 1984 amendment to the Seashore Act; to resolve some of the conflicts between the existing rule and the local ordinances; and to provide guidelines and procedures for application and issuance of Certificates of Suspension from Condemnation. The majority of the provisions of this rulemaking have been in effect since 1980 and are being retained with editorial changes made for the purpose of clarification.

Changes in the Secretarial Standards

The Proposed Rule contains seven changes to the existing standards which concern the scale or manner of residential construction. These proposed revisions reflect the Congressional mandate to use population density as the determining factor in regulating development. The goal of these revisions is to permit the landowner greater flexibility in determining siting, configuration, interior arrangement, and design of a structure while maintaining single-family use.

1. The requirement in § 28.6(a)(1) that maximum plot occupancy not exceed 25% for principal structures and 10% for accessory structures has been revised in the new § 28.6(d) to permit 35% lot occupancy, without regard to principal or accessory structures. This will permit the landowner more freedom to determine whether to construct decks, guest houses, etc. or a larger main structure with no difference in environmental impact.

2. The maximum height limitation of 28 feet has been revised to use either the average ground elevation (as in the existing § 28.6(a)(3) or the minimum elevation established for the federal flood insurance program. Under the current regulations, when the maximum height limitation and minimum floor elevation are applied on some lots, only a single-story house may be built. This change will mean that a building of the same volume will be permitted on all similar-sized lots although the buildings can be taller in low-lying areas. While this change may result in more massive structures, it is the view of the National Park Service that this change is consistent with the Congressional goal of using population density as the guiding criterion for the zoning standards.

3. Section 28.6(a)(4) currently limits a building lot to one kitchen and two and one half bathrooms. The single kitchen or cooking facility requirement is retained in the proposed rule. (See the definition of "single-family home" in § 28.2.) No restrictions are proposed on the number of bathrooms as it is the judgment of the National Park Service that a limitation on the number of kitchens will adequately preserve single-family density without unduly interfering with a landowner's chosen lifestyle.

4. Since Congress eliminated the language calling for acreage, frontage, and setback requirements and instructed the National Park Service to utilize population density (see 16 U.S.C. 459e-2[b]), the proposed rule eliminates § 28.6(a)(5) which incorporated local acreage, frontage, and setback requirements into the Secretarial standards. However, to ensure the protection of the resources of the Seashore, the proposed rule now establishes a minimum lot size of 4,000 square feet, see § 28.6(c). If the zoning authority has established a higher minimum, then the higher standard will apply. The impact of this revision is that the federal government will not be restricting the configuration or placement of structures on lots but will ensure that development does not exceed ten units per acre.

5. Swimming polls, both in-ground and above-ground, are permitted in the proposed rule, and a swimming pool is considered to be an accessory structure counted in calculating lot occupancy, see subsection (g). The current rule only

permits above-ground pools. (See § 28.4(a)(2)(iii)).

6. In the Seashore District, the current § 28.4(c)(1)(i) does not permit any alterations to existing "improved property" (pre-1963 residences) which would increase lot coverage. This has led to the anomalous result that a homeowner can add a complete second story on a house but cannot put on a deck. Therefore, new § 28.6(e) will permit lot occupancy up to 35% on a lot of 7500 square feet or less or up to 2625 square feet for larger lots.

7. The provisions in § 28.6(a)(6) concerning signs (size, number, location, and illumination) have been dropped because signs are effectively being regulated at the local level.

"In Support of Community Living"

The proposed standards retain the language in the present rule, (see § 28.4(a)(1)(ii) and § 28.4(a)(2)(v), numbered as § 28.4(a)(1)(iii) in the proposed rule) which permits commercial and industrial uses if the Superintendent has found that the use provides "a service to the community in support of community living." This phrase has been borrowed from a local zoning ordinance in one of the communities. The National Park Service is aware of the vagueness of this standard. However, given the diversity of community character among the 17 Fire Island communities, the Service has been unable to develop a phrase, or a list of permitted and prohibited commercial uses, which could be uniformly applied, without being insensitive to the varied needs of the different communities. The Service welcomes public comment and suggestions on this issue.

Condemnation Authority

The original language in the Act provided that if a community had an approved zoning ordinance but an individual property failed to conform to the federal standards, that property was subject to condemnation and ineligible for a Certificate of Suspension of Authority for Acquisition by Condemnation. By statutory amendment in October 1984, Congress revised the language of section 3(e) of the Act and established October 11, 1984 as the date after which any property which was exempt from condemnation could lose its exemption if thereafter converted or used in a manner inconsistent with the standards.

However, Congress did not alter the status of properties which were not exempt from condemnation as of October 11, 1984; i.e., they continue, according to the law, to be subject to condemnation.

During 1984, the Service was publicly discussing certain changes in the standards which are proposed here. Since the legislative history reflects a desire to expand the number of properties which are exempt from condemnation and eligible for Certificates, the Service has decided, by administrative interpretation, to expand the language in the Act to also exempt those properties which did not conform to the federal standards as of October 11, 1984 but do conform to the standards proposed here. Again, for administrative consistency, and not because it is statutorily compelled, the Service has determined that property developed after October 11, 1984 which is consistent with these standards will not be subject to condemnation. (See § 28.8 (a) and (b) and § 28.21 (a)(4–7) and (c).

The most significant of the above changes are:

1. The reduction in minimum lot size to 4000 square feet for existing lots, which will mean that many property owners who have variances solely for insufficient lot size will now conform to the federal standards;

2. The elimination of a maximum number of bathrooms, which does not affect population density as much as the number of kitchens does;

3. The change in minimum elevation to conform to the FEMA standards; and

4. The revision of lot occupancy minimums for the Seashore District. Therefore, properties which were previously subject to condemnation solely because of deviations such as these will now be eligible for Certificates. However, properties which were subject to condemnation prior to October 11, 1984 either due to their failure to conform to local law or conform to *both* the pre-1984 federal standards and these standards, will continue to be subject to condemnation.

The substantive changes between the 1980 standards and the proposed rule represents adjustments made due to legislative amendments and agency commitments made in the Land Protection Plan and the zoning ordinance approval process. They are drafted to make the regulation of development, in terms of siting, design, aesthetics, etc., primarily a matter of local regulation. The federal interest is limited to ensuring that the Seashore's resources are managed through limitations on population. Therefore, landowners who were previously subject to condemnation for a "technical" violation of the standards, such as houses built on lots plotted prior to upzoning by the local government will be immune from condemnation. However, the Seashore will continue to vigorously enforce such prohibitions as those on multiple-family uses, excessive lot coverage, inconsistent commercial uses and dune-front development, because these uses have an impact on Seashore resources.

Public Participation

The policy of the National Park Service is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule to the address noted at the beginning of this rulemaking.

The Fire Island National Seashore staff has worked and consulted with the Fire Island Association and other groups on Fire Island in development of these regulations.

A copy of the proposed rule and a Determination of Consistency with New York State's Coastal Zone Management Plan have been sent to New York State's Coastal Management Program Office. The consistency determination has been prepared by the Seashore and covers Coastal Zone Management including the State's Tidal Wetlands Program.

Drafting Information

The primary authors of this rulemaking are Jack Hauptman, Superintendent, and Christopher Soller, Management Assistant, both of Fire Island National Seashore.

Paperwork Reduction Act

The information collection requirements contained in sections 28.8 and 28.22 have been submitted to the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until approved by the Office of Management and Budget.

Compliance With Other Laws

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291, and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rulemaking has no economic effect since it neither removes existing restrictions nor imposes new ones.

The National Park Service has determined that this proposed rulemaking will not have a significant effect on the quality of the human environment, health, and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this proposed rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental regulations in 516 DM 6, (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects in 36 CFR Part 28

Seashores, Zoning.

In consideration of the foregoing, it is proposed to amend 36 CFR Chapter I by revising Part 28 to read as follows:

PART 28—FIRE ISLAND NATIONAL SEASHORE; ZONING STANDARDS

Subpart A—Federal Standards

Sec.
28.1 Purpose.
28.2 Definitions.
28.3 Boundaries: The Community Development District; The Dune District; The Seashore District.
28.4 Permitted and prohibited uses.
28.5 Nonconforming uses.
28.6 Federal standards.
28.7 Approval of local zoning ordinances.
28.8 Variance procedures.
28.9 Emergency action.

Subpart B—Condemnation Authority

28.20 Suspension of condemnation authority in the communities.
28.21 Condemnation authority of the Secretary.
28.22 Certificates of suspension of authority for acquisition by condemnation.
28.23 Severability.

Authority: 16 U.S.C.: 1,3,459e–2.

Subpart A—Federal Standards

§ 28.1 Purpose.

(a) The enabling legislation for Fire Island National Seashore (the Seashore) mandated the Secretary of the Interior (the Secretary) to issue regulations which provide standards for local zoning in order to protect and conserve Fire Island. The regulations in this part set forth federal standards to which local ordinances for Fire Island must conform to enable private property within the Seashore to be exempt from federal condemnation. The standards also apply to use and development of public property. From time to time these standards may be reviewed and revised. These standards are intended:

(1) To promote the protection and development of the land within the Seashore for the purposes of the Act by means of size, location, or use limitations or restrictions on commercial, residential, or other structures with the objective of controlling population density and to protect the island's natural resources;

(2) To limit development and use of land to single-family homes, to prohibit development and use of multiple family homes, and to prohibit the conversion of structures to multiple family homes;

(3) To prohibit commercial or industrial uses initiated after September 11, 1964 or the expansion of existing commercial or industrial uses on any property within the Seashore which is inconsistent with approved local ordinances or the purposes of the Act;

(4) To recognize that the zoning authorities have the primary responsibility for zoning enforcement within the Seashore;

(5) To provide that private property within the Community Development District may be retained by its owner as long as it is maintained in accordance with approved local ordinances;

(6) To provide that, within the Seashore District, private "improved property" may be retained by its owner as long as it is maintained in accordance with approved local ordinances; and

(7) To provide that, in the Dune District, private undeveloped property, if otherwise subject to condemnation, may be retained by its owner as long as it is maintained in its natural state.

(b) The Secretary may utilize any other statutory authority available to the Secretary for the conservation and development of natural resources to the extent the Secretary finds that such authority will further the purpose of the Act.

§ 28.2 Definitions.

"Accessory structure" means any development which is located on the same lot as the principal building or use and is customarily incidental and subordinate to the principal building or use. Accessory structure may include a storage shed, dock, deck, patio, swimming pool, or tennis court but does not include a garbage or bicycle rack and the single primary access walk. Accessory structure includes a guest house without cooking facilities used for overnight habitation.

"Act" means the Act of September 11, 1964, Pub. L. 88–587 (78 Stat. 928, 16 U.S.C. 459e), as amended, as further amended by Section 322 of the Act of November 10, 1978, Pub. L. 95–625 (92 Stat. 3488), and as further amended by Pub. L. 98–482 of October 17, 1984 (98 Stat. 2256).

"Building" means an enclosed structure having a roof supported by columns, walls, or cantilevers. (If a structure is separated by a party wall without openings, it is considered two separate "buildings.")

"Developed property" means any property which has been altered from its natural state by the construction or erection of materials located in, upon, or attached to something located in or upon the ground. Such alterations may include a building, deck, swimming pool, storage shed, patio, dock, tennis court, septic system or leaching field, walkway, groin, fence or sign (except dune protection fences and signs), road, retaining wall, grading, artificial fill, or other structure or material excluding live vegetation.

"Development" means any activity, action, alteration, structure or use which changes undeveloped property into developed property.

"Exception to a zoning ordinance" means any development or change in use of developed property which is not authorized by the zoning ordinance or the variance procedures of the zoning authority or, if authorized by the zoning authority, fails to conform to the approved ordinance or the standards of the Secretary.

"Guest house" means an accessory structure on the same lot as the principal building and that is used for the temporary accommodation of guests of a resident living in the principal building, and that does not contain cooking facilities.

"Improved property" is developed property defined by the Act to mean any building, the construction of which was begun prior to July 1, 1963, together with such amount of land on which said building is situated as the Secretary considers reasonably necessary to the use of said building not, however, to exceed 2 acres in the case of a residence and 10 acres in the case of a commercial use. The Secretary may exclude from such "improved property" any beach or waters, as well as land adjoining such beach or waters, which the Secretary deems necessary for public access thereto.

"Local ordinance" means a state, town, or village law applicable to the development or use of real property.

"Lot" means a parcel of land which meets the minimum acreage and frontage requirements of the zoning authority and is occupied or capable of

being legally occupied by one (1) principal building or main building, and the accessory structures or uses including such open spaces as are required by these standards, but in no case does a lot include lands below the toe of the natural foredune line.

"Non-conforming use" means any use of development that, if commenced after the effective date of these standards, fails to conform to these standards; or, if commenced prior to October 17, 1984, failed to conform to standards previously promulgated and fails to conform to these standards, whether or not the use or development was first commenced in compliance with the local ordinance.

"Single-family home" means a building which contains no more than one kitchen or cooking facility.

"Undeveloped property" means property which has not been altered from its natural state with the exception of dune protection measures such as snow fencing, beach nourishment, dune grass planting, or other approved biological or ecological sand-enhancing or stablization nethods.

"Zoning authority" means the Town of Brookhaven, the Town of Islip, the Village of Saltaire, the Village of Ocean Beach and/or any other legally incorporated village or political subdivision hereafter created and the officials authorized by local ordinance to make rulings and determinations on zoning in said towns and villages.

§ 28.3 Boundaries: The Community Development District; The Dune District; The Seashore District.

(a) *Generally.* The boundaries of the Seashore are described in the Act, as amended, and are delineated on the official boundary maps OGP-0002, dated June 1964, and amended by OGP-0004, dated May 1978. The maps are available for inspection at the Seashore headquarters. There are three districts: the Community Development District, the Seashore District, and the Dune District.

(b) *The Community Development District.* (1) The seventeen communities which comprise the Community Development District are set out below with their respective west/east boundaries:

(i) Lighthouse Shores—Kismet Park Unit:

West Boundary: 100 feet west of the west line of West Lighthouse Walk.
East Boundary: 80 feet east of the east line of Pine Street.

(ii) Seabay Beach Unit:

West Boundary: Approximately 94 feet west of the west line of Seabay Walk.
East Boundary: Approximately 94 feet east of the east line of Seabay Walk.

(iii) Saltaire:

West Boundary: 185 feet west of the west line of West Walk.
East Boundary: 85 feet east of the east line of East Walk.

(iv) Fair Harbor:

West Boundary: The east line of Broadway Walk.
East Boundary: The east line of Spruce Walk.

(v) Dunewood:

West Boundary: The east line of Spruce Walk.
East Boundary: 85 feet east of the east line of East Walk.

(vi) Lonelyville:

West Boundary: 85 feet east of the east line of East Walk.
East Boundary: 100 feet east of the east line of Raven Walk.

(vii) Atlantique:

West Boundary: 80 feet west of the west line of Sea Breeze Walk.
East Boundary: 80 feet east of the east line of East End Walk.

(viii) Robbins Rest:

West Boundary: The west line of Broadway Walk.
East Boundary: 113 feet east of the east line of Ocean Pathway.

(ix) Fire Island Summer Club—Corneille Estates:

West Boundary: 100 feet west of west line of Second Walk.
East Boundary: 100 feet east of east line of Ocean Roadway.

(x) Ocean Beach:

West Boundary: 7 feet west of the west line of Surf Road.
East Boundary: 2 feet east of the east line of Surf View Walk.

(xi) Seaview:

West Boundary: East line of Surf View Walk.
East Boundary: 200 feet east of Laurel Avenue.

(xii) Ocean bay Park:

West Boundary: 90 feet west of Superior Street.
East Boundary: 100 feet East of Cayuga Street.

(xiii) Point O'Woods:

West Boundary: 100 feet East of Cayuga Street.
East Boundary: Western boundary of Sunken Forest Preserve.

(xiv) Cherry Grove:

West Boundary: The west line of West Walk.
East Boundary: Approximately 100 feet east of the east line of Ivy Walk.

(xv) Fire Island Pines:

West Boundary: Approximately 150 feet west of the west line of Sandy Walk.
East Boundary: Approximately 120 feet east of Sail Walk.

(xvi) Water Island:

West Boundary: The west line of Charach Walk.
East Boundary: Approximately 100 feet east of the east line of East Walk.

(xvii) Davis Park:

West Boundary: 90 feet west of the west line of Eider Duck Walk.
East Boundary: 90 feet east of east line of Whalebone Walk.

(2) The northern boundary of the communities listed in paragraph (b)(1) of this section is the mean high water line on the south shore of the Great South Bay.

(3) The southern boundary of the communities listed in paragraph (b)(1) of this section is the mean high water line on the south shore of Fire Island.

(c) *The Seashore District.* The Seashore District is comprised of all portions of the lands and waters within the boundary of the Seashore which are not included in the Community Development District with the exception of the headquarters facilities at Patchogue and the William Floyd Estate at Mastic.

(d) *The Dune District.* The Dune District extends from the mean high water line to 40 feet landward of the primary natural high dune crest, as defined on Fire Island National Seashore Map #OGP-0004 and on Suffolk County Property Maps, section numbers 491-498 (Islip), 002 (Ocean Beach), 022-004 (Saltaire), and 985.70-987 (Brookhaven), as mapped in November 1976 or as subsequently amended. Map overlays of the Dune District are available for inspection in the Superintendent's Office. The Dune District overlaps portions of the Community Development District and the Seashore District.

§ 28.4 Permitted and prohibited uses.

(a) *The Community Development District*—(1) *Permitted uses:* (i) The construction, alteration, expansion, movement, and maintenance of a detached building which is used principally as a single-family home, church, school, or community facility; as an accessory structure; or as an office for a professional occupation, as defined in approved local ordinances is permitted. A professional office may be maintained only incidental to a residential use and shall be utilized by a person residing on the premises.

(ii) A commercial or industrial use in continuous and unchanged operation since September 11, 1964 is permitted. Any change is use of a commerical or

industrial use since September 11, 1964 including construction, expansion, or conversion of an existing structure or a change in type, mode or manner of operation constitutes a new commerical or industrial use.

(iii) A commercial or industrial use initiated after September 11, 1964 constitutes a new commerical or industrial use and is permitted with the approval of the zoning authority and the Superintendent. The Superintendent's approval is contingent upon his/her finding that the use provides a service to the community in support of community living and is consistent with the purposes of the Act. Any change in use of a commercial or industrial use including construction, expansion, or conversion of an existing structure, or change in type, location, mode, or manner of operation, constitutes a new commercial or industrial use and requires approval of the zoning authority and the Superintendent.

(2) *Prohibitied uses:* (i) The construction or expansion of an apartment building or other building with multiple dwelling units or conversion of an existing building into a multiple family home is prohibited.

(ii) The construction or expansion of a guest house with cooking facilities, or conversion of an existing structure to a guest house with cooking facilities is prohibited.

(iii) The subdivision of land into lots which are less than 4000 square feet, or that do not meet the requirements of the applicable approved zoning ordinance is prohibited.

(iv) The rezoning of an area zoned residential to commercial or business without approval of the Secretary is prohibited.

(b) *The Seashore District.*—(1) *Permitted uses:* (i) The alteration, expansion, movement, and maintenance of privately-held "improved property" used as a single-family home or as an accessory structure is permitted.

(ii) Any use consistent with the purposes of the Act and authorized by the Superintendent on any lands, whether publicly or privately held, which lie below mean high water in either the Atlantic Ocean or the Great South Bay is permitted.

(iii) General recreation, environmental and historic preservation and education, and natural resource protection uses and facilities consistent with the uses and facilities appropriate for each zone as set forth in the General Management Plan and Final Environmental Impact Statement are permitted on publicly-held property.

(2) *Prohibited uses:* Development or expansion of any property other than "improved property" is prohibited. The provisions of paragraph (a)(2) of this section apply to all privately-held property in the Seashore District.

(c) *The Dune District*—(1) *Permitted Uses:* (i) A community vehicular and private or community pedestrian dune crossing permitted by the zoning authority and approved by the Superintendent as necessary for access to areas behind the dune and such dune protection measures as snow fencing, poles, beach nourishment, dune grass planting, or other approved biological or ecological sand-enhancing or stabilization methods are permitted.

(ii) Residential use and maintenance of an existing structure or reconstruction in accordance with § 28.5 of this chapter is permitted.

(2) *Prohibited Uses:* (i) Any development subsequent to November 10, 1978 including construction of a new structure or expansion of an existing structure, such as a building, bulkhead, pile, septic system, revetment, deck, swimming pool, or other structure or man-made dune stabilization device (except one permitted under paragraph (c)(1) of this section) is prohibited.

(ii) Any use of the dune, other than those outlined in paragraph (c)(1)(i) of this section, including recreational use is prohibited.

(3) *Conflict with other provisions.* If a development or lot lies partially within the Dune District and partially in the Community Development District, or partially within the Dune District and partially within the Seashore District, and the standards applicable to the development, lot, or use are in conflict, the standards for the Dune District prevail for the portion of the development, lot, or use which lies within the Dune District.

§ 28.5 Nonconforming uses.

(a) Any use or structure lawfully existing under local law as of October 17, 1984 and rendered nonconforming by the Act or federal standards may continue, subject to the provisions of this section, and will not lose its exemption from condemnation, if otherwise eligible.

(b) *Change in Nonconforming Uses.* (1) No nonconforming development or use may be altered, intensified, enlarged, extended, or moved except to bring the use or structure into conformity with the regulations in Part 28 of this chapter.

(2) A nonconforming use which has been abandoned for more than one (1) year may not be resumed or replaced by another nonconforming use or structure.

(3) A nonconforming use in the Dune District may be moved to bring it into conformity with the regulations in Part 28 of this chapter.

(c) *Reconstruction of Nonconforming Uses.* If a nonconforming use or structure is severely damaged (as determined by fair professional insurance practices), destroyed or rendered a hazard, whether by fire, natural disaster, abandonment or neglect, no alteration, intensification, enlargement, reconstruction, extension, or movement is permitted without compliance with the following conditions:

(1) No use or structure within the Seashore built in violation of a local ordinance when constructed may be reconstructed except in compliance with the regulations in Part 28 of this chapter and the approved local ordinance.

(2) Local building permit applications for reconstruction shall be filed with the appropriate zoning authority within one (1) year of the damage, destruction, or abandonment.

(3) A commercial or industrial use may not be reconstructed without the approval of the zoning authority and the Superintendent.

(4) A nonconforming use in the Community Development District or on improved property in the Seashore District may be reconstructed to previous dimensions. It may not be altered, enlarged, intensified, extended, or moved except to bring the use of structure into conformity with the regulations in Part 28 of this chapter.

(5) A nonconforming use in the Dune District may be reconstructed if it can conform to the regulation in Part 28 of this chapter and lie north of the crest of the dune at the time of reconstruction.

§ 28.6 Federal standards.

No use permitted under § 28.4 of this chapter may be developed, constructed, altered, or conducted unless it complies with the following:

(a) A single-family home is the only type of development permitted in a residential district defined by a zoning authority.

(b) Commercial development is limited to commercial or business districts within the communities defined by a zoning authority and must supply a service in support of community living.

(c) Minimum lot size is 4000 square feet. A subdivision must comply with the subdivision requirements of the applicable zoning authority and may not result in development of any lot which is less than 4000 square feet.

(d) Maximum lot occupancy for all development may not exceed 35% of the lot. Lot occupancy is calculated to include any extension of the upper

floors beyond the developed area on the ground level.

(e) Lot coverage of all privately-held improved property in the Seashore District is limited to 35% of the square footage of a lot that is less than 7500 square feet, and to 2625 square feet for a lot 7500 square feet or greater. Lot coverage is calculated to include all buildings and structure on the property.

(f) No building or structure may be erected to a height in excess of 28 feet as measured from the average existing ground elevation but not less than the minimum elevation necessary to meet the prerequisites for Federal flood insurance as determined by the National Flood Insurance Program/FEMA shown on Flood Insurance Rate Maps for Fire Island communities.

(g) A swimming pool is a permitted accessory structure and is calculated in measuring lot occupancy.

(h) No sign may be self-illuminated.

(i) A zoning authority shall have in effect limitations, requirements, or restrictions on the burning of cover and trash, excavation, displacement or removal of sand or vegetation, and the dumping, storing, or piling of refuse materials, equipment or other unsightly objects which would pose safety hazards and/or detract from the natural or cultural scene. A violation of a local ordinance constitutes a use or development inconsistent with these standards.

(j) A zoning authority shall have in place ordinances to lessen the potential for flood and related erosion and property losses consistent with the Federal Insurance Administration's National Flood Insurance Program criteria for "Land Management and Use," as set forth in 24 CFR Part 1910, subpart A, as it may from time to time be amended. A violation of a local ordinance constitutes a use or development inconsistent with these standards.

§ 28.7 Approval of local zoning ordinances.

(a) The Secretary shall approve local ordinance or amendments to approved ordinances which conform to these regulations. The Secretary may not, however, approve an ordinance or amendment thereto which:

(1) Contains a provision that the Secretary considers adverse to the protection and development of the Seashore;

(2) Does not comply with the uses and federal standards set out in § 28.4, 28.5, and 28.6 of this chapter; or

(3) Fails to provide for the variance procedures of § 28.8 of this chapter.

(b) A zoning authority from time to time may amend its ordinance. At such time the Secretary may revoke the approval of any ordinance or portion of an ordinance which fails to conform to these regulations. Upon resubmission by the zoning authority of an amended ordinance, the Secretary shall approve the ordinance, if it conforms with the requirements of paragraph (a) of this section.

(c) Secretarial approval of a local ordinance will be withdrawn if the Secretary finds that a zoning authority is not enforcing its ordinance.

§ 28.8 Variance procedures.

(a) An alteration after October 17, 1984 to property developed prior to that date renders the property subject to acquisition by condemnation if a variance is required that causes the property to fail to conform to these federal standards.

(b) Property developed after October 17, 1984 shall be constructed in conformity with these federal standards and approved local zoning ordinances. A variance granted that would cause the use or development to violate these standards renders the property subject to acquisition by condemnation.

(c) The zoning authority shall send the Superintendent a copy of all applications for variances, exceptions, special permits and certified-as-completed surveys submitted to the zoning authority within five calendar days of their submission of the completed application by the applicant.

(d) The zoning authority shall send the Superintendent a copy of the written notice of the dates and times of any public hearing to be held concerning an application no less than 10 days prior to the date of the hearing.

(e) The zoning authority shall send the Superintendent a copy of the written notice within the fifteen calender days of the approval or disapproval of any application for a variance, exeception, special permit or certified-as-completed survey and copies of any variance, exception, special permit, or certificate which has been granted.

(f) The Superintendent, within 15 working days of the receipt of a copy of an application for a variance, exception, or special permit submitted by the zoning authority, shall inform the applicant and the appropriate zoning authority whether or not the proposed use or development will be subject to potential acquisition by condemnation. If the application does not conform to the standards, the Superintendent shall also inform the applicant that, should the application be granted, the Park Service may seek to enjoin the development and acquire the property by condemnation, subject to available funds.

(g) The Superintendent may also appeal the decision of the zoning authority pursuant to procedures of local law.

(h) The zoning authority shall send copies of all correspondence referred to in this section to: The Superintendent, Special Attention: Zoning, Fire Island National Seashore, 120 Laurel St., Patchogue, New York 11772.

§ 28.9 Emergency action.

If permitted by local law and if immediate action is essential to avoid or eliminate an immediate threat to the public health or safety or a serious and immediate threat to private property or natural resources, an agency or person may commence a temporary use without a permit from the zoning authority, provided that the agency or person obtains the prior approval of the Superintendent. In all cases, the agency or person shall send an application for a permit to the zoning authority and a copy to the Superintendent within 10 days after the commencement of the use and the applicant shall proceed in full compliance with the provisions of these regulations. When the reasons for undertaking the emergency action no longer exist, the agency or person shall cease an emergency action taken under this section until the provisions of these regulations have been complied with.

Subpart B—Condemnation Authority

§ 28.20 Suspension of condemnation authority in the communities.

The Secretary has the authority to acquire land by condemnation. Upon Secretarial approval of local ordinances, Secretarial authority to acquire by condemnation private property within the communities and improved property in the Seashore District that conform to the Federal Standards and the provisions of the Act is suspended.

§ 28.21 Condemnation authority of the Secretary.

(a) The Secretary has the authority to exercise powers of condemnation with respect to:

(1) Private property within the 8-mile area between the eastern boundary of Davis Park and the westerly boundary of the Smith Point County Park;

(2) Any beach or water and such adjoining land as the Secretary determines is necessary for access to the beach or water;

(3) Any property for which the Certificate of Suspension of Authority

for Acquisition by Condemnation has been revoked;

(4) Any property, if the approval of the ordinance of the zoning authority has been revoked, partially revoked, or an exception was made to the Secretarial approval and such property fails to conform to these standards, or any property where the appropriate local zoning authority does not have an ordinance approved by the Secretary;

(5) Any property built or altered after October 17, 1984 that does not conform to the regulations in Part 28 of this chapter;

(6) Any property which has been granted a variance, exception, or special use permit after October 17, 1984 that fails to conform to the regulations in Part 28 of this chapter; and

(7) Any property with respect to which the Secretary's authority to condemn was not suspended because the property failed to conform to the federal standards existing at the time of construction, modification, or commencement of a use, unless such construction, modification, or use conforms to the regulations found in Part 28 of this chapter.

(b) Undeveloped property which is otherwise subject to condemnation under the Act is not subject to condemnation if it is located in the Dune District and is maintained in its natural state.

(c) The Secretarial authority to condemn any property in the Seashore is suspended for any structure or use constructed, modified, or commenced prior to October 17, 1984 if:

(1) It was built or conducted in conformity with local zoning ordinances and procedures in effect at the time of such construction or commencement or had been issued a variance under local law;

(2) It was built or conducted in conformity to the federal standards existing at the time of such construction or commencement or to these standards; and

(3) The local zoning ordinance is approved by the Secretary without exceptions, or if approved by the Secretary with exceptions, such exceptions are not pertinent or applicable to the property.

(d) The above provisions shall not be interpreted to otherwise limit or circumscribe the authority of the Secretary to condemn property as provided by the Act, or other provisions of law.

§ 28.22 Certificates of suspension of authority for acquisition by condemnation.

Upon approval of a local zoning ordinance, a private property owner may apply to the Superintendent for a Certificate of Suspension of Authority for Acquisition by Condemnation. Procedures for obtaining a certificate are as follows:

(a) An application for a certificate shall contain:

(1) A current survey of the lot showing the dimension of all buildings, accessory structures, garbage and bicycle racks, all access walks, and any extensions of the upper floors beyond the developed area on the ground level;

(2) On the survey, the line of mean high water, the toe of the dune, and the crest of the dune shall be identified if they traverse the lot;

(3) A floor plan of each floor of each building showing the configuration of all rooms and cooking facilities;

(4) A vertical drawing of the structure showing actual ground level and building height; and

(5) Copies of the original and all subsequent building permit applications and permits, certificates of occupancy, certified-as-completed surveys, variances, special use permits, certificates of pre-existing use, or other documents relating to local authorization to develop or use the property. The burden rests on the applicant to show that the structure conformed to local law at the time of construction and at the time of each subsequent alteration and that the structure conforms to current federal standards.

(b) Upon receipt of the application, the Superintendent shall conduct a site inspection of both the interior and exterior of the property.

(c) After review of the materials submitted by the applicant and other pertinent information, and completion of the site inspection, the Superintendent shall determine whether or not the Secretary's authority to acquire by condemnation is suspended, and if so, shall furnish to any eligible party in interest a Certificate of Suspension of Authority for Acquisition by Condemnation.

(d) A Certificate of Suspension of Authority for Acquisition by Condemnation may be revoked at any time that the Secretary's authority to condemn is reinstated or that it becomes evident to the Superintendent that the Certificate was initially issued by mistake or on misinformation.

§ 28.23 Severability.

The invalidation of any provision of this Part 28 by any court of competent jurisdiction shall not invalidate any other provision hereof.

Dated: February 11, 1987.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-23119 Filed 10-6-87; 8:45 am]

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Wednesday
October 7, 1987

Part IV

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Part 45

Federal Acquisition Regulation (FAR); Accountability for Government Property in Possession of Contractors; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 45

Federal Acquisition Regulation (FAR); Accountability for Government Property in Possession of Contractors

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering a change to FAR 45.505 to clarify the property records maintenance responsibilities of contractors in possession of Government property.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before December 7, 1987, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 87-36 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523-4755.

SUPPLEMENTARY INFORMATION:

A. Background

Official Government property records must identify all Government property and provide a complete, current, auditable record of all transactions. However, the current FAR procedures do not specify how or in what format these records are to be maintained. Some contractors are unable to provide current, auditable information with respect to Government property because their systems of records maintenance for Government property are not equivalent to their systems for maintaining records of contractor-owned property. The Councils have examined the language of existing FAR coverage in light of the above noted problem and propose revisions which clarify the present FAR coverage on records and reports of Government property.

B. Regulatory Flexibility Act

The proposed rule will apply to all small businesses which are performing under Government contracts which provide for the furnishing of Government property. Approximately fifty thousand small businesses hold Government contracts. However, the number of small businesses being furnished Government property under these contracts is unknown. Nevertheless, the ultimate impact on small businesses should be minimal because it is believed that most small businesses having such contracts already comply with the proposed rule. The problem with dual property systems exists primarily with large contractors. Small businesses normally maintain only one property control system for their own and Government property. An Initial Regulatory Flexibility Analysis has been prepared and submitted to the Chief Counsel for Advocacy for the Small Business Administration.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) does not apply because the time and financial resources necessary to comply with a collection of information would be incurred by persons in the normal course of their business activities. The proposed revision does not impose any additional recordkeeping or information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*, and requires only that contractors maintain Government property records via a system that is equivalent to their system for maintaining records of their own property. The time and financial resources required to maintain property records are considered normal business activities.

List of Subjects in 48 CFR Part 45

Government procurement.

Dated: September 29, 1987.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Part 45 be amended as set forth below:

PART 45—GOVERNMENT PROPERTY

1. The authority citation for Part 45 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

2. Section 45.505 is amended by revising paragraph (c) to read as follows:

§ 45.505 Records and reports of Government property.

* * * * *

(c) Official Government property records must identify all Government property and provide a complete, current, auditable record of all transactions. The contractor's system of records maintenance shall be sufficient to adequately control Government property as required by this section and, as a minimum, shall be equivalent to and maintained in the same manner as the contractor's system for maintaining records of contractor-owned property. The records shall be safeguarded from tampering or destruction. Records shall be accessible to authorized Government personnel.

* * * * *

[FR Doc. 87-23010 Filed 10-6-87; 8:45 am]

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