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Contents

Federal Register

Vol. 53, No. 193

Wednesday, October 5, 1988

Agriculture Department
See also Federal Grain Inspection Service; Forest Service
NOTICES
Agency information collection activities under OMB review, 39121
Committees; establishment, renewal, termination, etc.:
Agriculture and Rural Development Policy National Commission; meeting, 39121

Child Support Enforcement Office
PROPOSED RULES
State plan requirements:
State and local IV-D agencies, and courts and law enforcement officials; cooperative arrangements, 39110

Commerce Department
See also Export Administration Bureau; International Trade Administration; National Oceanic and Atmospheric Administration; National Telecommunications and Information Administration
NOTICES
Meetings:
Export Now Advisory Committee, 39125

Commodity Futures Trading Commission
PROPOSED RULES
Reports:
Feeder cattle, long-term (6½–10 years), cocoa, crude oil, etc.; reporting levels; market surveillance programs, 39103

Conservation and Renewable Energy Office
NOTICES
Consumer product test procedures; waiver petitions:
Airlex Industries, Ltd., 39130

Defense Department
See also Defense Logistics Agency
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 39128
Foreign assistance:
Yemen; International security assistance determination, 39128
Meetings:
Electron Devices Advisory Group, 39128

Defense Logistics Agency
NOTICES
Privacy Act:
Systems of records, 39129

Education Department
RULES
Bilingual education and minority language affairs:
Basic programs, etc., 39218
NOTICES
Meetings:
Postsecondary Education Improvement Fund National Board, 39129

Energy Department
See Conservation and Renewable Energy Office; Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
California, 39087
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Ethyl 3-methyl-4-(methylthio)phenyl (1-methylethyl) phosphoramidate, 39090
N-(mercaptomethyl)phthalimide S-(O,O-dimethyl phosphorodithioate), 39090
Water pollution control:
State underground injection control programs—Nevada, 39088
PROPOSED RULES
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Diazinon, 39107
Diflubenzuron, 39106
Permethrin, 39109
NOTICES
Meetings:
State and EPA Municipal Program Managers, 39131
Pesticide, food, and feed additive petitions:
Uniroyal Chemical Co., 39131
Pesticide registration, cancellation, etc.:
Strychnine, 39131
Water pollution control:
Clean Water Act—
National sewage sludge survey; availablity of sampling and analytical methods, 39133

Executive Office of the President
See Management and Budget Office; Presidential Documents; Trade Representative, Office of United States

Export Administration Bureau
NOTICES
Meetings:
Computer Systems Technical Advisory Committee, 39125–39126
(3 documents)

Family Support Administration
See Child Support Enforcement Office

Farm Credit Administration
RULES
Farm credit system:
System institutions—
Reorganization authorities, 39079
PROPOSED RULES
Farm credit system:
Funding and fiscal affairs, loan policies and operations, and funding operations—
Borrower rights, etc., 39099

Federal Communications Commission
RULES
Common carrier services:
MTS and WATS market structure
Correction, 39095
Freedom of Information Act; implementation:
Uniform fee schedule and administrative guidelines, 39092
Radio stations; table of assignments:
Maryland; correction, 39095
PROPOSED RULES
Radio services, special:
Private land mobile services—
Frequency assignments, 39114
NOTICES
Meetings:
Advanced Television Service Advisory Committee, 39140, 39141
(2 documents)
Rulemaking proceedings; petitions filed, granted, denied, etc., 39141

Federal Emergency Management Agency
RULES
Flood insurance program:
Private sector property insurers assistance (write-your-own-program)
Correction, 39091

Federal Energy Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Questar Pipeline Co., 39131

Federal Grain Inspection Service
NOTICES
Agency designation actions:
Arkansas, 39123
California, 39121
Connecticut, 39123
Indiana and Illinois, 39122
Iowa, 39124
Virginia and Ohio, 39122

Federal Maritime Commission
NOTICES
Agreements filed, etc., 39142

Federal Reserve System
NOTICES
Federal Open Market Committee:
Domestic policy directives, 39142
Meetings; Sunshine Act, 39194
Applications, hearings, determinations, etc.:
Empire Bank Corp. et al., 39143
F.N.B. Corp., 39143
McElveen, Frances P., 39144
Nortwest Corp., 39144
Osterreichische Landerbank Aktiengesellschaft et al., 39144

Federal Trade Commission
PROPOSED RULES
Food retailing and gasoline industries; games of chance, 39103

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Mupirocin ointment, 39084
Food additives:
Polymers—
Polyurethane-polyester resin-epoxy adhesive, 39083

Forest Service
NOTICES
Environmental statements; availability, etc.:
Uinta National Forest, UT, 39124

General Services Administration
RULES
Acquisition regulations:
Small business and small disadvantaged business concerns; monitoring contractor compliance with subcontracting plans
Correction, 39096
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 39128
Meetings:
FTS 2000 Procurement Advisory Committee, 39145

Health and Human Services Department
See also Child Support Enforcement Office; Food and Drug Administration; Health Care Financing Administration; National Institutes of Health; Public Health Service
NOTICES
Organization, functions, and authority delegations:
Management and Acquisition Office et al., 39145

Health Care Financing Administration
NOTICES
Medicare:
Home health agency costs per visit; schedule of limits, 39150

Health Resources and Services Administration
See Public Health Service

Indian Affairs Bureau
NOTICES
Irrigation projects; operation and maintenance charges:
Flathead Irrigation Project, MT, 39153
Reservation establishment, additions, etc.:
St. Croix Chippewa Indians of Wisconsin, 39154

Interior Department
See also Indian Affairs Bureau; Land Management Bureau; Minerals Management Service; Surface Mining Reclamation and Enforcement Office
NOTICES
Facility Construction Operation and Maintenance class code categories for BIA; automated backlog data system, category and ranking code changes, 39153

International Trade Administration
NOTICES
Export Trade certificates of review, 39126
Short supply determinations:
Steel tubing used in manufacture of automotive brake, fuel, and power steering lines, 39127

International Trade Commission
NOTICES
Import investigations:
Dynamic random access memories, components, and products containing same, 39159

Shock absorbers and parts, components, and subassemblies from Brazil, 39159
Softballs and polyurethane cores, 39160
Senior Executive Service:
Performance Review Boards; membership, 39160

Interstate Commerce Commission
RULES
Practice and procedure:
Interlocking directorates; exemptions, 39096
PROPOSED RULES
Moto carriers:
Property motor carriers—
Accounting and reporting requirements, 39119
NOTICES
Railroad services abandonment:
Norfolk & Western Railway Co., 39160

Justice Department
NOTICES
Pollution control; consent judgments:
Avesta, Inc., 39161
Iowa Asbestos Co., 39161

Land Management Bureau
NOTICES
Environmental statements; availability, etc.:
Western Mojave Land Tenure Adjustment Project, CA, 39154
Realty actions; sales, leases, etc.:
Arizona, 39155
California, 39155
Utah, 39156
(2 documents)
Wyoming, 39157
Resource management plans, etc.:
Cody Resource Area, WY, 39157

Management and Budget Office
NOTICES
Cost comparison studies schedules (Circular A-76), 39183

Minerals Management Service
NOTICES
Agency information collection activities under OMB review, 39158

National Acid Precipitation Assessment Program
NOTICES
Meetings, 39161

National Aeronautics and Space Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 39128

National Highway Traffic Safety Administration
PROPOSED RULES
Fuel economy standards:
Passenger automobiles
Petition denied, 39115

National Institutes of Health
NOTICES
Meetings:
National Institute of Dental Research, 39153

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfish, 39097
Gulf of Mexico and South Atlantic coastal migratory pelagic resources, 39097
NOTICES
Meetings:
Mid-Atlantic Fishery Management Council, 39127
South Atlantic Fishery Management Council, 39128

National Science Foundation
NOTICES
Meetings:
Animal Learning and Behavior Advisory Panel, 39162
Atmospheric Sciences Advisory Committee, 39162
Biochemistry Advisory Panel, 39162
Developmental Biology Advisory Panel, 39162
Equal Opportunities in Science and Engineering Committee, 39163
Human Cognition and Perception Advisory Panel, 39163
Neural Mechanisms of Behavior Advisory Panel, 39163
Ocean Sciences Advisory Committee, 39163
Physics Advisory Committee, 39164
Sensory Systems Advisory Panel, 39164

National Telecommunications and Information Administration
RULES
Federal Radio Frequency Management, Manual of Regulations and Procedures; incorporation by reference, 39095

National Transportation Safety Board
NOTICES
Meetings; Sunshine Act, 39194

Nuclear Regulatory Commission
NOTICES
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 39165
Applications, hearings, determinations, etc.:
Duke Power Co. et al., 39164
Maine Yankee Atomic Power Co., 39165

Office of Management and Budget
See Management and Budget Office

Office of United States Trade Representative
See Trade Representative, Office of United States

Pension Benefit Guaranty Corporation
PROPOSED RULES
Multiemployer and single-employer plans:
Premiums payment, 39200

Postal Service
RULES
Conduct on postal property:
Authority citation update, 39087

Presidential Documents
PROCLAMATIONS
Special observances:
Columbus Day (Proc. 5878), 39077
Employ the Handicapped Week, National (Proc. 5876), 39073
Job Skills Week, National (Proc. 5877), 39075

Public Health Service
See also Food and Drug Administration; National Institutes of Health
NOTICES
National toxicology program:
Toxicology and carcinogenesis studies—
Monuron, 39153

Research and Special Programs Administration
PROPOSED RULES
Hazardous materials:
Highway routing standards for transportation of non-radioactive materials, 39114
NOTICES
Hazardous materials:
Inconsistency rulings, etc.—
California: Yellow Freight Systems, Inc., 39196

Small Business Administration
NOTICES
Disaster loan areas:
Illinois, 39190
Meetings:
Presidential Advisory Committee on Small and Minority Business Ownership, 39190
Applications, hearings, determinations, etc.:
Concord Finance Corp., 39190

State Department
NOTICES
Meetings:
Overseas Security Advisory Council, 39190
Shipping Coordinating Committee, 39191

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program and abandoned mine land reclamation plan submission:
Kansas, 39085
PROPOSED RULES
Permanent progam and abandoned mine land reclamation plan submissions:
Colorado, 39105

Tennessee Valley Authority
RULES
Nondiscrimination on basis of handicap in federally-conducted programs and activities, 39081

Trade Representative, Office of United States
NOTICES
United States-Canada Free-Trade Agreement; antidumping and countervailing duty determinations; applications and nominations to review panel, 39188

Transportation Department
See also National Highway Traffic Safety Administration; Research and Special Programs Administration
NOTICES
Aviation proceedings:
Hearings, etc.—
Nay, Robert O., et al., 39191
Wrangell Air, 39191

Treasury Department
NOTICES
Agency information collection activities under OMB review, 39191–39192
(4 documents)

Veterans Administration
NOTICES
Agency information collection activities under OMB review, 39193

Separate Parts In This Issue

Part II
Department of Transportation, Research and Special Programs Administration, 39196

Part III
Pension Benefit Guaranty Corporation, 39210

Part IV
Department of Education, 39218

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
5876 39073
5877 39075
5878 39077

12 CFR
611 39079
Proposed Rules:
615 39099

16 CFR
Proposed Rules:
419 39103

17 CFR
Proposed Rules:
15 39103

18 CFR
1307 39081

21 CFR
177 39083
524 39084

29 CFR
Proposed Rules:
2610 39200

30 CFR
916 39085
Proposed Rules:
906 39105

34 CFR
500 39218
501 39218
524 39218
525 39218
526 39218
548 39218
561 39218
562 39218
573 39218
574 39218
581 39218

39 CFR
232 39087

40 CFR
52 39087
147 39088
180 (2 documents) 39090
Proposed Rules:
180 (3 documents) 39106–39109

44 CFR
62 39091

45 CFR
Proposed Rules:
302 39110
303 39110
304 39110
305 39110

47 CFR
0 39092
36 39095
73 39095
300 39095
Proposed Rules:
90 39114

48 CFR
519 39096

49 CFR
1185 39096
Proposed Rules:
177 39114
531 39115
1207 39119
1249 39119

50 CFR
642 39097
675 39097

Federal Register
Vol. 53, No. 193
Wednesday, October 5, 1988

Presidential Documents

Title 3—

The President

Proclamation 5876 of October 3, 1988

National Employ the Handicapped Week, 1988

By the President of the United States of America

A Proclamation

The American creed of opportunity for all has proven rich soil for the growing realization that everyone gains when people with disabilities are employed. Disabled people with jobs contribute to prosperity, take a more active part in their communities, and lead more satisfying lives; and their employers gain productive employees. Since the end of World War II, America has celebrated National Employ the Handicapped Week in recognition of the many achievements of workers with disabilities and of those who employ them. During this week we also reaffirm our desire and determination to continue fostering employment opportunities for Americans who have disabilities.

Each year we remove more barriers that have prevented people with disabilities from taking jobs. New technology, job training and placement programs, an increasingly accessible working environment, and greater public understanding all contribute to disabled people's competitiveness in the job market.

More remains to be done, though, as we seek to ensure enhanced employment opportunities for the disabled. Only one-third of working-age Americans with disabilities are employed, so we must keep on opening up more ways for them to gain job skills and overcome job discrimination and transportation, communication, and physical barriers to employment. We are all enriched immeasurably when everyone who wants to work can and does find employment and every citizen is free to follow the path to full and equal participation in the life of our communities and country.

The Congress, by Joint Resolution approved August 11, 1945, as amended (36 U.S.C. 155), has called for the designation of the first full week in October of each year as "National Employ the Handicapped Week." This special week is a time for all Americans to join together to renew their dedication to meeting the goal of increased opportunities for people with disabilities.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning October 2, 1988, as National Employ the Handicapped Week. I commend and urge all governors, mayors, other public officials, leaders in business and labor, and private citizens to continue to help meet the challenge of ensuring equal employment opportunities and full citizenship rights and privileges for disabled Americans.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of October, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-23150
Filed 10-4-88; 10:52 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5877 of October 3, 1988

National Job Skills Week, 1988

By the President of the United States of America

A Proclamation

During National Job Skills Week, 1988, every American can reflect on the good news that our economy is far along in its sixth year of uninterrupted growth, employment is at an all-time high, and the average unemployment rate this year is the lowest in 14 years. Our economy, unlike that of many of our international competitors, is creating several million new jobs each year and helping meet the challenges of greater economic competition and rapid technological change.

Our celebration of a week in recognition of all who foster, teach, and learn job skills should include awareness that jobs now being created demand capabilities and higher levels of literacy. A recent report by the Secretaries of Commerce, Education, and Labor, "Building a Quality Workforce," reminds us of these demands and the concomitant need for improved skills among entry-level workers. We can address workplace requirements in a changing economy if business, labor, educators, community groups, and all levels of Government cooperate to strengthen workers' skills and adaptability.

The Federal Government is doing its part in this regard by supporting education, training, and employment programs for disadvantaged and dislocated workers. These programs include adult basic education, vocational education, and dropout prevention efforts; the summer youth employment program; an expanded adjustment program for dislocated workers; and training assistance through a $1.8 billion Job Training Partnership Act block grant. The JTPA has been particularly effective in reintegrating citizens into the work force, by stressing private sector involvement and concentrating on skills actually needed in localities across our land. The new Economic Dislocation and Worker Adjustment Assistance Program will build upon JTPA to provide Federal grants to States, offering rapid response to dislocation and a comprehensive approach to education and employment assistance for workers affected by plant closings or large layoffs.

Let us observe National Job Skills Week, 1988, with greater understanding of the skills, needs, and devotion of America's workers and with continued appreciation and support for private and public job training efforts in their behalf.

To focus national attention on the role of job training in maintaining a competitive work force, the Congress, by Senate Joint Resolution 333, has designated the week of October 9 through October 15, 1988, as "National Job Skills Week" and authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of October 9 through October 15, 1988, as National Job Skills Week, and I urge all Americans and interested groups to observe this week with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of October, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-23151
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Presidential Documents

Proclamation 5878 of October 3, 1988

Columbus Day, 1988

By the President of the United States of America

A Proclamation

We Americans proudly set aside time as a Nation each October to pay tribute to Christopher Columbus, whose voyage to the Americas in 1492 inaugurated communication between worlds old and new. Today, nearly 500 years after his epochal discoveries, Columbus remains for us a giant of exploration and of the human spirit—a man whose faith, vision, courage, and perseverance have won him an imperishable place in the history of America and the world.

The qualities Columbus exhibited so well have always made him a kindred soul to pioneering and individualistic Americans, who to this day confidently set sail in their own way toward far horizons in every area of achievement. Not for us the discouraging word, but rather the desire to do and to dare for a great good. Generations of Americans recall the lines of Joaquin Miller's poem, "Columbus": " 'Now speak, brave Adm'r'l, speak and say'—He said: 'Sail on! sail on! and on!' " and its final lines, "He gained a world; he gave that world its grandest lesson: 'On! sail on!' " That was the spirit of Columbus, and it is the American spirit.

Today, our homage to Christopher Columbus includes recognition of the accomplishments of the many Italians who have followed him to America and of the achievements of their descendants. Columbus remains an inspiration for them and for all Americans, and a source of comity between the peoples of Italy and the United States.

The same is true for Americans of Spanish descent. Support by the Spanish monarchs Ferdinand and Isabella made the discoveries of Columbus possible and led to Spain's later cultural and economic contributions to the New World and the development of the heritage we share with our Spanish-speaking neighbors throughout the Western Hemisphere.

As we approach the 500th anniversary of the first voyage of Columbus to the New World in 1492, observances in his honor are growing in number and significance. The Christopher Columbus Quincentenary Jubilee Commission, a group of Americans assisted by representatives from Spain, Italy, and the Bahamas, has made recommendations for our Nation's celebration of the Quincentenary. The Commission is planning educational and commemorative programs that will take place across our land. We can all look forward to an appropriate, enjoyable, and truly memorable jubilee.

In tribute to Christopher Columbus, the Congress of the United States, by joint resolution approved April 30, 1934 (48 Stat. 657), as modified by the Act of June 28, 1968 (82 Stat. 250), has requested the President to proclaim the second Monday in October of each year as "Columbus Day."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim Monday, October 10, 1988, as Columbus Day. I invite the people of this Nation to observe that day with appropriate ceremonies in honor of this great explorer. I also direct that the flag of the United States be displayed on all public buildings on the appointed day in honor of Christopher Columbus.

IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of Oct., in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

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Rules and Regulations

Federal Register
Vol. 53, No. 193
Wednesday, October 5, 1988

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.

FARM CREDIT ADMINISTRATION

12 CFR Part 611

Organization

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA) Board adopts a final regulation which implements the provisions of section 411 of the Agricultural Credit Act of 1987 (1987 Act) Pub. L. 100–233. The final regulation sets forth requirements governing the development of proposals for the merger of certain Federal land bank associations and production credit associations and timetables for the submission of merger proposals to the affiliated banks and to the FCA.

DATES: This regulation is effective October 5, 1988.

FOR FURTHER INFORMATION CONTACT:
James F. Thies, Assistant Chief, Financial Analysis and Standards Division, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4475.
or
Gary L. Norton, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444

SUPPLEMENTARY INFORMATION: On February 16, 1988, the FCA Board published an Advance Notice of Proposed Rulemaking requesting public comments on the implementation of the new authorities for institutions to reorganize contained in the 1987 Act (53 FR 4416). On June 6, 1988, the FCA Board published for comment a proposed regulation which, among other things, implemented the provisions of section 411 of the 1987 Act relating to the development of proposals for the merger or consolidation of Federal land bank associations (FLBAs) and production credit associations (PCAs) that share substantially the same territory (53 FR 20637). The FCA received comments from numerous interested parties addressing many of the proposed regulations published on June 6, 1988. The FCA Board determined that in light of the statutory deadlines applicable to section 411 mergers, the Board should adopt final regulations relating to those authorities as quickly as possible, taking into consideration the comments received on the proposed regulation. The FCA Board will address the remainder of the June 6, 1988 regulation, and the public comments received thereon, in the near future in a separate document.

The proposed regulation at § 611.1145 sets forth the requirements governing the content of merger proposals and timetables for the submission of the merger proposals to the affiliated Farm Credit Bank (FCB) and to the FCA. The proposed regulation clarified the meaning of "substantially the same" as used in section 411 of the 1987 Act and specified that merger proposals must comply with the provisions of Subpart G of Part 611 relating to contents of the proposal. The proposed regulation also provided that the merger proposals must be submitted to the affiliated FCB for approval not later than 60 days following the creation of the affiliated FCB, and to the FCA for approval not later than 90 days following the creation of the affiliated FCB.

The FCA received comments from one Senator, Five Representatives, the Farm Credit Corporation of America (FCCA) the St. Paul District Federation of Local Associations, and the Association Coordination Committee of the Third Farm Credit District. The FCA received a comment from the FCCA regarding proposed § 611.1145(b), which clarifies the meaning of "substantially the same" as used in section 411 of the 1987 Act. The FCCA requested that the regulation should be amended to identify the point in time at which unlike associations must have 90 percent territorial overlap in order to fall under the provisions of the regulation. The FCCA did not recommend a specific cutoff date for determining the applicability of this requirement. The FCA Board agrees with the need to establish a cutoff date to be applied in determining whether two associations are required to submit merger proposals under section 411 of the 1987 Act. The FCA Board considered using January 6, 1988, the date of enactment of the 1987 Act, or July 5, 1988, the date of the creation of the FCBs. The FCA Board believes that the July 5, 1988 date would be most consistent with the provisions of section 411 of the 1987 Act, which uses timetables based on that date, and would give maximum effect to the purpose of section 411, which is to give stockholders of associations the opportunity to determine if they desire to establish "one-stop" credit institutions. Accordingly, the final regulation has been amended to provide that the date for determining whether two associations share substantially the same territory shall be based on their chartered territories as of July 5, 1988. The Board notes that this cutoff date does not preclude other institutions from submitting proposals to merge in accordance with the authorities of unlike associations to merge under section 7.8 of the Act.

The FCCA also requested that the FCA promptly issue regulations which provide for the lending authorities for agricultural credit associations (ACAs) by reconciling the lending powers of FLBAs and PCAs. On September 28, 1988, the FCA Board approved proposed regulations which substantially revise all of 12 CFR Parts 613 and 614 and, among other things, specify the lending authorities of ACAs. Those regulations will be published in the **Federal Register** following the expiration of the 30-day review period required under section 5.17(a)(3) of the Farm Credit Act of 1971, as amended (Act).

The FCCA commented that proposed § 611.1145 does not address "whether competition among associations would be permitted in those parts of a merged association's territory where the territories of the constituent associations did not overlap." The FCCA further commented that the existing regulations do not deal with situations where two entities are chartered to serve the same territory but "that the regulation does suggest one avenue of resolution of the question, namely, some form of agreement or understanding between the overlapping associations."

The FCA Board recognizes that section 411 of the 1987 Act contemplates the possibility of FLBA/PCA mergers in

which both associations do not share the identical territory. In those situations it is possible that some of the merger proposals submitted under section 411 of the 1987 Act will contain proposed charters that only cover the common territory of the associations involved and other proposals may contain proposed charters for the territory served by either one of the institutions. In either event, any ACA chartered under section 411 of the 1987 Act or Title VII of the Act will be authorized to extend its lending authority for both long-term and short-term loans throughout its chartered territory.

If a proposed charter of an ACA excludes any territory served by one or both of the constituent associations, the charter will not be approved except in connection with the transfer of the excluded territory to another association. In this way the FCA Board will ensure that farm credit services are provided to all areas of the country.

If a proposed charter includes territory currently served by a third association which is not a party to the merger, the FCA Board will consider the best interests of the borrowers in that area in approving the charter. Before submitting a merger proposal that involves a request for a charter that overlaps the territory of a third association, the parties to the merger should discuss the issue with the association(s) involved. Any such association may also submit its views, in writing, to the FCA regarding the effects of the proposed action on its operations. The FCA's analysis of a merger request involving overlapping territories will be based on all relevant factors, including, but not limited to, the cost of credit delivery to eligible borrowers; the operating costs of the affected associations; the degree of competition among System and non-System lenders in the territory, and the effectiveness with which the credit needs of the borrower can best be served. Accordingly, these issues should be addressed in the merger proposal.

The Association Coordination Committee of the Third Farm Credit District commented that the regulation should clarify that merger proposals must be submitted only when the associations involved share 90 percent or more common territory *with each other*. The FCA Board agrees with this interpretation and the regulation is clear on this point. The regulation specifies that a merger proposal *must* be developed only when 90 percent or more of the territory of a FCA overlaps with 90 percent or more of the territory of an FLBA.

The FCA received comments from the FCCA, the St. Paul District Federation of Local Associations, one Senator and five Representatives regarding the proposed timetable for submission of merger proposals to the affiliated FCB and to the FCA. All of the commenters expressed the view that § 611.1145 unnecessarily accelerates the times at which merger proposals must be submitted. The commenters believe that an extension of the timetable for submission would provide associations a better opportunity to analyze the available options and educate their stockholders concerning the implications of various proposed actions, as well as give full effect to congressional intent.

The FCA Board agrees that in light of the potential complexity involved in analyzing the relevant issues and in preparing the required documents, it would be prudent to provide all parties involved with the maximum flexibility in scheduling as possible. The FCA Board is concerned, however, that there should not be an extended delay in the consummation of any stockholder approved merger. One commenter suggested that the regulation should require the merger to be effective not more than 90 days after the date of the stockholder vote, thereby allowing the new association time to conduct the many post-vote responsibilities that are necessary, including the amendment of procedures and forms, the assignment of security interests to the new entity, the implementation of marketing strategies, and the running of any applicable reconsideration period. The FCA Board concurs with this recommendation but notes that mergers conducted under section 411 of the 1987 Act and this regulation are not subject to the reconsideration provisions of section 7.9 of the Act. While these mergers are not technically subject to the section 7.9 reconsideration provisions of the Act, the FCA Board would encourage institutions to implement the spirit of section 7.9 by including the reconsideration procedure in their merger agreements.

Taking into consideration the comments received, the final regulation has been amended to allow stockholder votes to take place not later than January 5, 1989, and to require the mergers to have an effective date not later than 90 days following the date of the stockholder vote. Consistent with the extended date for stockholder votes, the regulation has been amended to provide that merger proposals must be submitted to the affiliated FCB for review and approval not later than October 5, 1988, and, subsequently, to the FCA not later than November 5, 1988.

In accordance with 5 U.S.C. 553(d)(3) the FCA Board finds, for good cause, that this regulation must be effective immediately upon publication in the **Federal Register.** The FCA Board considered comments in response to an Advance Notice of Proposed Rulemaking and the proposed regulation. The final regulation provides the maximum flexibility possible to enable institutions to develop merger proposals and submit them to their stockholders in time to satisfy statutory deadlines. Any delay in the effective date would be contrary to the public interest since it could impede compliance with this statutory deadline. For the same reasons, the FCA Board, in accordance with § 5.17(c)(2) of the Act, finds than an emergency exists which requires this regulation to be effective prior to the expiration of thirty days after it is published in the **Federal Register.**

List of Subjects in 12 CFR Part 611

Banks, Banking, Organizations and functions (Government agencies).

PART 611—ORGANIZATION

1. The authority citation for Part 611 is revised to read as follows:

Authority: Secs. 1.3, 1.13, 2.0, 2.10, 3.0, 3.21, 4.12, 4.15, 5.0, 5.9, 5.10, 5.17, 7.0–7.13; 12 U.S.C. 2011, 2031, 2071, 2091, 2121, 2142, 2183, 2203, 2221, 2243, 2244, 2252, 2279a–2279j; secs. 411 and 412 of Pub. L. 100–233.

Subpart J—Merger and Reorganization Proposals Required by the Agricultural Credit Act of 1987

2. Section 611.1145 is added to read as follows:

§ 611.1145 Required consideration of proposals to merge production credit associations and Federal land bank associations.

(a) In accordance with section 411 of the Agricultural Credit Act of 1987 certain Federal land bank associations and production credit associations are required to develop proposals for the merger of such associations, with the resulting association to have the authority of an agricultural credit association.

(b) Merger proposals shall be developed in those instances in which 90 percent or more of the chartered territory of a production credit association overlaps with 90 percent or more of the chartered territory of a

Federal land bank association. A determination of whether the chartered territories of two associations overlap shall be based on charters in effect on July 5, 1988.

(c) Merger proposals shall be developed by the associations involved and submitted to the affiliated Farm Credit Bank for approval not later than October 5, 1988. Following review and approval by the affiliated Farm Credit Bank, the associations shall submit the merger proposal to the Farm Credit Administration for approval not later than November 5, 1988.

(d) Each merger proposal shall comply with and be subject to all of the provisions of Subpart G of Part 611 relating to contents of the proposal, required information statements, Farm Credit Administration approval, and stockholder votes.

(e) Not later than January 5, 1989, each merger proposal must be submitted to the stockholders for a vote, and any resulting mergers shall have an effective date which shall not be later than 90 days after an affirming stockholder vote.

Dated: September 28, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-22860 Filed 10-4-88; 8:45 am]

BILLING CODE 6705-01-M

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1307

[3316-A088]

Enforcement of Nondiscrimination on the Basis of Handicap in Tennessee Valley Authority Programs

December 28, 1987.

AGENCY: Tennessee Valley Authority.

ACTION: Final rule.

SUMMARY: This regulation amends the regulation issued by Tennessee Valley Authority for enforcement of section 504 of the Rehabilitation Act of 1973, as amended, in federally assisted programs or activities to include a cross-reference to the Uniform Accessibility Standards.

EFFECTIVE DATE: November 4, 1988.

FOR FURTHER INFORMATION CONTACT: William L. Osteen, Jr., Associate General Counsel, Office of the General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902, Telephone: (615) 632-4142, TDD: (615) 632-2467.

SUPPLEMENTARY INFORMATION: Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), provides that:

> No otherwise qualified handicapped individual in the United States * * * shall, solely by reason of his handicap be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance * * *.

The existing Tennessee Valley Authority (TVA) Section 504 regulation for federally assisted programs requires that new construction be designed and built to be accessible and that alterations of facilities be made in an accessible manner. It requires new construction or alteration to be accomplished in accordance with standards specified by TVA in the contract for the program. The standards used by TVA were ANSI Standard A117.1, "Specifications for Making Buildings and Facilities Accessible to, and Usable by, Physically Handicapped People." The amendment states that new construction or alteration accomplished in accordance with the Uniform Federal Accessibility Standards (UFAS) meets the requirements of section 504.

On August 7, 1984, UFAS was issued by the four agencies establishing standards under the Architectural Barriers Act (49 FR 31,528) (see discussion *infra*). The Department of Justice, as the agency responsible under Executive Order 12250 for coordinating the enforcement of section 504, has recommended that agencies amend their section 504 regulations for federally assisted programs or activities to establish that, with respect to new construction and alterations, compliance with UFAS shall be deemed to be compliance with section 504. Because some facilities subject to new construction or alteration requirements under section 504 are also subject to the Architectural Barriers Act, Government-wide reference to UFAS would diminish potential conflict between standards enforced by the responsible funding agencies under the two statutes. In addition, compliance with UFAS by Federal agencies and States will reduce potential conflicts when a building is subject to the section 504 regulations of more than one Federal agency and also when it is subject to State or local accessibility requirements as well.

On November 6, 1986, TVA published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register.** 51 FR 40338. The NPRM was based on a prototype developed by the Department of Justice (DOJ). No comments were received except from DOJ. DOJ's comments pointed out several items which needed clarification or correction and have been adopted.

Background of Accessibility Standards

The Architectural Barriers Act of 1968, 42 U.S.C. 4151-4157 (1982), requires certain Federal and federally funded buildings to be designed, constructed, and altered in accordance with accessibility standards. It also designates four agencies (the General Services Administration, the Departments of Defense and of Housing and Urban Development, and the U.S. Postal Service) to prescribe the accessibility standards. Section 502 of the Rehabilitation Act of 1973 established the Architectural and Transportation Barriers Compliance Board (ATBCB). In 1978 the Rehabilitation Act was amended to require the ATBCB, inter alia, to issue minimum guidelines and requirements for the standards to be issued by the four standard-setting agencies. The minimum guidelines were published on August 4, 1982 (45 FR 33,862), and are codified at 36 CFR Part 1190.[1]

On August 7, 1984, the four standard-setting agencies issued the Uniform Federal Accessibility Standards as an effort to minimize the differences among the four agencies' Barriers Act standards, and among those standards and accessibility standards used by the private sector. The General Services Administration (GSA) and Department of Housing and Urban Development (HUD) have incorporated UFAS into their Barriers Act regulations (*see* 41 CFR Part 101-19.6) (GSA) and 24 CFR Part 40 (HUD)). In order to ensure uniformity, UFAS was designed to be consistent with the scoping and technical provisions of the ATBCB's minimum guidelines and requirements, as well as the technical provisions of ANSI A117.1-1980, published by the American National Standards Institute (ANSI). (The 1980 ANSI standard contains few scoping provisions.) ANSI is a private, national organization that publishes recommended standards on a wide variety of subjects. ANSI's original accessibility standard, ANSI A117.1, "Specifications for Making Buildings and Facilities Accessible to, and Usable by, Physically Handicapped People," was published in 1961 and reaffirmed in 1971. The current edition, issued in 1986, is ANSI A117.1-1986. The 1961, 1980, and 1986 ANSI standards are frequently

[1] The ATBCB Office of Technical Services is available to provide technical assistance to recipients upon request relating to the elimination of architectural barriers. Its address is: U.S. ATBCB, Office of Technical Services, 330 C Street SW., Washington, DC 20201. The telephone number is (202) 472-2700 [voice/TDD]. This is not a toll free number.

used in private practice and by State and local governments.

This rule amends the current regulation implementing section 504 in programs or activities receiving Federal financial assistance from TVA to refer to UFAS.

TVA has determined that it will not require the use of UFAS, or any other standard, as the sole means by which recipients can achieve compliance with the requirement that new construction and alterations be accessible. To do so would unnecessarily restrict recipients' ability to design for particular circumstances. In addition, it would create conflicts with State or local accessibility requirements that may also apply to recipients' buildings and that are intended to achieve ready access and use. It is expected that in some instances recipients will be able to satisfy the Section 504 new construction and alteration requirements by following applicable State or local codes, and vice versa.

Effect of Amendment

The amendment would not affect the current Section 504 requirement that new facilities be designed and constructed to be readily accessible and that alterations be accessible to the maximum extent feasible. It would merely provide that compliance with UFAS with respect to buildings shall be deemed compliance with these requirements with respect to those buildings. Thus, for example, an alteration is accessible "to the maximum extent feasible" if it is done in accordance with UFAS. It should be noted that UFAS contains special requirements for alterations where meeting the general standards would be impracticable or infeasible (*see, e.g.*, UFAS sections 4.1.6(1)(b), 4.1.6(3), 4.1.6(4), and 4.1.7).

Buildings under design on the effective date of this amendment will be governed by the amendment if the date that bids or proposals were invited falls after the effective date. This interpretation is consistent with GSA's Architectural Barriers Act regulation incorporating UFAS, at 41 CFR Subpart 101–19–6. In this same context, the NPRM in proposed § 1307.6(d)(1) set May 2, 1978, as the date governing what was a "new facility." This date is no longer necessary and has been eliminated.

The amendment also includes language providing that departures from particular UFAS technical and scoping requirements are permitted so long as the alternative methods used will provide substantially equivalent or greater access to and utilization of the building. Allowing these departures from UFAS will provide recipients with necessary flexibility to design for special circumstances and will facilitate the application of new technologies that are not specified in UFAS. As explained under "Background of Accessibility Standards," we anticipate that compliance with some provisions of applicable State and local accessibility requirements will provide "substantially equivalent" access. In some circumstances, recipients may choose to use methods specified in model building codes or other State or local codes that are not necessarily applicable to their buildings but that achieve substantially equivalent access.

The amendment requires that the alternative methods provide "substantially" equivalent or greater access, in order to clarify that the alternative access need not be precisely equivalent to that afforded by UFAS. Application of the "substantially equivalent access" language will depend on the nature, location, and intended use of a particular building. Generally, alternative methods will satisfy the requirement if in material respects the access is substantially equivalent to that which would be provided by UFAS in such respects as safety, convenience, and independence of movement. For example, it would be permissible to depart from the technical requirement of UFAS section 4.10.9 that the inside dimensions of an elevator car be at least 68 inches or 80 inches (depending on the location of the door) on the door opening side, by 54 inches, if the clear floor area and the configuration of the car permits wheelchair users to enter the car, make a 360° turn, maneuver within reach of controls, and exist from the car. This departure is permissible because it results in access that is safe, convenient, and independent, and therefore substantially equivalent to that provided by UFAS.

With respect to UFAS scoping requirements, it would be permissible in some circumstances to depart from the UFAS new construction requirement of one accessible principal entrance at each grade floor level of a building (*see* UFAS section 4.1.2(8)), if safe, convenient, and independent access is provided to each level of the new facility by a wheelchair user from an accessible principal entrance. This departure would not be permissible if it required a handicapped person to travel an extremely long distance to reach the spaces served by the inaccessible entrances or otherwise provided access that was substantially less convenient than that which would be provided by UFAS.

It would not be permissible for a recipient to depart from UFAS's requirement that, in new construction of a long-term care facility, at least 50 percent of all patient *bedrooms* be accessible (*see* section 4.1.4(9)(b)), by using large accessible wards that make it possible for 50 percent of all beds in the facility to be accessible to handicapped persons. The result is that the population of handicapped persons in the facility will be concentrated in large wards, while able-bodied persons will be concentrated in smaller, more private rooms. Because convenience for handicapped persons is therefore compromised to such a great extent, the degree of accessibility provided to handicapped persons is not substantially equivalent to that intended to be afforded by UFAS.

It should be noted that the amendment does not require that existing buildings leased by recipients meet the standards for new construction and alterations. Rather, it continues the current Federal practice under section 504 of treating newly leased buildings as subject to the program accessibility standard for existing facilities.

The amendment includes language modifying the effect of UFAS section 4.1.6(1)(g), which provides an exception to UFAS section 4.1.6 *Accessible buildings: alterations.* Section 4.1.6(1)(g) of UFAS states that "mechanical rooms and other spaces which normally are not frequented by the public or employees of the building or facility or which by nature of their use are not required by the Architectural Barriers Act to be accessible are excepted from the requirements of 4.1.6." Particularly after the development of specific UFAS provisions for housing alterations and additions, UFAS section 4.1.6(1)(g) could be read to exempt alterations to privately owned residential housing, which is not covered by the Architectural Barriers Act unless leased by the Federal Government for subsidized housing programs. This exception, however, is not appropriate under section 504, which protects beneficiaries of housing provided as part of a federally assisted program. Consequently, the amendment provides that, for purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or handicapped residents or employees.

The amendment also provides that whether or not the recipient opts to follow UFAS in satisfaction of the ready

access requirement, the recipient is not required to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member. This provision does not relieve recipients of their obligation under the current regulation to ensure program accessibility.

This document has been reviewed by the Department of Justice. It is an adaptation of a prototype prepared by the Department of Justice under Executive Order 12250 (45 FR 72995, 3 CFR, 1980 Comp., at 298).

The Architectural and Transportation Barriers Compliance Board has also been consulted in the development of this document in accordance with 28 CFR 41.7.

This regulation is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR, 1981 Comp. at 127) because it imposes no new requirements. Therefore, a regulatory impact analysis has not been prepared.

It does not have an impact on small entities and, therefore, is not subject to the Regulatory Flexibility Act (5 U.S.C. 601–612).

List of Subjects in 18 CFR Part 1307

Blind, Buildings, Civil Rights, Federal buildings and facilities, Handicapped.

For the reasons stated in the preamble, Part 1307 of Title 18 of the *Code of Federal Regulations* is amended as follows:

PART 1307—[AMENDED]

1. The authority citation for Part 1307 continues to read as follows:

Authority: TVA Act, 48 Stat. 58 (1933) as amended, 16 U.S.C. 831–831dd (1976) and sec. 504 of the Rehabilitation Act of 1973, Pub. L. 93–112, as amended, 29 U.S.C. 794 (1976; Supp. II 1978).

(2) In § 1307.6, paragraph (d) is revised as follows:

§ 1307.6 Program accessibility.

* * * * *

(d) *New construction.* (1) New facilities required under a program subject to this part shall be designed and constructed to be readily accessible to and usable by handicapped persons.

(2) Effective as of November 4, 1988, design, construction, or alteration of buildings in conformance with Sections 3–8 of the Uniform Federal Accessibility Standards (UFAS) (41 CFR Subpart 101–19.6 app. A) shall be deemed to comply with the requirements of this section with respect to those buildings. Departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided.

(3) For purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of physically handicapped persons.

(4) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

W.F. Willis,

General Manager.

Editorial Note: This document was received at the Office of the Federal Register September 30, 1988.

[FR Doc. 88–22975 Filed 10–4–88; 8:45 am]

BILLING CODE 8120–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 86F–0233]

Indirect Food Additives; Polymers

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 a polyurethane-polyester resin-epoxy adhesive in the production of high temperature laminates intended to contact food. This action responds to a petition filed on behalf of Takeda Chemical Industries, Ltd.

DATES: Effective October 5, 1988; written objections and requests for a hearing by November 4, 1988.

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

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

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of July 25, 1986 (51 FR 26752), FDA announced that a petition (FAP 6B3937) had been filed on behalf of Takeda Chemical Industries, Ltd., c/o. 1730 Rhode Island Ave. NW., Washington, DC 20036, proposing that § 177.1390 *Laminate structures for use at temperatures of 250 °F and and above* (formerly *High-temperature laminates*) (21 CFR 177.1390) be amended to provide for the safe use of a polyurethane-polyester resin-epoxy adhesive formulated from: (1) polyester-urethanediol resin, prepared by the reaction of polybasic acids and polyhydric alcohols listed in 21 CFR 175.300(b)(3)(vii) and 3-isocyanatomethyl-3,5,5-trimethylcylclohexyl isocyanate, with optional trimethoxysilane coupling agents containing amino, epoxy, ether, and/or mercapto groups; (2) polyester resins formed by the reaction of polybasic acids and polyhydric alcohols listed in 21 CFR 175.300(b)(3)(vii), additionally azelaic acid and 1,6-hexanediol may also be used as reactants; (3) epoxy resins listed in 21 CFR 175.300(b)(3)(viii)(*a*); and (4) urethane cross-linking agent, formulated from 3-isocyanatomethyl-3,5,5-trimethylcyclohexyl isocyanate adduct of trimethylol propane and/or 1,3-bis(isocyanatomethyl)benzene adduct of trimethylol propane for use in the production of high-temperature laminates intended to contact food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use of the additive is safe, and that the regulations should be amended in 21 CFR 177.1390(c) as set forth below. The agency is also correcting inconsistencies in the title of the method incorporated by reference in 21 CFR 177.1390 (c)(3)(i)(*a*) and (c)(3)(i)(*b*).

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition 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. FDA 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 the 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 4, 1988 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 177

Food additives, Food packaging, Incorporation by reference.

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, Center for Food Safety and Applied Nutrition, Part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR Part 177 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 177.1390 is amended by adding paragraph (c)(2)(vi), in paragraphs (c)(3)(i)(*a*)(*1*) and (*2*) by revising " 'Determination of Nonvolatile Chloroform Soluble Residues in Retort Pouch Water Extractives' " to read " 'Determination of Non-volatile Chloroform Soluble Residues in Retort Pouch Water Extracts' " everywhere it appears, in paragraphs (c)(3)(i)(*b*)(*1*) and (*2*) by revising " 'Determination of Nonvolatile Chloroform Soluble Residues in Retort Pouch Water Extracts' " to read " 'Determination of Non-volatile Chloroform Soluble Residues in Retort Pouch Water Extracts' " everywhere it appears, and by adding (c)(3)(i)(*b*)(*3*) to read as follows:

§ 177.1390 Laminate structures for use at temperatures of 250 °F and above.

* * * * *

(c) * * *

(2) * * *

(vi) Polyurethane-polyester resin-epoxy adhesives formulated from the following mixture:

(*a*)(*1*) Polyester-polyurethanediol resins prepared by the reaction of a mixture of polybasic acids and polyhydric alcohols listed in § 175.300(b)(3)(vii) of this chapter and 3-isocyanatomethyl-3,5,5-trimethylcyclohexyl isocyanate (CAS Reg. No. 4098–71–9).

(*2*) Polyester resin formed by the reaction of polybasic acids and polyhydric alcohols listed in § 175.300(b)(3)(vii) of this chapter. Additionally, azelaic acid and 1,6-hexanediol may also be used as reactants in lieu of a polyhydric alcohol.

(*3*) Epoxy resin listed in § 175.300(b)(3)(viii)(*a*) of this chapter and comprising not more than 5 percent by weight of the cured adhesive.

(*4*) Optional trimethoxy silane curing agents, containing amino, epoxy, ether, or mercapto groups not in excess of 3 percent of the cured adhesive.

(*b*) Urethane cross-linking agent, comprising not more than 20 percent by weight of the cured adhesive, and formulated from trimethylol propane (CAS Reg. No. 77–99–6) adducts of 3–isocyanatomethyl–3,5,5–trimethylcyclohexyl isocyanate (CAS Reg. No. 4098–71–9) or 1,3-bis(isocyanatomethyl)benzene (CAS Reg. No. 25854–16–4).

(3) * * *

(i) * * *

(*b*) * * *

(*3*) The chloroform-soluble fraction of the total nonvolatile extractives for containers using adhesives listed in paragraph (c)(2)(vi) of this section shall not exceed 0.008 milligram per square centimeter (0.05 milligram per square inch) as determined by a method entitled, "Determination of Non-volatile Chloroform Soluble Residues in Retort Pouch Water Extracts," which is incorporated by reference in paragraph (c)(3)(i)(*a*)(*1*) of this section.

* * * * *

Dated: September 26, 1988.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88–22855 Filed 10–4–88; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 524

Topical Dosage Form New Animal Drugs Not Subject to Certification; Mupirocin Ointment

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Beecham Laboratories, providing for the use of Bactoderm® (mupirocin) Ointment for treating topical bacterial infections of the skin of dogs.

EFFECTIVE DATE: October 5, 1988.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3420.

SUPPLEMENTARY INFORMATION: Beecham Laboratories, Division of Beecham, Inc., Bristol, TN 37620, filed NADA 140–839 which provides for topical use of Bactoderm® mupirocin) Ointment for dogs for treating bacterial infections of the skin, including superficial pyoderma, caused by susceptible strains of *Staphylococcus aureus* and *Staphylococcus intermedius*. The NADA is approved and the regulations are amended by adding new § 524.1465 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

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

The agency has carefully considered the potential environmental effects of this action. FDA 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).

List of Subjects in 21 CFR Part 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 524 is amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 524 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. New § 524.1465 is added to read as follows:

§ 524.1465 Mupirocin ointment.

(a) *Specifications.* Each gram contains 20 milligrams of mupirocin.

(b) *Sponsor.* See No. 000029 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Dogs*:

(i) *Indications for use.* Topical treatment of bacterial infections of the skin, including superficial pyoderma, caused by susceptible strains of *Staphylococcus aureus* and *Staphylococcus intermedius.*

(ii) *Limitations.* Apply twice daily. Treatment should not exceed 30 days. Because of potential hazard of nephrotoxicity due to polyethylene glycol content, care should be exercised in treating deep lesions. Safety of use in pregnant or breeding animals has not been determined. Not for ophthalmic use. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) [Reserved]

Dated: September 28, 1988.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 88-22854 Filed 10-4-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

Approval of Amendment to the Kansas Permanent Regulatory Program

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

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of a program amendment submitted by Kansas as a modification to the State's permanent regulatory program (hereinafter referred to as the Kansas program) and abandoned mine land reclamation (AMLR) plan under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment abolishes of the Mined Land Conservation and Reclamation Board (MLCRB) and transfers the program to the Kansas Department of Health and Environment (KDHE), Division of Environment, Bureau of Waste Management, Surface Mining Section to improve operational efficiency.

EFFECTIVE DATE: July 1, 1988.

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

The Secretary of the Interior approved the Kansas program on January 21, 1981 (46 FR 5892). Information pertinent to the general background and revisions to the permanent program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Kansas program, can be found in the January 21, 1981, **Federal Register** (46 FR 5892). Subsequent actions concerning proposed amendments are codified at 30 CFR 916.12, 916.15, and 916.16.

II. Submission of Amendments

On April 29, 1988, (Administrative Record No. KS-424) Kansas proposed to amend its permanent regulatory program and AMLR plan by abolishing the MLCRB and transfering its functions and staff to the KDHE. House Bill No. 3009 amends the following Sections of the Kansas Statutes Annotated (K.S.A.): 49-402, 49-404, 49-405, 49-405a, 49-405b, 49-405c, 49-405d, 49-407, 49-408, 49-409, 49-410, 49-413, 49-415, 49-416, 49-416a, 49-417, 49-420, 49-421a, 49-426, 49-427, 49-428, 49-429, 49-432, and 49-433 and K.S.A. 1987.

The Director announced receipt of the Proposed amendments in the June 8, 1988, **Federal Register** (53 FR 21494) and, in the same notice, opened the public comment period and provided an opportunity for a public hearing on its substantive adequacy. No public comments were received by July 8, 1988, the close of the comment period. The public hearing, scheduled for July 5, 1988, was not held because no one requested an opportunity to testify.

III. Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.15 and 732.17, that the amendment submitted by Kansas on April 29, 1988, meets the requirements of SMCRA and 30 CFR Chapter VII as discussed below.

Reorganization of Regulatory Authority

House Bill 3009 eliminates the Kansas MLCRB and transfers its office and responsibilities to the KDHE. Section 1 ensures that the KDHE will be the successor to the powers, duties, and functions of the MLCRB, abolishes the office of the MLCRB executive director, and provides for the continued effectiveness of all rules, regulations, permits, orders, and directives. Section 2 ensures that the funds appropriated to the State Corporation Commission for the activities of the MLCRB are transferred to the KDHE for the purpose of the original appropriation. Sections 3 and 4 provide for the succession by KDHE of property, records, and judicial proceedings of the MLCRB. Section 5 transfers the existing officers and employees of the MLCRB to the KHDE. Section 6 through 32 record the name changes of the regulatory authority from the MLCRB to the Secretary, the KDHE, the authorized representative, or the hearing officer and includes certain nonsubstantive minor editorial changes for improved clarity and accuracy.

The Federal regulations at 30 CFR 732.17(b)(2) stipulate that the State shall promptly notify the Director, in writing, of any changes in the authority of the regulatory authority to implement, administer or enforce the approved program. As noted above, Kansas formally notified OSMRE of the impending transfer of the regulatory authority by letter dated April 29, 1988. The Kansas program amendment includes no substantive changes except for the transfer of the regulatory authority.

After reviewing the document submitted by Kansas, the Director has determined that the designation of the new regulatory authority meets the requirements of SMCRA and the Federal regulations since the program will retain current resources, staffing levels and regulations. Therefore, the Director finds that the newly designated regulatory authority has the capability to implement, administer and enforce the approved program provisions consistent with section 503(a) of SMCRA and 30 CFR 732.15(b).

Abandoned Mine Land Reclamation Program

House Bill 3009 makes no substantive changes in the Kansas abandoned mine land reclamation (AMLR) program other than the reorganization of the regulatory authority. Section 1 provides that the KDHE will be the successor to the powers, duties, and functions of the MLCRB. Section 2 provides that the funds appropriated to the State Corporation Commission for the activities of the MLCRB are transferred to the KDHE for the purposes of the original appropriations. Section 5 transfers the existing officers and employees of the MLCRB to the KDHE. Sections 6 through 32 record the name changes of the regulatory authority from the MLCRB to the Secretary, the KDHE, the authorized representative, or the hearing officer.

Therefore, the Director finds that the KDHE has the capability and the authority to implement the approved AMLR program as required by section 205(b) of SMCRA and the Federal regulations at 30 CFR 884.13(a).

IV. Public Comments and Agency Comments

As discussed above, the Director solicited public comment and provided opportunity for a public hearing on the proposed amendments. No public comments were received and, since no one requested an opportunity to testify at a public hearing, no hearing was held.

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11), comments were also solicited from various Federal agencies with an actual or potential interest in the Kansas program. The Washington, DC office of the U.S. Environmental Protection Agency (EPA) concurred that the amendments to the Kansas program demonstrate the legal authority, administrative capability, and technical conformity to OSMRE regulations necessary to maintain water quality standards promulgated under the authority of the Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*). The Region VII office of the EPA offered four comments that referred to provisions of the Kansas program previously reviewed and approved by OSMRE. Since these comments are outside the scope of this current rulemaking, the Director cannot address the comments at this time. None of the other agencies notified offered any comment.

V. Director's Decision

Based on the above findings, the Director is approving the proposed amendments submitted by Kansas on April 29, 1988. To the extent required by 30 CFR 732.17(h)(11)(ii), the EPA has concurred in this approved (Administrative Record No. KS–427). The transfer of responsibility from the MLCRB to the KDHE became effective July 1, 1988. The Federal regulations at 30 CFR Part 916 codifying decisions concerning the Kansas programs are being amended to implement this decision. The final rule is being made effective July 1, 1988 to coincide with the effective date of the Kansas legislation and to avoid any conflicts regarding enforcement actions and other program activities.

VI. Additional Determinations

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

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On July 12, 1984, 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 review by OMB.

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

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

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 916

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

Dated: September 15, 1988.

Robert E. Boldt,

Deputy Director, Office of Surface Mining Reclamation and Enforcement.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below.

PART 916—KANSAS

1. The authority citation for Part 916 is revised to read:

Authority: 30 U.S.C. 1201 et seq.

2. Section 916.10 is revised to read:

§ 916.10 State regulatory program approval.

The Kansas program as submitted on February 26, 1980, and amended on October 31, 1980, was conditionally approved, effective January 21, 1981. Beginning on that date, and continuing until July 1, 1988, the Kansas Mined Land Conservation and Reclamation Board was deemed the regulatory authority in Kansas for all surface coal mining and reclamation operations on non-Federal and non-Indian lands. Beginning on July 1, 1988, the Department of Health and Environment shall be deemed the regulatory authority, pursuant to the program transfer provisions of House Bill 3009 as signed by the Governor of Kansas on April 8, 1988. Copies of the approved program, as amended, are available at:

(a) Office of Surface Mining Reclamation and Enforcement, Kansas City Field Office, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106.

(b) Kansas Department of Health and Environment, Division of Environment, Bureau of Waste Management, Surface Mining Section, 107 W. 11th Street, P.O. Box 1418, Pittsburg, Kansas 66762.

(c) Office Surface Mining Reclamation and Enforcement, Administrative Record Office, 1100 L Street NW., Room 5131 Washington, DC 20240.

3. Section 916.15 is amended by adding paragraph (h) to read as follows:

§ 916.15 Approval of regulatory program amendment.

* * * * *

(h) The following statutory amendment submitted to OSMRE on April 29, 1988, Transferring administration of the Kansas program from the Mined Land Reclamation and Conservation Board to the Kansas Department of Health and Environment is approved effective July 1, 1988: Revisions to the Kansas Statutes Annotated (K.S.A.) sections 49–402, 49–404, 49–405, 49–405a, 49–405b, 49–405c,

49–405d, 49–407, 49–408, 49–409, 49–410, 49–413, 49–415, 49–416, 49–416a, 49–417, 49–420, 49–421a, 49–426, 49–427, 49–428, 49–429, 49–432, and 49–433 and K.S.A. 1987 Supplement 49–403, 49–406, and 49–422a.

4. Section 916.20 is revised to read:

§ 916.20 Approval of Kansas abandoned mine land reclamation plan.

The Kansas abandoned mine land reclamation (AMLR) plan as submitted October 1, 1981 and amended April 4, 1982 and July 1, 1988, was approved effective June 3, 1983. Copies of the approved AMLR plan as amended are available at:

(a) Office of Surface Mining Reclamation and Enforcement, Kansas City Field Office, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106.

(b) Kansas Department of Health and Environment, Division of Environment, Bureau of Waste Management, Surface Mining Section, 107 W. 11th Street, P.O. Box 1418, Pittsburg, Kansas 66762.

(c) Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, 1100 L Street NW., Room 5131, Washington, DC 20240.

5. Section 916.25 is added to read as follows:

§ 916.25 Approval of abandoned mine land reclamation plan amendments.

(a) The following amendment as submitted to OSMRE on April 29, 1988 is approved effective July 1, 1988: House Bill 3009, which abolishes the Mined Land Conservation and Reclamation Board and transfers its authorities, responsibilities, personnel and funding to the Kansas Department of Health and Environment.

(b) [Reserved]

[FR Doc. 88–21626 Filed 10–4–88; 8:45 am]
BILLING CODE 4310-05-M

POSTAL SERVICE

39 CFR Part 232

Updating of Authority Citation

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The purpose of this document is to update the authority line of Part 232 by substituting a reference to the most recently enacted appropriation act.

EFFECTIVE DATE: September 22, 1988.

FOR FURTHER INFORMATION CONTACT: Paul J. Kemp (202) 268–2960.

SUPPLEMENTARY INFORMATION:

List of Subjects in 39 CFR Part 232

Law enforcement, Postal Service.

PART 232—[AMENDED]

The authority citation for Part 232 is revised to read as set forth below:

Authority: 39 U.S.C. 401, 403(b)(3); 40 U.S.C. 318, 318a, 318b, 318c; sec. 609, Treasury, Postal Service and General Government Appropriations Act, 1989, Pub. L. 100–440; 18 U.S.C. 3061.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 88–22894 Filed 10–4–88; 8:45 am]
BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3458–6]

Approval and Promulgation of Implementation Plans; State of California; Ventura County Ozone Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This notice announces EPA's final disapproval of the California State Implementation Plan (SIP) for ozone in the southern portion of Ventura County. This final action is being taken because the SIP for Ventura County does not provide for attainment of the ozone national ambient air quality standard (NAAQS) by the statutory deadline of December 31, 1987, or by any other fixed date, as required by section 172(a) of the Clean Air Act ("the Act") (42 U.S.C. 7502(a)). Pursuant to section 110(a)(2)(I) of the Act and EPA's implementing regulations, this disapproval results in the imposition of a moratorium on the construction and modification of major stationary sources of volatile organic compounds (VOC) in Ventura County. *See* 40 CFR 52.24 and 42 U.S.C. 7410(a)(2)(I).

DATES: EPA's disapproval of the Ventura ozone SIP is effective November 4, 1988. The ban on construction or modification of major sources is effective November 4, 1988.

FOR FURTHER INFORMATION CONTACT: Wallace D. Woo, Chief, State Liaison Section, Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, California 94105, *Telephone*: (415) 974–7634, (FTS) 454–7634.

SUPPLEMENTARY INFORMATION:

A. Background

A brief background of the Act and the history of the Ventura SIP is provided here. For a more comprehensive description of the relevant requirements of the Act and EPA's regulatory actions on the Ventura SIP, see the proposed disapproval of the SIP for Ventura and three other areas in California (52 FR 26431, July 14, 1987) and the General Preamble accompanying that notice (52 FR 26404).

The Clean Air Act mandates a system of state implementation plans as the chief mechanism for meeting the NAAQS. Section 110(a)(1) directs the state to submit, within nine months from the promulgation of primary NAAQS, a plan for implementing those NAAQS. Section 110 lays out the requirements that the plan must meet and provides a mechanism for revision of the plan where the Administrator finds that the plan is substantially inadequate to achieve the NAAQS by the relevant deadline.

Recognizing the numerous areas had not been able to attain the NAAQS within the initial timeframe, Congress added Part D to the Act in 1977. Part D allowed certain "nonattainment" areas to apply for time extensions to December 31, 1982, with the exception that certain areas, in which it was "not possible" to meet that deadline for ozone and CO despite the application of all reasonably available control measures, could apply for a further extension to December 31, 1987.

California requested, and EPA approved, an extension of the statutory attainment date for ozone in Ventura County to December 31, 1987. The State then submitted 1982 plan updates for the ozone SIP. In 1983, EPA proposed to disapprove this revision and impose a construction ban on the ground that the plan did not provide for attainment of the ozone standard by the end of 1987, or reasonable further progress in the interim. 48 FR 5074 February 3, 1983). On July 30, 1984, EPA took final action to approve the control measures submitted by the State, but held open the question of whether to approve the attainment demonstration in the SIP submittal for Ventura and for three other areas of California (South Coast, Fresno, and Sacramento) similarly lacking approvable SIP attainment demonstrations for ozone or carbon monoxide. 49 FR 30300, 30305 (July 30, 1984).

In July 1987, EPA reproposed to disapprove the ozone SIP for Ventura, South Coast, Fresno, Sacramento and several other areas. 52 FR 26408–26409,

26431–26435 (July 14, 1987). In that notice, EPA stated that it lacked authority to continue to defer action on the plans for those areas that had not yet submitted a plan demonstrating attainment by the deadline, and that it had no choice but to disapprove the plans for those areas and impose a construction ban under section 110(a)(2)(I).

In November 1987, the Ninth Circuit Court of Appeals issued its opinion in *Abramowitz v. United States Environmental Protection Agency*. 832 F.2d 1071 (9th Cir. 1987). The court held that EPA lacked authority to defer action on whether the South Coast ozone and carbon monoxide plan meets all of the Part D requirements of the Act when the Agency approved the individual control measures. The court ordered EPA to "disapprove the relevant SIP provisions." 832 F.2d at 1079. Pursuant to the Ninth Circuit Court's instructions, EPA took final action in January 1988 to disapprove the South Coast SIP. 53 FR 1780 (January 22, 1988).

B. Discussion

EPA concludes that the attainment demonstration deficiency in the Ventura ozone SIP is substantively identical to the deficiency in the South Coast CO and ozone SIP, and EPA is therefore now taking final action to disapprove the Ventura SIP. As in the case of EPA's July 14, 1987 proposal and the final disapproval of the South Coast SIP, the ground for EPA's final disapproval of the Ventura SIP is that it does not demonstrate attainment of the ozone NAAQS by December 31, 1987, or by any other fixed near term date thereafter. Under the terms of the Act and EPA's regulations, such final plan disapproval results in the imposition of a construction ban in the nonattainment portion of Ventura County for major new sources and major modifications of existing sources of VOC.[1] Section 110(a)(2)(I); 40 CFR 52.24(a). Under 40 CFR 52.24(f)(4)(ii) and (f)(5)(i), a major stationary source or major modification that is major for VOC is also major for ozone.

Today's action is driven by the reasoning of the decision in *Abramowitz*. That decision establishes that EPA has no discretion under the law to postpone the final disapproval when the Agency has effectively determined that the plan does not provide for attainment by any fixed date. Thus, EPA is not responding directly to public comments on EPA's July 14, 1987 proposal. EPA may respond to some of the comments in the future, perhaps in connection with EPA's final policy on how areas like Ventura should correct their SIPs after December 31, 1987.

C. Final Action

EPA is today taking final action to disapprove the 1982 Ventura County SIP revision for attainment of the primary NAAQS for ozone. Pursuant to the Administrative Procedure Act, 5 U.S.C. 553(d), this disapproval is effective November 4, 1988. The effective date for the construction ban is November 4, 1988.

Under Executive Order 12291, this action is not "Major." It has been submitted to the Office of Management and Budget for review.

Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA must assess the impact of proposed or final rules on small entities. EPA does not have sufficient information to determine the impacts that the construction moratorium announced in today's notice may have on small entities, because it is difficult to obtain reliable information on future plans for business growth. Even if this action were to have a significant impact, however, the Agency could not modify its action. Under the Act, the imposition of a construction moratorium is mandatory whenever the Agency determines that an implementation plan for a nonattainment area fails to meet the requirements of Part D of the Act, and that determination, in turn, is effectively required by the Ninth Circuit's decision in *Abramowitz*.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 5, 1988. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Intergovernmental relations.

Dated: September 28, 1988.

Lee M. Thomas,

Administrator.

40 CFR Part 52, Subpart F, is amended as follows:

PART 52—[AMENDED]

Subpart F—California

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.237 is amended by adding new paragraph (a)(2) to read as follows:

§ 52.237 Part D disapproval.

(a) * * *

(2) The ozone attainment demonstration for Ventura County. No major stationary source, or major modification of a stationary source, of volatile organic compounds may be constructed in the Ventura County nonattainment area unless the construction permit application is complete on or before November 4, 1988.

* * * * *

[FR Doc. 88–22915 Filed 10–4–88; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 147

[FR–3382–2]

Nevada Department of Conservation and Natural Resources; Underground Injection Control Primacy Program Approval

AGENCY: Environmental Protection Agency.

ACTION: Approval of Primacy Program.

SUMMARY: The State of Nevada has submitted an application under section 1422 of the Safe Drinking Water Act for the approval of an Underground Injection Control (UIC) program. After careful review of the application, the Agency has determined that the State's injection well program meets the requirements of the Act and therefore, approves it.

A notice of public comment period for the State of Nevada UIC Primacy Application was published in the **Federal Register** on February 18, 1988. Only comments generally supportive of groundwater protection programs were received by March 21, 1988, the close of the comment period.

EFFECTIVE DATE: This approval shall become effective on October 5, 1988. The incorporation by reference of certain State statutes and regulations listed in the State Primacy program is approved by the Director of the Federal Register effective October 5, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie A. Higgins, W–6–2, Environmental Protection Agency, Region IX, 215

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[1] The ozone nonattainment area in Ventura County includes all portions of the County south of the southern boundary of the Los Padres National Forest. Within this nonattainment area, any major new source or major modification for which the construction permit application is incomplete on or after [thirty days from publication] will be prohibited from construction. EPA's criteria for determining an application to be complete are explained in 52 FR 26404 and 26409 n.18 (July 4, 1987).

Fremont St., San Francisco, California 94105, PH: (415) 974–0782, (FTS) 454–0782.

SUPPLEMENTARY INFORMATION: Part C of the Safe Drinking Water Act (SDWA) provides for an Underground Injection Control (UIC) program. Section 1421 of the SDWA requires the Administrator to promulgate minimum requirements for effective State programs to prevent underground injection which endangers drinking water sources. The Administrator is also to list in the **Federal Register** each State for which, in his judgement, a State UIC program may be necessary. Each State listed shall submit to the Administrator an application which contains a satisfactory demonstration that the State: (i) Has adopted after reasonable notice and public hearings, a UIC program which meets the requirements of regulations in effect under section 1421 of the SDWA; and (ii) will keep such records and make such reports with respect to its activities under its UIC program as the Administrator may require by regulations. Section 1425 provides that for oil and gas-related injection control programs, the State may in lieu of meeting the requirements under section 1422(b)(1)(A) demonstrate that the State program meets the requirements of section 1421(b)(1) (A)–(D) and represents an effective program to prevent underground injection which endangers drinking water sources. After reasonable opportunity for public comment, the Administrator shall by rule approve, disapprove or approve in part and disapprove in part, the State's UIC program.

The State of Nevada was listed by EPA as needing a UIC program. The State submitted a final application under section 1422 on January 21, 1988, for a UIC program to regulate injection wells to be administered by the Nevada Division of Environmental Protection (DEP).

On February 18, 1988, EPA published notice of receipt of the application, requested public comments, and offered a public hearing on the UIC program submitted by the State. No requests to present substantive oral testimony were made, so the public hearing was cancelled.

After careful review of the application, I have determined that the portion of the Nevada program submitted by the DEP to regulate underground injection wells, applicable on all lands in the State other than Indian lands, meets the requirements of section 1422 of the SDWA and, hereby, approve it. The effect of the approval is to establish this program as the applicable underground injection control program under the SDWA for all wells on all non-Indian lands in the State of Nevada.

This program replaces the existing EPA-administered program for all underground injection wells (except on Indian lands). EPA promulgated a UIC program for Nevada on June 25, 1984 in order to comply with the requirement of the SDWA to promulgate a Federally-administered program if a State-administered program cannot be approved within a certain time. Now that EPA has determined that the State-administered program meets all applicable Federal requirements, the Agency is withdrawing the EPA-administered program for underground injection wells (except on Indian lands) and establishing the State-administered program as the applicable UIC program in the State, because of the preference in the SDWA for State administration of UIC programs.

This approval will be codified in 40 CFR 147.1450. State statutes and regulations that contain standards, requirements, and procedures applicable to owners or operators are incorporated by reference. To the extent set forth in 40 CFR Part 144 and 40 CFR Part 146, these provisions incorporated by reference, as well as all permit conditions or permit denials issued pursuant to such provisions, are enforceable by EPA pursuant to section 1423 of the SDWA.

The terms listed below comprise a complete listing of the thesaurus terms associated with 40 CFR Part 147, which sets forth the requirements for a State requesting the authority to operate its own permit program of which the Underground Injection control program is a part. These terms may not all apply to this particular notice.

List of Subjects in 40 CFR Part 147

Indian lands, Reporting and recordkeeping requirements, Intergovernmental relations, Penalties, Confidential business information, Water supply, Incorporation by reference.

OMB Review

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I certify that approval by EPA under section 1422 of the Safe Drinking Water Act of the application by the Nevada Division of Environmental Protection will not have a significant economic impact on a substantial number of small entities, since this rule only approves State actions. It imposes no new requirements on small entities.

Dated: May 12, 1988.

Lee M. Thomas,

Administrator.

As set forth in the preamble, Part 147 of Title 40 of the Code of Federal Regulations is amended as follows:

PART 147—STATE UNDERGROUND INJECTION CONTROL PROGRAMS

Subpart DD—Nevada

1. The authority for Part 147 continues to read as follows:

Authority: 42 U.S.C. 300h, 300h–1, 300h–2, 3009, 300j–4, 300j–6, 300i–9, 6912 and 6921 to 6939a.

2. Section 147.1450 is revised to read as follows:

§ 147.1450 State-administered program.

The UIC program for all classes of underground injection wells in the State of Nevada, other than those on Indian lands, is the program administered by the Nevada Division of Environmental Protection approved by EPA pursuant to section 1422 of the SDWA. Notice of this approval was published in the **Federal Register** on February 18, 1988; the effective date of this program is October 5, 1988. This program consists of the following elements, as submitted to EPA in the State's program application.

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Nevada. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained at the Nevada Department of Conservation and Natural Resources, Division of Environmental Protection, 201 South Fall Street, Carson City, Nevada 89710.

Copies may be inspected at the Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, California 99105, or at the Office of the Federal Register, 1100 L Street NW., Washington, DC.

(1) Nevada Revised Statutes [NRS], Volume 25, Chapters 445.131 through 445.354, Inclusive. 1987.

(2) Nevada Revised Statutes [NRS], Volume 29, Chapters 534A.010 through 534A.090, Inclusive. 1987.

(3) Nevada Revised Statutes [NRS], Volume 28, Chapters 522.010 through 522.190, Inclusive. 1987.

(4) Nevada Administrative Code [NAC], Underground Injection Control Regulations, Sections 1 through 96.1, Inclusive. July 22, 1987, revised September 3, 1987 (amending NAC Chapter 445).

(5) Nevada Administrative Code [NAC], Regulations and Rules of Practice and Procedure adopted Pursuant to NRS 534A, Sections 1 through 69, Inclusive. November 12, 1985 (amending NAC Chapter 534A).

(6) Nevada Administrative Code [NAC], Regulations and Rules of Practice and Procedure adopted Pursuant to NRS 522.010 through 522.625, Inclusive. July 22, 1987 (amending NAC Chapter 522).

(b) The Memorandum of Agreement between EPA Region 9 and the Nevada Department of Conservation and Natural Resources signed by the EPA Regional Administrator on April 6, 1988.

(c) *Statement of Legal Authority.* Statement and Amendment to the Statement from the Attorney General of the State of Nevada, signed on July 22, 1987 and November 6, 1987 respectively, by the Deputy Attorney General.

(d) The Program Description and any other materials submitted as part of the original application or as supplements thereto.

[FR Doc. 88-11208 Filed 10-4-88; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 180

[PP 8E3621/R984; FRL-3458-5]

Pesticide Tolerance for N-(Mercaptomethyl) Phthalimide S-(O,O-Dimethyl Phosphorodithioate)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the insecticide *N*-(Mercaptomethyl)phthalimide *S*-(*O,O*-dimethyl phosphorodithioate), also referred to in this document as phosmet, and its oxygen analog in or on the raw agricultural commodity crabapples. The Interregional Research Project No. 4 (IR-4) petitioned for this tolerance in support of regional registration.

EFFECTIVE DATE: October 5, 1988.

ADDRESS: Written objections, identified by the document control number, [PP 8E3621/R984], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Emergency Response and Minor Use Section, Registration Division (TS-767C), Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone numbers: Rm. 716 CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2310.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of August 17, 1988 (53 CF 31051), in which it was announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition (PP) 8E3621 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the Agricultural Experiment Station of California.

The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, establish a tolerance for cholinesterase-inhibiting residues of the insecticide phosmet and its oxygen analog *N*-(mercaptomethyl) phthalimide *S*-(*O,O*-dimethyl phosphorothioate) in or on the raw agricultural commodity crabapples at 20 parts per million (ppm).

The petitioner requested that use of phosmet or crabapples be limited to California based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

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

The data submitted in the petition and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance wil protect the public health. Therefore, the tolerance is established as set forth below.

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

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

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

Dated: September 22, 1988.

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 180.261(b) is amended by adding and alphabetically inserting the listing for the raw agricultural commodity crabapples, to read as follows:

§ 180.261 N-(Mercaptomethyl)phthalimide S-(O,O-dimethyl phosphorodithioate) and its oxygen analog; tolerances for residues.

* * * * *

(b) * * *

Commodities	Parts per million
Crabapples	20
* * * * *	

[FR Doc. 88-22812 Filed 10-4-88; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 180

[PP 7E3559, 8E3585/R983; FRL 3458-6]

Pesticide Tolerances for Ethyl 3-Methyl-4-(Methylthio)Phenyl (1-Methylethyl) Phosphoramidate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the

nematocide ethyl 3-methyl-4-(methylthio)phenyl (1-methylethyl) phosphoramidate, also referred to in this document as fenamiphos, and its cholinesterase-inhibiting metabolites in or on the raw agricultural commodities kiwifruit and non-bell peppers. The Interregional Research Project No. 4 (IR-4) petitioned for these tolerances in support of regional registration.

EFFECTIVE DATE: October 5, 1988.

ADDRESS: Written objections, identified by the document control number [PP 7E3559, 8E3585/R983], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Emergency Response and Minor Use Section, Registration Division (TS-767C), Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2310.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of August 17, 1988 (53 FR 31049), in which it was announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petitions (PP) 8E3585 and 7E3559 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the Agricultural Experiment Stations of California (PP 8E3585) and California and Puerto Rico (PP 7E3559) for the combined residues of the nematocide fenamiphos and its cholinesterase inhibiting metabolites ethyl 3-methyl-4-(methylsulfinyl)phenyl (1-methylethyl) phosphoramidate and ethyl 3-methyl-4-(methylsulfonyl)phenyl (1-methylethyl) phosphoramidate in or on certain raw agricultural commodities.

1. *PP 8E3585.* Petition submitted on behalf of the Agricultural Experiment Station of California for kiwifruit at 0.1 part per million (ppm).

2. *PP 7E3559.* Petition submitted on behalf of the Agricultural Experiment Stations of California and Puerto Rico and the U.S. Department of Agriculture for non-bell peppers at 0.6 ppm.

The petitioner proposed that use of fenamiphos on kiwifruit be limited to California and use on non-bell peppers be limited to California, Georgia, and Puerto Rico based on the geographical representation of the residue data submitted. Additional data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

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

The data submitted in the petitions and all other relevant material have been evaluated and discussed in the proposed rule. 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 publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

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

Dated: September 23, 1988.

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 180.349(c) is amended by adding and alphabetically inserting the listings for the raw agricultural commodities kiwifruit and non-bell peppers, to read as follows:

§ 180.349 Ethyl 3-methyl-4-(methylthio) phenyl (1-methylethyl) phosphoramidate; tolerances for residues.

* * * * *

(c) * * *

Commodities	Parts per million
* * * * *	
Kiwifruit	0.1
Peppers, non-bell	0.6

[FR Doc. 88-22811 Filed 10-4-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 62

National Flood Insurance Program; Assistance to Private Sector Property Insurers; Correction

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule; correction.

SUMMARY: This correction relates to the final rule that was published in the **Federal Register** on April 28, 1988 (53 FR 15208-15219), regarding changes in the National Flood Insurance Program's assistance to private sector property insurers under the "Write-Your-Own" (WYO) Program.

On page 15217 in the right-hand column, the reference in item No. 6.e.(3) to section "f" should read "g".

FOR FURTHER INFORMATION CONTACT: Charles M. Plaxico, Federal Emergency Management Agency, Federal Insurance Administration, Room 429, 500 "C" Street, SW., Washington, DC 20472; telephone number (202) 646-3422.

SUPPLEMENTARY INFORMATION: Accordingly, in FR Doc. 88-9378, appearing on pages 15208-15219 in the issue of April 28, 1988, the following correction is made:

PART 62—SALE OF INSURANCE AND ADJUSTMENT OF CLAIMS

Appendix B to Part 62—[Corrected]

1. On page 15217 in the right-hand column, the reference in item No. 6.e.(3) is corrected by removing the phrase "section 'f' " and adding in its place the phrase "section 'g' ".

Dated: September 29, 1988.

Charles M. Plaxico,

Chief, Regulations & Underwriting Division, Federal Insurance Administration.

[FR Doc. 88-22931 Filed 10-4-88; 8:45 am]

BILLING CODE 6718-05-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[Gen. Docket No. 87-387, FCC 88-259]

Administrative Practice and Procedure; Public Information and Inspection of Records

AGENCY: Federal Communications Commission.

ACTION: Final Rule.

SUMMARY: To implement the statutory requirements contained in the Freedom of Information Reform Act (Reform Act) and the administrative procedures set forth in OMB Guidelines pertaining to the Reform act, the Commission has amended its Freedom of Information (FOIA) regulations.

EFFECTIVE DATE: September 29, 1988.

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

FOR FURTHER INFORMATION CONTACT: Sharon Diskin, Office of the General Counsel, Federal Communications Commission, (202) 632-6990.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in Gen. Docket No. 87-387, adopted July 26, 1988, and released August 23, 1988. The new procedures implement the requirements of the Freedom of Information Reform Act of 1986, Pub. L. 99-570, which amended 5 U.S.C. 552. Consistent with that provision, the new rules set out a multi-tiered system for the assessment of fees for search and duplication of Agency records made available under FOIA.

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 Report and Order

1. In this *Report and Order* the Commission amends its Freedom of Information Act (FOIA) regulations to incorporate the recent changes to the FOIA regarding establishment of fees to be charged for search, review and duplication of records in response to FOIA requests. The rules follow the guidelines established by the Office of Management and Budget, (OMB).

2. The rules implement the statutory amendments contained in the Freedom of Information Reform Act (Reform Act) and the administrative procedures set forth in the OMB Guidelines. The most significant revision contained in the rules is the establishment of a multi-tiered structure for the assessment of FOIA charges. The Reform Act establishes several categories of FOIA requesters with separate fee provisions applicable to each category. For example, whenever records are sought for "commercial use," agencies are permitted to charge not only for search and reproduction costs, but for the costs of reviewing documents for the purpose of applying FOIA exemptions. When educational, noncommercial scientific institutions or news media requesters seek records, they will be charged only for duplication costs, after receiving the first 100 pages free. All other non-commercial use requesters will receive the first 100 pages of documents free of copying charges and two hours of search without charge.

3. Further, the Reform Act permits agencies to recover only the direct costs of search, duplication or review. The Commission has determined that the direct cost of duplicating is 17 cents per page. This charge is based on the most recent estimates of costs to the Commission. As under its existing rules, the Commission's charges for search and review will be based on the grade level of the employee performing the search plus an allowance for benefits. In addition, the rules provide that requesters will have the option of obtaining routinely available information from the copy contractor rather than filing a FOIA request with the Commission. Materials obtained from the contractor will be available at the contract rate and pursuant to the contract's terms. Any requester who seeks a reduced assessment of fees because of the category in which he or she falls may receive such a reduced assessment only if the information request is filed with the Commission.

4. The Commission is also taking this opportunity to add a new provision establishing that only those records within the Commission's possession and control as of the date a FOIA request is received are subject to the request. By this rule, we will establish a uniform benchmark for determining which documents should be considered in responding to a request. Other noteworthy features contained in the OMB Guidelines and the rules include provisions for charging for unsuccessful searches and for assessing interest for late payments.

5. Finally, the rules update the charge for certification of documents. To cover the agency's administrative costs, including the time needed to verify that the document is a true copy of the original document in the Commission's record and to bind and seal the material, we are charging $10 for each certification. Copies of certified documents, if requested, will be charged at the rate of 17 cents per copy. We do not, however, propose any charge for the additional search time that may be required to find the original document in the Commission's records. The fee for certification must be paid before the certified document is released by the Commission.

6. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), it is hereby certified that the amendment will not, if promulgated, have a significant economic impact on a substantial number of small entities. The amendments are not designed to alter the fees charged small entities for document production. To the extent small entities may be among the categories of information requesters specified in the fee provisions, the rules will affect only small entities who file FOIA requests.

7. In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), any reporting and recordkeeping provisions that are included in the rules will be submitted for approval to the Office of Management and Budget (OMB).

8. The Commission's Rules, as set forth below, are issued pursuant to the authority contained in Section 4(i) of the Communications Act, 47 U.S.C. 154(i) and section 552(a)(4)(A)(i) of the Freedom of Information Act, 5 U.S.C. 552(a)(4)(A)(i).

9. Accordingly, it is ordered, That the Rules of the FCC are amended, as set forth below, effective September 29, 1988.[1]

[1] The Administrative Procedure Act requires that the publication of a rule shall be made not less than 30 days before its effective date, except as otherwise provided by the agency for good cause The Reform Act required agencies to promulgate rules implementing its provisions by April 25, 1987 Accordingly, the Commission finds that good cause exists to dispense with the 30 day prior notice provisions of the APA. In addition, the Commission publicly released the text of the rules, specifying an effective date of September 29, 1988. Therefore, the public, in fact, received 30 days advance notice of the rules prior to their effective date

Federal Communications Commission.
H. Walker Feaster, III,
Acting Secretary.

List of Subjects in 47 CFR Part 0

Freedom of Information.

Part 0 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 0—[AMENDED]

1. The authority citation for Part 0 continues to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082 as amended; 47 U.S.C. 154, 303 unless otherwise noted. Implement; 5 U.S.C. 552, unless otherwise noted.

2. Section 0.460 is amended by revising paragraph (e) to read as follows:

§ 0.460 Requests for inspection of records which are routinely available for public inspection.

* * * * *

(e) Written requests shall be captioned "REQUEST FOR INSPECTION OF RECORDS", shall be dated, shall list the telephone number (if any) of the person making the request and for each document requested, shall set out all information known to the person making the request which would be helpful in identifying and locating the document. Written requests shall, in addition, specify the maximum search fee the person making the request is prepared to pay. (see § 0.467)

* * * * *

3. Section 0.461 is amended by revising paragraph (b)(2) and adding paragraph (f)(6) to read as follows:

§ 0.461 Requests for inspection of materials not routinely available for public inspection.

* * * * *

(b) * * *

(2) The request shall, in addition, specify the maximum search fee the person making the request is prepared to pay (see § 0.467).

* * * * *

(f) * * *

(6) In locating and recovering records responsive to a FOIA request, only those records within the Commission's possession and control as of the date of its receipt of the request shall be considered.

* * * * *

4. Section 0.465 is amended by revising paragraph (a), including the note, and paragraph (c)(2); and adding new paragraphs (c)(4) and (f) to read as follows:

§ 0.465 Request for copies of materials which are available, or made available, for public inspection.

(a) The Commission awards a contract to a commercial duplication firm to make copies of Commission records and offer them for sale to the public. In addition to the charge for copying, the contractor may charge a search fee for extracting the requested documents from the Commission's files.

Note: The name, address, telephone number, and schedule of fees for the current duplication contractor are published annually at the time of contract award or renewal in a Public Notice. This information may be obtained from the Office of Congressional and Public Affairs, Consumer Assistance and Small Business Division, Telephone (202) 632–7000.

* * * * *

(c) * * *

(2) The Commission has reserved the right to make copies of its records for its own use or for the use of other agencies of the U.S. Government. When it serves the regulatory or financial interests of the U.S. Government, the Commission will make and furnish copies of its records free of charge. In other circumstances, however, if it should be necessary for the Commission to make and furnish copies of its records for the use of others, the fee for this service shall be 17 cents per page. For copies prepared with other media, such as computer tapes, microfiche or videotape, the charge will be the actual direct cost including operator time. Requests for copying should be accompanied by a statement specifying the maximum copying fee the person making the request is prepared to pay. If the Commission estimates that copying charges are likely to exceed $25 or the amount which the requester has indicated that he/she is prepared to pay, then it shall notify the requester of the estimated amount of fees. Such a notice shall offer the requester the opportunity to confer with Commission personnel with the object of revising or clarifying the request.

* * * * *

(4) Certified Documents. Copies of documents which are available or made available, for inspection under §§ 0.451 through 0.465, will be prepared and certified, under seal, by the Secretary, or for documents located in the Commission's Gettysburg, Pennsylvania Office by his deputy. Requests shall be in writing, specifying the exact documents, the number of copies desired, and the date on which they will be required. The request shall allow a reasonable time for the preparation and certification of copies. The fee for preparing copies shall be the same as that charged by the Commission as described in § 0.465(c)(2). The fee for certification shall be $10 for each document.

* * * * *

(f) Anyone requesting copies of documents pursuant to this section may select either the Commission or the contractor to fulfill the request. If a request goes directly to the contractor, the requester will be charged by the contractor pursuant to the price list set forth in the latest contract. If a request goes directly to the Commission, it shall be sent to the Office of the Managing Director for appropriate processing according to the fee standards established under the FOIA.

§ 0.467 [Removed]

5. Section 0.467 is removed; present § 0.466 is redesignated as new 0.467, and is amended by revising paragraph (a) through (e) and by removing existing paragraphs (h) and (j) and by redesignating paragraph (i) to become paragraph (h). A new § 0.466 is added to read as follows.

§ 0.466 Definitions

(a) For the purpose of §§ 0.467 and 0.468, the following definitions shall apply:

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

(2) The term "search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material contained within documents. Such activity should be distinguished, however, from "review" of material in order to determine whether the material is exempt from disclosure (*see* paragraph (a)(3) of this section).

(3) The term "review" refers to the process of examining documents located in response to a commercial use request (*see* paragraph (a)(4) of this section) to determine whether any portion of a document located is exempt from disclosure. It also includes processing any documents for disclosure, *e.g.*, performing such functions that are

necessary to excise them or otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of FOIA exemptions.

(4) The term "commercial use" request refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial interests of the requester. In determining whether a requester properly falls within this category, the Commission shall determine the use to which a requester will put the documents requested. Where the Commission has reasonable cause to question the use to which a requester will put the documents sought, or where that use is not clear from the request itself, the Commission shall seek additional clarification before assigning the request to a specific category.

(5) The term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution or graduate higher education, an institution of professional education and an institution of vocational education, which operates a program or programs of scholarly research.

(6) 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)(4) 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.

(7) 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 where they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all inclusive. Moreover, as traditional methods of news delivery evolve (*e.g.*, electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it.

§ 0.467 Search fee.

(a) Subject to the provisions of this section, an hourly fee shall be charged for recovery of the full, allowable direct costs of searching for and reviewing records requested under § 0.460(e) or § 0.461, unless such fees are precluded or waived pursuant to § 0.470. The fee is based on the grade level of the employee(s) who conducts the search, as specified in the following schedule:

Grade	Hourly fee
GS-2	6.32
GS-3	7.12
GS-4	7.99
GS-5	8.94
GS-6	9.96
GS-7	10.07
GS-8	12.25
GS-9	13.54
GS-10	14.91
GS-11	16.35
GS-12	19.64
GS-13	23.34
GS-14	27.58
GS-15	32.45

Note: These fees will be modified periodically to correspond with modifications in the rate of pay approved by Congress.

The above fees were computed at Step 5 of each grade level based on the General Schedule effective January 1987 and include 16 percent for personnel benefits.

(b) Search fees may be assessed for time spent searching, even if the Commission fails to locate the records or if the records are determined to be exempt from disclosure.

(c) The Commission shall charge only for the initial review, *i.e.*, the review undertaken initially when the Commission analyzes the applicability of a specific exemption to a particular record. The Commission shall not charge for review at the appeal level of an exemption already applied. However, records or portions of records withheld in full under an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs of such a subsequent review, under these circumstances, are properly assessable.

(d) The fee charged will not exceed an amount based on the time typically required to locate records of the kind requested.

(e) If the Commission estimates that search charges are likely to exceed $25 or the amount which the requester indicated he/she is prepared to pay, then it shall notify the requester of the estimated amount of fees. Such a notice shall offer the requester the opportunity to confer with Commission personnel with the object of revising or clarifying the request.

* * * * *

7. Section 0.468 is added to read as follows:

§ 0.468 Interest.

Interest shall be charged those requesters who fail to pay the fees charged. The agency will begin assessing interest charges on the amount billed starting on the 31st day following the day on which the billing was sent. The date on which the payment is received by the agency will determine whether and how much interest is due. The interest shall be set at the rate prescribed in 31 U.S.C. 3717.

8. Section 0.469 is added to read as follows:

§ 0.469 Advance payments.

(a)(1) The Commission may not require advance payment of estimated FOIA fees except as provided in subsection (a)(2) or where the Commission estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250.00 and the requester has no history of payment. Where allowable charges are likely to exceed $250.00 and the requester has a history of prompt payment of FOIA fees the Commission may notify the requester of the estimated cost and obtain satisfactory assurance of full payment.

(2) Where 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), the Commission may require the requester to pay the full amount owed plus any applicable interest as provided in § 0.468, and to make an advance payment of the full amount of the estimated fee before the Commission begins to process a new request or a pending request from that requester.

(3) When the Commission acts under paragraphs (a) (1) or (2) of this section, 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 denials, plus permissible extensions of these time limits) will begin only after the agency has received the fee payments described above.

9. Section 0.470 is added to read as follows:

§ 0.470 Assessment of fees.

(a)(1) Commercial use requesters. When the Commission receives a request for documents for commercial use, it will assess charges that recover

the full direct cost of searching for, reviewing and duplicating the records sought pursuant to §§ 0.466 and 0.467, above.

(2) Educational and non-commercial scientific institution requesters and requesters who are representatives of the news media. The Commission shall provide documents to requesters in these categories for the cost of reproduction only, pursuant to § 0.465 above, excluding reproduction charges for the first 100 pages, provided however, that requesters who are representatives of the news media shall be entitled to a reduced assessment of charges only when the request is for the purpose of disseminating information.

(3) All other requesters. The Commission shall charge requesters who do not fit into any of the categories above fees which cover the full, reasonable direct cost of searching for and reproducing records that are responsive to the request, pursuant to §§ 0.467 and 0.465 above, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge.

(b)(1) The 100 page restriction on assessment of reproduction fees in paragraphs (a)(2) and (a)(3) of this section refers to 100 paper copies of a standard size, which will normally be "8½x11" or "11x14," or microfiche containing the equivalent of 100 pages or 100 pages of computer printout. Requesters will not be entitled to 100 microfiche.

(2) When the agency reasonably believes that a requester or group of requesters is attempting to segregate a request into a series of separate individual requests for the purpose of evading the assessment of fees, the agency will aggregate any such requests and assess charges accordingly.

(c) When a requester believes he is entitled to a restricted fee assessment pursuant to paragraphs (a)(2) and (a)(3), of this section , or a waiver pursuant to paragraph (e) of this section, the requester must include, in his original FOIA request, a statement explaining with specificity, the reasons demonstrating that he/she qualifies for a restricted fee or a fee waiver. Included in this statement should be a certification that the information will not be used to further the commercial interests of the requester.

Note: Anyone requesting a restricted fee must submit the request directly to the Commission and not to the contractor who will provide documents only at the contract price.

(d) If the Commission reasonably believes that a commercial interest exists, based on the information provided pursuant to paragraph (c) of this section, the requester shall be so notified and given an additional 5 working days to provide further information to justify receiving a restricted fee. During this time period, the materials will be available for inspection to the extent that the time period exceeds the 10 or 20 day time period for responding to FOIA requests, as appropriate.

(e) Copying, search and review charges shall be waived or reduced by the General Counsel, when "disclosure of the information is in the public interest because it is unlikely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. 552(a)(4)(A)(iii).

(f) The Commission shall not assess any fees if the routine cost of collecting the fee would be equal to or greater than the fee itself.

[FR Doc. 88-22925 Filed 10-4-88; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 36

[CC Docket Nos. 78-72, 80-286, and 86-297]

MTS and WATS Market Structure; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: On June 27, 1988, the Commission adopted a final rule in this proceeding concerning the MTS and WATS Market Structure. This document removes a change made to 47 CFR Part 36, Appendix-Glossary, which was inadvertently made due to administrative error.

FOR FURTHER INFORMATION CONTACT: Tom Quaile, Accounting and Audits Division, Common Carrier Bureau, (202) 632-7500.

SUPPLEMENTARY INFORMATION: The Commission is correcting an error in its final rule action concerning the MTS and WATS Market Structure and the Establishment of a Federal-State Joint Board, FCC 88-216. Amendment 23, published at 53 FR 33012, Aug. 29, 1988, which revised the definition of *Study Area* in the Part 36, Appendix-Glossary, is withdrawn.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-22858 Filed 10-4-88; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 80-90]

FM Allotment Regarding La Plata and Waldorf, MD

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The effective date of the final rule clarifying certain portions of the FM Table of Allotments, specifically for Waldorf and La Plata, MD, was inadvertently omitted. This document corrects that error.

EFFECTIVE DATE: The action taken in the final rule became effective on September 13, 1988.

FOR FURTHER INFORMATION CONTACT: Robert Hayne (202) 634-6530.

SUPPLEMENTARY INFORMATION: The final rule was published on September 13, 1988, at 53 FR 35316.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-22924 Filed 10-4-88; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

47 CFR Part 300

Incorporation by Reference of the Manual of Regulations and Procedures for Federal Radio Frequency Management

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Final rule.

SUMMARY: This final rule gives notice of current revisions to the May 1986 Manual of Regulations and Procedures for Federal Radio Frequency Management (NTIA Manual), that is being published and forwarded to all holders of the Manual. The revisions cover the changes in various government policies relating to the United States Government use of the radio frequency spectrum. These changes have been adopted by the Interdepartment Radio Advisory Committee (IRAC) and approved by the National Telecommunications and Information Administration.

EFFECTIVE DATE: October 5, 1988.

FOR FURTHER INFORMATION CONTACT: Edwin E. Dinkle, National Telecommunications and Information

Administration, Department of Commerce, Room H1605, 14th and Constitution Avenue NW., Washington, DC 20230; (202) 377–0599.

SUPPLEMENTARY INFORMATION: The President by Reorganization Plan No. 1 of 1977 and Executive Order 12046 of March 27, 1978, delegated to the Secretary of Commerce authority to act for the President or under the President's authority in the discharge of certain Presidential telecommunication functions under the Communications Act of 1934, as amended, and the Communications Satellite Act of 1962.

The Secretary of Commerce has delegated this Presidential authority to the Assistant Secretary of Commerce for Communications and Information (the Assistant Secretary). The Manual of Regulations and Procedures for Federal Radio Frequency Management (NTIA Manual) is issued by the Assistant Secretary and is specifically designed to detail the Assistant Secretary's frequency management responsibilities.

List of Subjects in 47 CFR Part 300

Incorporation by reference, Radio Telecommunications.

For the reasons set out in the preamble, Title 47, Chapter III, Part 300 of the Code of Federal Regulations is amended as set forth below.

PART 300—[AMENDED]

1. The authority citation for Part 300 continues to read as follows:

Authority: E.O. 12046 (March 27, 1978), 43 FR 13349, 3 CFR 1978 Comp., p. 158.

2. Section 300.1(b) is revised to read as follows:

§ 300.1 Incorporation by Reference of the Manual of Regulations and Procedures for Federal Radio Frequency Management.

* * * * *

(b) The Federal agencies shall meet the requirements set forth in the May 1986 edition of the NTIA Manual as amended by revisions dated September 1988 which is incorporated by reference with the approval of the Director, Office of the Federal Register in accordance with 5 U.S.C 552(a) and 1 CFR Part 51.

* * * * *

William D. Gamble,

Deputy Associate Administrator, Office of Spectrum Management.

[FR Doc. 88–22782 Filed 10–4–88; 8:45 am]

BILLING CODE 3510–60–M

GENERAL SERVICES ADMINISTRATION

48 CFR Part 519

[APD 2800.12 CHGE 57]

Implement FAR 84–31 and Monitoring Contractor Compliance With Subcontracting Plans; Correction

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule correction.

SUMMARY: This document corrects material previously published in the Federal Register dated September 1, 1988 (53 FR 33812).

FOR FURTHER INFORMATION CONTACT: Mr. John Joyner, Office of GSA Acquisition Policy and Regulations on (202) 523–4916.

519.706–70 [Corrected]

1. On page 33812, in the third column, fourth line in paragraph (b), remove the word "and" and the "slant line" after SF–294.

2. On page 33812, in the third column, sixth line in paragraph (d), the word "required" should read "requires."

519.770–1 [Corrected]

3. On page 33813, in the first column of paragraph (b)(1)(i), remove the words "contracting office administrating the contract and to the."

Dated: September 27, 1988.

Richard H. Hopf III,

Associate Administrator for Acquisition Policy.

[FR Doc. 88–22946 Filed 10–4–88; 8:45 am]

BILLING CODE 6820–61–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1185

[Ex Parte No. 474]

Exemption for Certain Interlocking Directorates

AGENCY: Interstate Commerce Commission.

ACTION: Final rule and exemption.

SUMMARY: The Commission adopts rules at 49 CFR part 1185 exempting individuals from the prior approval requirements of 49 U.S.C. 11322(a) when they seek to assume positions as officers or directors of one rail carrier while holding the position of officer or director of another rail carrier, except where both carriers are class I railroads. The Commission finds that the prior approval requirements for this type of transaction are no longer necessary to carry out the national rail transportation policy of 49 U.S.C. 10101a, that these transactions are of limited scope, and that regulation is not necessary to protect shippers from abuse of market power. This action will eliminate unwarranted government regulation and the accompanying delay. Notice of the proposed rule was published April 14, 1988, at 53 FR 12443.

EFFECTIVE DATE: The rules are effective November 4, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph Dettmar, (202) 275–7245. (TDD for hearing impaired: (202) 275–1721)

SUPPLEMENTARY INFORMATION: The revised rule is set forth below. Additional information is contained in the Commission's full decision in this proceeding. 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 (DC Metropolitan area), (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.)

This action will not significantly affect either the quality of the human environment or energy conservation; nor will it have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 1185

Administrative Practice and procedure, Antitrust, Railroads.

Authority: 49 U.S.C. 10321, 11322, and 10505; 5 U.S.C. 553 and 559.

Decided: September 19, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips. Commissioner Lamboley dissented in part with a separate expression. Commissioner Simmons dissented with a separate expression.

Kathleen M. King,

Acting Secretary.

Title 49, Subtitle B, Chapter X, Part 1185 of the Code of Federal Regulations is amended as follows:

PART 1185—INTERLOCKING OFFICERS

1. The authority citation for 49 CFR Part 1185 is revised to read as follows:

Authority: 49 U.S.C. 10321, 11322, and 10505; 5 U.S.C. 553 and 559.

§§ 1185.1–1185.10 [Redesignated as §§ 1185.2–1185.11]

2. Sections 1185.1–1185.10 are redesignated as §§ 1185.2–1185.11 respectively.

3. A new § 1185.1 is added to read as follows:

§ 1185.1 Scope of exemption.

(a) Subject to the exception in paragraph (c) of this section, "interlocking directorates," as defined in paragraph (b) of this section, are exempt from the prior approval requirements of 49 U.S.C. 11322(a).

(b) An "interlocking directorate" exists whenever an individual holds the position of officer (as defined in paragraph (b) of this section are exempt from the prior approval requirements of 49 U.S.C. 11322(a).

(c) The exemption in paragraph (a) of this section does not apply to those interlocking directorates sought where the individual is already an officer or a director of a Class I railroad and seeks to become an officer or director of another class I railroad. An application under 49 U.S.C. 11322(a) or a petition for exemption under 49 U.S.C. 10505 for authority for this type of interlocking arrangement must be filed.

(d) This exemption does not affect the competitive bidding requirements of section 10 of the Clayton Act (15 U.S.C. 20), as implemented in part by 49 CFR Part 1010.

4. Newly redesignated § 1185.3 is revised to read as follows:

§ 1185.3 Application of regulations.

The regulations in this part apply to any person authorized by or undertaking for each of two or more class I rail carriers to perform the duties, or any of the duties, ordinarily performed by a director, president, vice president, secretary, treasurer, general counsel, general solicitor, general attorney, comptroller, general auditor, general manager, freight traffic manager, passenger traffic manager, chief engineer, general superintendent, general land and tax agent, or chief purchasing agent of a carrier.

[FR Doc. 88–22875 Filed 10–4–88; 8:45 am]
BILLING CODE 7035–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 80621–8131]

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

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

ACTION: Notice of bag limit reductions.

SUMMARY: The Secretary of Commerce (Secretary) reduces to zero the bag limits in the exclusive economic zone (EEZ) for Spanish mackerel from the Atlantic migratory group. The Secretary has determined that the recreational allocation of 0.96 million pounds for the Atlantic migratory group of Spanish mackerel has been reached. This reduction of the bag limits is necessary to protect the overfished Atlantic Spanish mackerel resource.

EFFECTIVE DATE: Reduction of the bag limits is effective at 0001 hours, local time, October 3, 1988, until 2400 hours, local time, March 31, 1989.

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

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic (FMP), as amended, was developed by the South Atlantic and Gulf of Mexico Fishery Management Councils (Councils) under authority of the Magnuson Fishery Conservation and Management Act, and is implemented by regulations at 50 CFR Part 642. Amendment 2 to the FMP, which went into effect on June 30, 1987 (52 FR 23836, June 25, 1987), established separate allocations for the Gulf and Atlantic migratory groups of Spanish mackerel and provided for the reduction of bag limits to zero when the appropriate recreational allocation is reached. Regulations effective July 1, 1988, implemented catch limits recommended by the Councils for the Atlantic migratory group for the current fishing year (April 1, 1988, through March 31, 1989). Those regulations set the recreational allocation for this Spanish mackerel group at 0.96 million pounds (53 FR 25611), July 8, 1988). The management area for the Atlantic migratory group of Spanish mackerel extends from the Virginia/North Carolina border southward to a line extending directly east from the Dade/Monroe County, Florida, boundary (25°20.4' N. latitude).

Under § 642.22(b), after consulting with the Councils, the Secretary is required to reduce to zero the bag limits for a Spanish mackerel migratory group when the appropriate allocation for that group is reached, or is projected to be reached, and when that group is overfished, by publishing a notice in the **Federal Register**. The Secretary, based on current catch statistics, has determined that the recreational allocation of 0.96 million pounds for the Atlantic migratory group of Spanish mackerel has been reached. He also finds, based upon the most recent stock assessment, that Spanish mackerel from the Atlantic migratory group remain overfished. Further, he has consulted with the Councils and they agree with this finding and concur in this action. Hence, the bag limits for Spanish mackerel from the Atlantic migratory group are reduced to zero effective 0001 hours, local time, October 3, 1988, through March 31, 1989, the end of the current fishing year. During this period, Spanish mackerel from the Atlantic migratory group caught in the EEZ in the recreational fishery, or by a person fishing under the bag limit, must be returned immediately to the sea with a minimum of harm. Possession of such Spanish mackerel on board a recreational vessel is prohibited.

Other Matters

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

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

List of Subjects in 50 CFR Part 642

Fisheries, Fishing.

Dated: September 29, 1988.

Joe P. Clem,

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

[FR Doc. 88–22853 Filed 9–30–88; 10:24 am]
BILLING CODE 3510–22–M

50 CFR Part 675

[Docket No. 71147–8002]

Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Notice of inseason adjustment.

SUMMARY: NOAA announces the apportionment of amounts of "other rockfish" from the nonspecific reserve to domestic fishermen processing fish or

delivering fish to domestic processors (DAP). This action, taken under provisions of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area, assures optimum use of groundfish in the "other rockfish" fishery and in other directed fisheries that take "other rockfish" as bycatch. By providing retainable amounts of "other rockfish", it allows DAP fishing for "other rockfish" in the BSAI to continue, and reduces wastage that would otherwise occur.

DATES: Effective September 30, 1988. Comments will be accepted through October 17, 1988.

ADDRESS: Comments should be mailed to James W. Brooks, Acting Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802, or delivered to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Jessica Gharrett, (Resource Management Specialist, NMFS), 907–586–7229.

SUPPLEMENTARY INFORMATION: Rules appearing at 50 CFR 611.93 and Part 675 implement the FMP. Initially, 15 percent of the 1988 total allowable catch (TAC) for each species or species group in the BSAI area was placed in reserve, DAP was specified, and remaining amounts were provided to domestic fishermen delivering fish to foreign processors (JVP) (53 FR 894, January 14, 1988). No amounts of groundfish were provided for foreign harvest because U.S. fishermen are able to harvest the entire 1988 TAC amounts.

The following inseason actions have apportioned amounts from the reserve to DAP, JVP, or both, or amounts from DAP to JVP in the Bering Sea and Aleutians Fishery for groundfish: April 19 (53 FR 12772), May 10 (53 FR 16552), May 25 (53 FR 19303), June 22 (53 FR 23402), July 14 (53 FR 26599), July 27 (53 FR 28229), August 30 (53 FR 33140), and September 9 (53 FR 35081).

The Director, Alaska Region, NMFS (Regional Director), has determined from fishery data, including DAP catches to date and a DAP survey completed in August 1988, that DAP fisheries could harvest and process at least 370 mt of "other rockfish" in the Bering Sea subarea by the end of 1988. The DAP catch of Bering Sea subarea "other rockfish" as of September 17 was 302 mt, 89 percent of the current apportionment of 340 mt. For these reasons, the Regional Director has determined that the current DAP amounts of "other rockfish" in the Bering Sea subarea are insufficient to meet DAP needs in 1988. Therefore, 30 mt of the reserve are apportioned to the DAP "other rockfish" category in the Bering Sea subarea.

These apportionments will not result in overfishing of "other rockfish" because the sum of the adjusted DAP amount and the JVP amount for "other rockfish" does not exceed the allowable biological catch for this species (Table 1). Directed fishing for "other rockfish" by DAP fishermen in the Bering Sea subarea remains open for 1988. Directed fishing is defined at § 675.2.

Without this reapportionment, fishermen would be required to treat "other rockfish" in the same manner as a prohibited species when the current TAC is reached, and excessive wastage of "other rockfish" would occur during the course of other groundfish fisheries that take "other rockfish" as bycatch.

Classification

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

The Assistant Administrator for Fisheries, NOAA, 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 will allow DAP fishermen to continue directed fishing for "other rockfish" and for species that require "other rockfish" as bycatch, reducing waste that would otherwise occur. Interested parties are invited to submit comments in writing to the address above for 15 days after the effective date of this notice, in accordance with § 675.20(b)(2)(i).

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

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

Dated: September 30, 1988.

Richard H. Schaefer,

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

TABLE 1.—BERING SEA SUBAREA REAPPORTIONMENTS OF INITIAL TAC

[All values are in metric tons]

	Current	This action	Revised
Bering Sea subarea:			
Other rockfish DAP	340	+30	370
Other rockfish JVP	30	(1)	30
TAC=400; ABC=400			
BSAI:			
DAP	708,993	+30	709,023
JVP	1,282,784	(1)	1,282,784
Reserve	8,223	−30	8,193
Total (TAC=2,000,000)			

[1] No change.

[FR Doc. 88–22927 Filed 9–30–88; 3:32 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 53, No. 193
Wednesday, October 5, 1988

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.

FARM CREDIT ADMINISTRATION

12 CFR Part 615

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations

AGENCY: Farm Credit Administration.

ACTION: Resolicitation of Comments.

SUMMARY: On April 5, 1988 the Farm Credit Administration Board (Board) proposed amendments to Subparts A, B, C, and O of Part 615, which govern the funding of Farm Credit System institutions by means of issuance of securities. The proposed amendments were necessary to conform the current regulations with certain amendments to the Farm Credit Act of 1971 (Act), made by the Agricultural Credit Act of 1987, (1987 Act), Public Law 100–233, which was enacted on January 6, 1988. The Board determined that these amendments to the regulations should be proposed for public comment. The comment period ended on June 13, 1988. After reviewing the proposed rule in the light of comments received, and incorporating changes which reflect comments received, the Board has determined that additional comment is needed on the revisions now being made to the proposed rule.

DATE: Written comments are due on or before November 4, 1988.

ADDRESS: Submit any comments in writing (in triplicate) to Anne E. Dewey, General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Alan Glenn, Special Examination Division, Office of Examination, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4225, TDD (703) 883–4444,

or

James M. Morris, Attorney, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: The proposed amendments (53 FR 16963, May 12, 1988) are necessary to conform the current regulations with certain amendments to the Farm Credit Act of 1971 (Act), made by the Agricultural Credit Act of 1987 (1987 Act) Pub. L. 100–233, which was enacted on January 6, 1988.

Subpart A of Part 615 contains regulations that define the funding activities of the banks of the Farm Credit System and the role of the Federal Farm Credit Banks Funding Corporation (Funding Corporation). No comments were received concerning proposed amendments to the regulations contained in Subpart A, and the Board is making no revisions in this subpart.

Subpart B of Part 615 contains regulations concerning the collateral required for issuance of obligations by Farm Credit System institutions. Comments were received from the Farm Credit Corporation of America (FCCA) and the Farm Credit System banks in the Springfield District concerning proposed amendments to regulations contained in Subpart B of Part 615.

FCCA commented that proposed § 615.5050 might be read to imply a requirement that promissory notes given in conventional banking transactions be collateralized. Regulations of Subpart B of Part 615 are meant to protect investors in bonds, notes, debentures, and similar obligations by setting minimum standards for collateral required to support the issuance of those obligations. These standards are not meant to require that all credit extended to a Farm Credit System institution from whatever source be similarly collateralized, nor to restrict commercial banks and other creditors from making their own credit decisions in private lending transactions. Accordingly, § 615.5050(a) has been revised to delete the words "all other known and recorded liabilities."

The Farm Credit System banks in the Springfield District (Springfield) commented concerning proposed § 615.5050(c). Springfield suggested that the collateral value of loans and acquired property should be their "net value less allowance for losses," and that the reference to "recovery value" in § 615.5050(c)(2) should be replaced with "net realizable value." § 615.5050(c) is now being revised to clarify the method for determining the value of collateral. The terms "recovery value" and "investment value" are eliminated. The revised § 615.5050(c)(1) provides that, in general, the collateral value of a loan is the unpaid balance of the loan, less any appropriate allowance for losses. Revised § 615.5050(c)(2) provides that the collateral value of loans in the process of liquidation or foreclosure, judgments, and real estate sales contracts are the unpaid balance of the loans, judgments or contracts, less any appropriate allowance for losses. Revised § 615.5050(c)(3) provides that the collateral value of the restructured loan is the unpaid balance of the loan, less any appropriate allowance for losses. Section 615.5050(c)(4) is redesignated as § 615.5050(c)(5) and a new § 615.5050(c)(4) provides that the collateral value of property acquired in the liquidation of loans is the book value adjusted for any allowance for losses. In order to accurately reflect the value of the collateral, the allowance for losses must be continuously updated. FCCA suggested that the proposed regulation could be read to eliminate secured interbank loans from eligible collateral. In response to the comment, the Board is adding § 615.5050(c)(6) to specifically state that a secured interbank loan may serve as collateral for obligations issued by the bank making such loan, provided that the loan is adequately secured by assets which, if held by the lending bank, would have been eligible collateral. In computing its eligible collateral, the borrowing bank is prohibited from counting the assets securing the loan. A new § 615.5045 provides definitions for "cost," "market value," "cash equivalents," "secured interbank loan," and "unpaid balance," as these terms are used in Subpart B. Comments are specifically requested on these new definitions and their application in § 615.5050.

FCCA commented that the words "or association" should be added after the word "bank" each time it appears in § 615.5060(a). FCCA also suggested that a reference to section 1.7(a) of the Act be added. The Board is making these revisions in the language of § 615.5060(a) to clarify that the entire paragraph is meant to apply not only to banks, but

also to those associations which may have direct real estate lending authority.

Subpart C of Part 615 contains regulations governing the issuance of notes, bonds, debentures, and similar obligations by Farm Credit System institutions. Subpart C was revised to reflect new responsibilities of the Funding Corporation which were previously exercised by the Farm Credit System finance committees. Comments were received from the Farm Credit System banks in the Baltimore District, the Farm Credit System banks in the Texas District, the Central Bank for Cooperatives, and FCCA concerning the proposed amendments to regulations contained in Subpart C.

FCCA indicated concern that reference to sales of securities to "members of the general public" in § 615.5100(a) through (c) might be interpreted to preclude private placement of securities. The Board agrees and has deleted the references in § 615.5100 to "members of the general public".

Section 615.5101(b) requires that each debt obligation be authorized by a resolution of the board of directors of the issuing Farm Credit System banks. FCCA expressed concern that this regulation could be read to require that the banks adopt a specific resolution for each issue of debt. At present, each bank's board of directors authorizes Systemwide obligations by a periodic resolution which states a maximum amount of obligations which may be issued. The proposed regulation, which is clarified by deleting the words "issuance of" from the introductory paragraph, does not require a change in this practice, but does require that each obligation of whatever kind be authorized by an appropriate resolution of the board of directors of each issuing bank. The frequency of resolutions consistent with the duty of directors to exercise their judgment effectively is left to the determination of the board of directors of the issuing bank.

Section 615.5101(e)(1) requires consultation by Farm Credit System representatives with the Secretary of the Treasury. FCCA suggested that, in order to avoid uncertainty, FCA should, in its regulation, expressly designate the Funding Corporation as the Farm Credit System's representative for this purpose. The FCA Board does not agree with the FCCA suggestion. The decision whether to delegate this responsibility to the Funding Corporation is a management decision for the Farm Credit System banks.

The Farm Credit System banks in the Texas District and the Central Bank for Cooperatives raised a concern that § 615.5102(a) might be read to imply that the Funding Corporation has authority to approve the amount, maturities, rates of interest, terms and conditions of individual bank obligations. The FCA Board amends § 615.5102(a) to clarify that this aspect of the Funding Corporation's authority is limited to joint, consolidated and Systemwide obligations.

The Farm Credit System banks in the Texas District (Texas) also expressed concern that the revision of § 615.5102(a) not imply that the Funding Corporation has absolute authority over the funding operations of individual banks. Texas points out that the former law provided that the finance committees determined each bank's participation in joint, consolidated and Systemwide debt issues. Texas suggests that the phrase "taking into consideration the needs of the individual System banks" be added after the word "Act." The Board does not make this revision of § 615.5102(a), but does revise the wording of § 615.5101(a) to make it more consistent. Section 615.5102(a), as originally proposed, basically restates section 4.9. Section 4.9 of the Act and § 615.5102(a) both include the words "acting for the banks of the Farm Credit System." Sensitivity to the needs of the banks is also built into the Funding Corporation's structure, since four of the members of its board of directors are required to be current or former directors of System banks, and three are required to be Chief Executive Officers or presidents of Farm Credit System banks. Section 615.5102 was not meant to change the relationship of the Funding Corporation with the Farm Credit System banks. It is not the intent of this section or the regulation to further define the relationship that exists between the Funding Corporation and the Farm Credit System banks. Although it is correct that the Funding Corporation does not have absolute authority over the funding of the banks, the amendment of § 615.5102(a) suggested by Texas is unnecessary.

The FCCA requests clarification of §§ 615.5101(d) and 615.5102(c), which require FCA approval of each issue of debt. FCCA is concerned that these sections might be interpreted to preclude the current FCA method of approving guidelines for sales of daily discount notes. At present, the Farm Credit System banks utilize several different marketing strategies, each requiring different FCA approval methods to provide necessary program monitoring and to enable the Funding Corporation to market the debt instruments. The Board believes that the method of FCA's approval should continue to have flexibility to adjust to the Farm Credit System banks' funding program and does not prescribe in § 615.5101 or § 615.5102 only one method of FCA approval of the issuance of securities.

In order to clarify FCA approval responsibility for all debt issues, the Board is revising § 615.5101(d) to eliminate the cross-reference to § 615.5102.

The Farm Credit System banks in the Baltimore District commented that proposed changes in Part 615 did not appear to affect the mode of operations of its Puerto Rican subsidiary. The comment was addressed to the application of the regulation to a particular institution. Each Farm Credit institution must determine for itself how the proposed regulation affects it.

Subpart O of Part 615 contains regulations governing the form in which Farm Credit securities may be issued. FCCA suggests that the listing of denominations in § 615.5450 is more reflective of definitive securities than a mature book-entry system. The Board agrees that specific mention of denominations other than a minimum denomination is unnecessary. However, consistent with a book-entry system, a minimum multiple amount is specified. The revised regulation deletes paragraph (b) of the proposed regulation and redesignates paragraphs (c) and (d) as paragraphs (b) and (c). FCCA commented that § 615.5450 (b) (as redesignated) should be revised to provide for issuance of consolidated notes, debentures or similar obligations, as well as consolidated bonds, in book-entry form. The Board in making this revision in § 615.5450(b) and a similar revision in § 615.5450(a), in order to standardize authority for the issuance of debt securities.

It is unnecessary to add additional language to § 615.5450(c) (as redesignated), as suggested by FCCA, in order to permit delegation of approval of issuance of securities in definitive form, since such authority may generally be delegated.

List of Subjects in 12 CFR Part 615

Accounting, Agriculture, Banks, Banking, Government securities, Investments, Rural areas.

For the reasons stated in the preamble, Part 615 of Chapter VI, Title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

1. The authority citation for Part 615 continues to read as follows:

Authority: Secs. 4.3, 4.9, 4.14B, 5.9, 5.17, 6.20, 6.26, 12 U.S.C. 2154, 2160, 2202b, 2243, 2252, 2278b, 2278b–6; Sec. 301(a) of Pub. L. 100–233.

Subpart A—Funding

2. Sections 615.5000, 615.5010, and 615.5030 of Part 615 are revised to read as follows:

§ 615.5000 General responsibilities.

(a) The System banks, acting through the Federal Farm Credit Banks Funding Corporation (Funding Corporation), have the primary responsibility for obtaining funds for the lending operations of the System institutions.

(b) The System's funding operations have a significant impact upon the investment community, the general public, and the national economy in both the volume and the manner by which funds are raised. The Farm Credit Administration supervises compliance with the statutory collateral requirements for the debt obligations issued. The Chairman of the Farm Credit Administration, under policies adopted by the Board, consults with the Secretary of the Treasury concerning the System's funding activities, pursuant to section 5.10 of the Act.

§ 615.5010 Funding corporation.

(a) The Funding Corporation is authorized to issue, market, and handle System obligations and, handle, upon request of the banks, interbank or intersystem flows of funds and investment portfolios. The Funding Corporation shall maintain accurate and timely records. The System banks shall provide for the sale of obligations through the Funding Corporation by negotiation, offer, bid, syndicate sale, and for the delivery of such obligations by book entry, wire transfer, or such other means as may be appropriate.

(b) The interaction of the System with the financial community shall be conducted principally through the Funding Corporation. The Funding Corporation shall be subject to regulation and examination by the Farm Credit Administration.

§ 615.5030 Borrowing from commercial banks.

(a) The System bank boards, by resolution, shall authorize all commercial bank borrowings.

(b) The Financial Assistance Corporation may borrow from commercial banks only with the approval of the Farm Credit Administration.

3. Subpart B of Part 615 is revised to read as follows:

Subpart B—Collateral

Sec.

615.5045 Definitions.
615.5050 Collateral requirements.
615.5060 Special collateral requirement.
615.5090 Reduction in carrying value of collateral.

Subpart B—Collateral

§ 615.5045 Definitions.

(a) "Cost" means the actual amount paid for any asset.

(b) "Market value" means the price at which a willing seller would sell to a willing buyer, neither under any compulsion to buy or sell.

(c) "Cash equivalents" include obligations of the United States or any agency thereof directly or fully guaranteed by the United States, and other items which can be converted into cash without substantial difficulty or loss.

(d) "Unpaid balance" means total principal and accrued interest owed.

(e) "Secured interbank loan" means a loan from one Farm Credit System bank to another Farm Credit System bank, secured by assets of the borrowing Farm Credit System bank.

§ 615.5050 Collateral requirements.

(a) Each bank shall have on hand at the time of issuance of any notes, bonds, debentures, or other similar obligations, and at all times thereafter maintain, free from any lien or other pledge, assets consisting of notes and other obligations representing loans made under the authority of the Act, real or personal property acquired in connection with loans made under the Act, other bank assets (including marketable securities) approved by the Farm Credit Administration, cash, or cash equivalents in an aggregate amount equal to the sum of consolidated and Systemwide bonds, Farm Credit investment bonds, consolidated Systemwide notes, other notes, bonds, debentures, or other similar obligations outstanding for which the bank is primarily liable.

(b) The collateral value of eligible investments (as defined in § 615.5140) shall be the lower of cost or market value.

(c)(1) Except as otherwise provided in this paragraph, the collateral value of notes and other obligations representing loans made under the authority of any Farm Credit Act shall be the unpaid balance of such loans adjusted for any allowance for loan losses (except as provided for in § 615.5090).

(2) The collateral value of loans in process of liquidation or foreclosure, judgments, and real estate sales contracts shall be the unpaid balance of such loans, judgments, and contracts adjusted for any allowance for losses.

(3) The collateral value of loans which have been restructured by any action, such as an extension, deferment, or partial release, shall be the new unpaid balance of the loans adjusted for any allowance for losses.

(4) The collateral value of property acquired in the liquidation of loans shall be the book value of such property adjusted for any allowance for losses.

(5) Collateral shall not include the amount of any loan that exceeds the maximum amount authorized under the Act or Part 614 of these regulations.

(6) Collateral may include the collateral value of secured interbank loans, computed as provided in § 615.5050(c)(1), provided that the assets securing the loan could serve as collateral supporting the issuance of obligations under § 615.5050(a). In computing its eligible collateral, the borrowing bank shall not count the assets securing such loan.

(d) Each bank shall have procedures which will ensure that the bank is in compliance with the statutory requirements for maintenance of collateral. Such procedures shall include provisions for:

(1) Adequate safekeeping facilities;

(2) Methods to determine that debt instruments meet all requirements of law and regulations;

(3) A report signed by an authorized bank officer at each regular meeting of the board of directors certifying the eligibility and the adequacy of collateral. Items to be reported will include but not be limited to the total amount of eligible collateral, amount of ineligible loans, amount of deductions, and the amount of excess collateral; and

(4) Written procedures and practices to ensure that there will be a high degree of accuracy in protecting and accounting for the collateral.

§ 615.5060 Special collateral requirement.

(a) If the counsel for a System bank or association has determined, in writing, that bank or association procedures provide sufficient safeguards to assure that a real estate mortgage loan, within the meaning of section 1.7(a) of the Act, made by the bank or association will be secured by a first lien, or its equivalent, on interest in the primary real estate

security, an attorney lien certification need not be obtained at the time a note is accepted for collateral. However, the note shall be withdrawn from collateral upon the expiration of 1 year from the date of loan closing, unless, before the end of such period, an attorney has certified that the interest of the bank or association in the primary real estate security for the loan is a first lien on the borrower's interest or its equivalent from a security standpoint.

(b) A loan participation agreement to which a System bank or association is a participant and involving a loan originated by another lender shall constitute an obligation meeting the collateral requirements of § 615.5050(a).

§ 615.5090 Reduction in carrying value of collateral.

When the bank or Farm Credit Administration determines that a loan did not conform to the requirements of the law or regulations at the time the loan was closed, such loan shall be withdrawn from collateral until the cause of ineligibility is remedied. When a loan has been classified as a loss loan, the bank shall adjust the collateral value of the loan accordingly.

Subpart C—Issuance of Bonds, Notes, Debentures and Similar Obligations

4. Sections 615.5100, 615.5101, and 615.5102 are revised to read as follows:

§ 615.5100 Authority to issue.

The Act authorizes each bank of the System, subject to the collateral requirements of section 4.3(c) of the Act, to issue:

(a) Notes, bonds, debentures, or other similar obligations;

(b) Consolidated obligations, together with any or all banks organized and operating under the same title of the Act;

(c) Systemwide obligations, together with other banks of the System; and

(d) Investment bonds to the authorized purchased subject to the limitations contained in the regulations set forth in Subpart D.

§ 615.5101 Requirements for issuance.

Each debt obligation shall meet the following requirements:

(a) each obligation except investment bonds shall be issued through the Federal Farm Credit Banks Funding Corporation acting for System banks.

(b) Each debt obligation shall be authorized by resolution of the board(s) of directors of the issuer(s). Each participating bank shall provide, in its authorizing resolution, for its primary liability on the portion of any consolidated or Systemwide obligation issued on its behalf and be jointly and severally liable for the payment of any additional sums as called upon by the Farm Credit Administration, in accordance with section 4.4 of the Act, in the event any bank primarily liable therefor is unable to pay.

(c) Each issuance of debt obligations shall meet the collateral requirements set forth in Subpart B.

(d) Each issuance of debt obligations shall be approved by the Farm Credit Administration.

(e)(1) Consultation with the Secretary of the Treasury required by 31 U.S.C. 9108 shall be conducted by System representatives and shall have occurred prior to each debt issuance.

(2) Under policies adopted by the Board of the Farm Credit Administration, the Chairman will consult with the Secretary of the Treasury on a regular basis concerning the exercise by the System of the powers conferred under section 4.2 of the Act.

§ 615.5102 Issuance of debt obligations through the funding corporation.

(a) The amount, maturities, rates of interest, terms and conditions of participation by the System banks in each issue of joint, consolidated or Systemwide obligations shall be determined by the Funding Corporation acting for the banks of the System established pursuant to section 4.9 of the Act, subject to the approval of the Farm Credit Administration in accordance with this section.

(b) The Funding Corporation shall plan and develop funding guidelines, priorities, and objectives based upon the asset/liability management policies of the System institutions and the requirements of the market. The guidelines, priorities, and objectives shall be designed to ensure that the debt marketing responsibilities of the Funding Corporation will continue to provide flexibility for the banks and are fiscally sound.

(c) For all debt issuances conducted by the Funding Corporation, the specific prior approval of the Farm Credit Aministration must be obtained prior to the distribution and sale of the obligation pursuant to section 4.9 of the Act.

5. Section 615.5105 is amended by revising paragraph (b) to read as follows:

§ 615.5105 Consolidated systemwide notes.

* * * * *

(b)(Prices shall be on a discount yield basis or as determined by the Funding Corporation.

* * * * *

Subpart O—Issuance of Farm Credit Securities

6. Section 615.5450 is revised to read as follows:

§ 615.5450 Book entry and definitive notes and bonds.

(a) The System banks operating under the same title of the Act may issue consolidated notes, bonds, debentures, and other similar obligations dated on or after January 1, 1978, in book-entry form, in denominations of $1,000 or multiples thereof. There are still outstanding consolidated bonds of the Federal land banks dated before January 1, 1978, in definitive form in denominations of $1,000, $5,000, $10,000, $50,000, $100,000, and $500,000.

(b) The System banks may issue consolidated Systemwide notes, bonds, debentures, or other similar obligations in book-entry form, in denominations of $1,000 or multiples thereof for issues with an original maturity over 1 year and 1 month and $5,000 or multiples thereof for issues with an original maturity of under 1 year and 1 month.

(c) Consolidated and consolidated Systemwide bonds and discount notes may be issued in definitive form as determined to be appropriate by the Funding Corporation and as approved by the Chairman of the Farm Credit Administration.

7. Sections 615.5451 through 615.5453 are removed and reserved.

§ 615.5451 through 615.5433 [Removed and Reserved]

8. Sections 615.5460 is amended by revising paragraphs (b) and (c) to read as follows:

§ 615.5460 Definition of terms for book-entry issuance of Farm Credit securities.

* * * * *

(b) "Banks of the Farm Credit System" means all of the Farm Credit Banks or all the banks for cooperatives, or all of the banks of the System.

(c) "Farm Credit securities" means consolidated notes, bonds, debentures, or other similar obligations of the System banks and Systemwide notes, bonds, debentures, or similar obligations issued under the Farm Credit Act of 1971, or laws repealed thereby, the completion and delivery of which is or has been undertaken by a Reserve Bank as agent of the banks of the System.

* * * * *

§ 615.5497 [Removed and Reserved]

6. Section 615.5497 is removed and reserved.

Date: September 28, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-22861 Filed 10-4-88; 8:45 am]

BILLING CODE 6705-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 419

Games of Chance in the Food Retailing and Gasoline Industries Proposed Amendment of Trade Regulation Rule

AGENCY: Federal Trade Commission.

ACTION: Notification of cancellation of public hearings and rebuttal period.

SUMMARY: The Commission published its Notice of Proposed Rulemaking on July 7, 1988 (53 FR 25503). The notice stated that a public hearing would commence on October 5, 1988. Persons who desired to testify at the hearing were advised that they must file a statement of their testimony no later than September 20, 1988. Since no such statements were received, a public hearing will not be held in this proceeding.

In view of this development and because of the paucity of written comment received, the Presiding Officer has determined, pursuant to the authority of Section G of the Notice of Proposed Rulemaking, 53 FR 35503, 25507, that the presentation of rebuttal submissions is not required for a full and true disclosure with respect to any disputed issue of fact that is material and necessary to resolve. Accordingly rebuttal submissions will not be received.

The next stage in the proceedings is the release of the staff recommendations to the Commission followed by the recommended decision of the Presiding Officer. Announcement of the publication of these documents, which will be subject to public comment, will be made in the **Federal Register**.

DATE: This action will become effective October 5, 1988.

FOR FURTHER INFORMATION CONTACT: Henry B. Cabell, Presiding Officer, Federal Trade Commission, Room 319, 6th and Pennsylvania Avenue NW., Washington, DC 20580, telephone: 202-326-3642.

SUPPLEMENTARY INFORMATION:

List of Subjects in 16 CFR Part 419

Trade practices, Games of chance in the food retailing and gasoline industries.

Henry B. Cabell,

Presiding Officer.

[FR Doc. 88-22921 Filed 10-4-88; 9:45 am]

BILLING CODE 6750-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 15

Reports General Provisions

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed Rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is proposing amendments to § 15.03(a), 17 CFR 15.03(a) (1987), of its regulations as part of its ongoing review of various reporting requirements. Its review with respect to the market surveillance data received from members of contract markets, futures commission merchants ("FCMs"), foreign brokers and traders ("large-trader data") indicates that the reporting levels set forth in § 15.03(a) of the regulations can be adjusted for certain commodities. In view of its findings, the Commission is proposing that the reporting levels in futures traded on feeder cattle, long-term (6½-10 year) Treasury notes, cocoa and crude oil be raised from their current levels. In addition, the Commission is proposing that reporting levels in futures traded on copper, the New York Stock Exchange Composite Index and the Value Line Average Index be lowered from the current levels.

DATE: Comments must be received by November 4, 1988.

ADDRESS: Comments should be sent to the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 30582 and should make reference to "reporting levels."

FOR FURTHER INFORMATION CONTACT: Lamont L. Reese, Division of Economic Analysis, 2033 K Street, NW., Washington, DC, Telephone (202) 254-3310.

SUPPLEMENTARY INFORMATION:

Reporting levels are set in commodities to ensure that the Commission receives adequate information to carry out its market surveillance programs that include detection and prevention of market congestion and price manipulation and enforcement of speculative limits. In addition, the information serves as a basis to gauge overall hedging and speculative uses of the futures markets, use of the markets by foreign participants and other matters of public and/or Congressional concern.

Generally, Parts 17 and 18 of the regulations require reports from members of contracts markets, FCMs or foreign brokers and traders, respectively, when a trader holds a "reportable position," *i.e.*, any open position held or controlled by a trader at the close of business in any one future of a commodity traded on any one contract market that is equal to or in excess of the quantities fixed by the Commission in § 15.03 of the regulations. See, § 15.00(b), 17 CFR 15.00(b) (1988).

Members of contract markets, FCMs and foreign brokers who carry accounts in which there are "reportable positions" of traders are required to identify such accounts on a Form 102 and report on the series '01 forms any reportable positions in the account, the delivery notices issued or stopped by the account and any exchanges of futures for physicals. Traders who own or control reportable positions are required to file annually a CFTC Form 40 giving certain background information concerning their trading in commodity futures and, on call by the Commission, must submit a Form 103 showing positions and transactions in the commodity specified in the call.

The Commission reviews information concerning trading volume, open interest and the number and position sizes of individual traders relative to the reporting levels for each market to determine if coverage is adequate for effective market surveillance. In cases where coverage appears more than required, the Commission may propose to raise reporting levels as part of its ongoing effort to reduce the reporting burden. In other cases, where the current reporting level appears too high for adequate coverage, the Commission may propose to lower the reporting level.

The Commission's most recent review of reporting levels indicates that the size of trading volume, open interest and positions of individual traders in futures traded on feeder cattle, long-term Treasury notes, cocoa and crude oil enable the Commission to raise reporting levels for these commodities as follows: in Feeder Cattle from 25 contracts to 50 contracts; in Long-term Treasury Notes from 200 contracts to 300 contracts; in Cocoa from 25 to 50 contracts; and in Crude Oil from 200 to 250 contracts.

In certain other commodities, changed market conditions suggest that reporting levels should be lower. Effective December 5, 1984, the Commission raised the reporting level for futures traded on copper from 100 contracts to 150 contracts and subsequently, effective June 16, 1986, again raised the level from 150 contracts to 200 contracts. 49 FR 46116 (November 23, 1984 and 51 FR 21343 (June 12, 1986). During that time the copper market was characterized by large deliverable supplies, less volatile prices and large open interest. Over the past year, however, open interest has declined significantly, price volatility has increased and deliverable supplies have diminished.[1] In addition, the Commission has noted an accompanying decrease in market coverage provided through its large-trader reporting system. This coverage is significantly lower than that provided when the reporting level in copper was 100 contracts. In view of this, the Commission is proposing that reporting levels in copper futures be lowered from 200 contracts to 100 contracts.

In addition to futures trade on copper, significant declines in open interest have occurred in futures traded on the Value Line Average Index (VLA) and the New York Stock Exchange Composite Index (NYSE).[2] Market coverage of these markets provided through the large-trader system similarly has declined and currently may not be adequate to ensure effective surveillance.[3] Accordingly, the Commission is proposing to lower the reporting levels for these contract markets from 100 to 50 contracts.[4]

[1] During December 1984 daily open interest in all futures months combined ranged from about 82,000 to 87,000 contracts. In comparison, during August 1988 daily open interest in all futures months combined ranged from about 27,000 to 33,000 contracts.

[2] During August 1988, daily open interest in futures on the NYSE Index ranged from about 5,000 to 8,500 contracts compared to more than 11,000 contracts open on each day during September 1987. For futures traded on the VLA Index, daily open interest during August 1988 ranged from about 1,200 to 1,600 contracts compared to more than 3,000 contracts open on each day during September 1987.

[3] The Commission also reviewed the reporting levels for futures traded on the Standard and Poors 500 Index and on the Chicago Board of Trade's (CBT) contract representing $250 times the American Stock Exchange (Amex) Major Market Index. The current reporting levels on these markets, set at 300 and 50 contracts, respectively, appear adequate for surveillance purposes.

[4] At this time, the Commission also is proposing technical amendments to Rule 15.03. These include removing reference to domestic certificates of deposit and to the CBT's futures contract representing $100 times the Amex Major Market Index and changing the reference from the sugar #12 contract to the sugar #14 contract. This latter action results from a name change approved by the Commission in addition to other rule changes for this contract. Domestic certificates of deposit and the subject CBT contract are dormant within the meaning of Commission Rule 5.2, 17 CFR 5.2 (1988).

[5] 5 U.S.C. 801 et. seq.

The Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") [5] requires that agencies, in proposing rules, consider the impact of those rules on small businesses. These amendments affect large traders, futures commission merchants and other similar entities such as foreign brokers and foreign traders. The Commission has defined "small entities" as used by the Commission in evaluating the impact of its rule in accordance with the RFA. 47 FR 18618–18621 (April 30, 1982).

In that statement, the Commission concluded that large traders and futures commission merchants are not considered to be small entities for purposes of the RFA. Similarly, foreign brokers and foreign traders report only if carrying or holding reportable, *i.e.*, large, positions. Thus, pursuant to section 3(a) of the RFA (5 U.S.C. 605(b)), the Chairman, on behalf of the Commission, certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. The Commission nonetheless invites comments from any firm which believes that these rules would have a significant economic impact upon its operations.

Paperwork Reduction Act

Pursuant to the provisions of the Paperwork Reduction Act of 1980, the Office of Management and Budget has assigned control number 3038–0009 to the regulations which appear herein, the series '01 reports and Forms 103, 40 and 102. The Commission has reviewed the impact of these proposed rule changes with respect to the public reporting burden and has concluded that, overall, this burden will be unaffected.

Interested members of the public may obtain a complete copy of the information collection relating to the rules contained herein by contacting Joseph Salazar at (202) 254–9735. Persons wishing to comment on the Paperwork Reduction Act implications of the proposed rule change are asked to send a copy of their comments to Mr. Salazar at the Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, and to Bob Neal, Office of Management and Budget, Room 3228, NEOB, Washington, DC 20503.

List of Subjects in 17 CFR Part 15

Brokers and large traders, Reporting and recordkeeping requirements.

In conclusion of the foregoing, the Commission is proposing to amend Part 15 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 15—REPORTS—GENERAL PROVISIONS

3. The authority citation for Part 15 continues to read as follows:

Authority: 7 U.S.C. 2, 4, 6, 6a (a)–(d), 6f, 6g, 6i, 6k, 6m, 6n, 7, 9, 12a, 19 and 21; 5 U.S.C. 552 and 552(b) unless otherwise noted.

4. Section 15.03 is revised to read as follows:

§ 15.03 Quantities fixed for reporting.

The quantities for the purpose of reports filed under Parts 17 and 18 of this chapter are as follows:

Commodity	Quantity
Wheat (bushels)	500,000
Corn (bushels)	500,000
Soybeans (bushels)	500,000
Oats (bushels)	300,000
Cotton (bales)	5,000
Soybean oil (contracts)	150
Soybean meal (contracts)	159
Live cattle (contracts)	100
Feeder cattle (contracts)	50
Hogs (contracts)	50
Sugar No. 11 (contracts)	200
Sugar No. 14 (contracts)	100
Cocoa (contracts)	50
Copper (contracts)	100
Gold (contracts)	200
Silver bullion (contracts)	150
Platinum (contracts)	50
No. 2 Heating oil (contracts)	150
Crude oil (contracts)	250
Unleaded gasoline (contracts)	100
Long-term U.S. Treasury bonds (contracts)	500
GNMA (contracts)	100
Three-month (13-week) U.S. Treasury bills (contracts)	100
Long-term U.S. Treasury notes (contracts)	300
Three-month Eurodollar time deposit rates (contracts)	400
Foreign currencies (contracts)	200
Standard and Poor's 500 stock price index (contracts)	300
New York Stock Exchange composite index (contracts)	50
Amex Major Market Index—maxi (contracts)	50
Municipal bonds (contracts)	50
Value Line Average Index (contracts)	50
All other commodities (contracts)	25

(Approved by the Office of Management and Budget under control numbers 3038–0007 and 3038–0009)

Issued in Washington, DC on September 29, 1988, by the Commission.

[FR Doc. 88–22873 Filed 10–4–88; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

Colorado Permanent Regulatory Program; Public Comment Period and Opportunity for Public Hearing on Proposed Amendments

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

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing the receipt of proposed amendments to the Colorado permanent regulatory program (hereinafter referred to as the Colorado program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendments pertain to the small operator assistance program, use of explosives, excess spoil, coal exploration, hydrology and geology, diversions, siltation structures and impoundments, coal mine waste, permitting, alluvial valley floors, backfilling and grading, archaeology and cultural resources, vegetation, mountaintop removal mining, bonding, air pollution control plan, and civil penalties. If approved, the amendments will become part of the State's permanent regulatory program. Colorado is modifying their approved program to be consistent with SMCRA and the Federal regulations.

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

DATES: Written comments must be received on or before 4:00 pm, m.s.t. November 4, 1988. If requested, a public hearing on the proposed amendments will be held on October 31, 1988, at the location shown under **ADDRESSES.** Requests to present oral testimony at the hearing must be received on or before 4:00 pm, m.d.t. on October 20, 1988.

ADDRESSES: Written comments should be mailed or hand-delivered to Mr. Robert H. Hagen, Director, Albuquerque Field Office at the address listed below. If a public hearing is requested, it will be held at the Office of the Colorado Mined Land Reclamation Division address listed below. Copies of the Colorado program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the OSMRE offices and the office of the State Regulatory Authority listed below, Monday, through Friday, 8:00 am to 4:00 pm, excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendments by contacting the OSMRE Albuquerque Field Office listed under **"ADDRESSES."** The aforementioned documents are available for review at the following locations:

Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW, Suite 310, Albuquerque, NM 87102, Telephone: (505) 766–1486;

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5215, 1100 "L" Street, NW., Washington, DC 20240, Telephone: (202) 343–5492; and

Colorado Mined Land Reclamation Division, 423 Centennial Building, 1313 Sherman Street, Denver, CO 80203, Telephone: (303) 866–3567.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., Suite 310, Albuquerque, NM 87102, Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior conditionally approved the Colorado program on December 15, 1980. Information regarding the general background of the Colorado program including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Colorado program can be found in the December 15, 1980, **Federal Register** (45 FR 82173). Subsequent actions taken with regard to Colorado's program and program amendments can be found at 30 CFR 906.15.

II. Proposed Amendments

By letter dated August 23, 1988, Colorado submitted the proposed amendments (Administrative Record No. CO–384) to its permanent regulatory program under SMCRA. Colorado submitted the majority of the proposed amendments in response to the May 7, 1986, and June 9, 1987, letters (Administrative Record Nos. CO–282 and CO–342) which OSMRE sent in accordance with 30 CFR Part 732. The remainder of the proposed amendments were submitted at the State's initiative in order to improve its program. The proposed amendments are summarized below:

Small Operator Assistance Program

Colorado proposes to amend Rules 2.09.2, 2.09.3, 2.09.5, 2.09.6, and 2.09.8.

Use of Explosives

Colorado proposes to amend Rules 2.05.3, 4.08.1, 4.08.2, 4.08.4, 4.08.5, and 4.08.6.

Excess Spoil

Colorado proposes to amend Rules 1.04, 2.06.7, 4.09, 4.09.1, 4.09.2, 4.09.3, and 4.11.4. Colorado proposes to add Rule 4.09.4.

Coal Exploration

Colorado proposes to amend Rules 1.04, 2.02.3, 2.02.5, 2.02.7, 4.21.4, and 7.08.

Hydrology and Geology

Colorado proposes to amend Rules 1.04, 2.03, 2.03.3, 2.04.6, 2.04.7, 2.05.6, 4.05.1, 4.05.5, 4.05.8, 4.05.13, 4.05.16, 4.05.18, and 4.07.2.

Diversions

Colorado proposes to amend Rules 4.05.3 and 4.05.4.

Siltation Structures and Impoundments

Colorado proposes to amend Rules 1.04, 2.05.3, 4.05.2, 4.05.6, 4.05.9, and 4.11.5.

Coal Mine Waste

Colorado proposes to amend Rules 1.04, 2.05.3, 4.09.2, 4.09.3, and 4.10, 4.10.1, 4.10.2, 4.10.3, 4.10.4, 4.11, 4.11.1, 4.11.2, 4.11.3, and 4.11.5.

Permitting

Colorado proposes to amend Rules 2.03.5, 2.04.4, 2.05.4, 2.07.3, 2.07.4, 2.07.5, 2.08.4, 2.08.5, 2.08.6, and 2.10.3. Colorado proposes to add Rule 2.04.13.

Alluvial Valley Floors

Colorado proposes to amend Rules 1.04, 2.06.8, 4.24.2, 4.24.3, 4.24.4, and 4.24.5.

Backfilling and Grading

Colorado proposes to amend Rules 2.05.4, 4.14.1, 4.14.2, and 4.14.6.

Archaeology and Cultural Resources

Colorado proposes to amend Rules 2.02.3, 2.04.4, and 2.05.6.

Vegetation

Colorado proposes to amend Rule 1.04.

Mountaintop Removal Mining

Colorado proposes to amend Rule 2.06.3.

Bonding

Colorado proposes to amend Rules 3.02.4, and 3.03.2.

Air Pollution Control Plan

Colorado proposes to amend Rule 4.17.

Civil Penalties

Colorado proposes to amend Rule 5.04.3.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h)(10), OSMRE is now seeking comment on whether the amendments proposed by Colorado satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Colorado program.

Written Comments

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

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed at **FOR FURTHER INFORMATION CONTACT"** by 4:00 pm m.d.t. on October 20, 1988. Time of day of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

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

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

Public Meeting

If only one person requests an opportunity to comment at a hearing a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **"ADDRESSES."** A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 906

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

Date: September 23, 1988.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 88-22920 Filed 10-4-88; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 5E3174, 8E3582/P464; FRL3458-4]

Pesticide Tolerance for Diflubenzuron

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that tolerances be established for residues of the insecticide diflubenzuron in or on the raw agricultural commodities range grass and walnuts. The proposed regulation to establish maximum permissible levels for residues of the pesticide in or on the commodities was requested in petitions submitted by the Interregional Research Project No. 4 (IR-4). The tolerance regulation for range grass was requested by IR-4 in support of regional registration of the pesticide.

DATE: Comments, identified by the document control number [PP 5E3174, 8E3582/P464], must be received on or before November 4, 1988.

ADDRESSES:

By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

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

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petitions to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the named Agricultural Experiment Stations. These petitions requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of tolerances for residues of the insecticide diflubenzuron (*N*-[[(4-chlorophenyl)amino]carbonyl]-2,6-difluorobenzamide) in or on certain raw agricultural commodities.

1. *PP 5E3174.* Petition submitted on behalf of the New Mexico Agricultural Experiment Station for range grass at 3.0 parts per million (ppm).

2. *PP 8E3582.* Petition submitted by the California Agriculture Experiment Station for walnuts at 0.1 ppm.

Based on the geographical representation of the residue data submitted, the petitioner proposes that use of diflubenzuron on range grass be limited to Colorado, New Mexico, Oklahoma, and Texas and that registration be limited to application by Federal, State, and local public agencies for the control of range caterpillars. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

The data submitted with the petitions and other relevant material have been evaluated. The toxicological data

considered in support of the proposed tolerances include:

1. A 1-year feeding study in dogs with a no-observed-effect level (NOEL) of 2 milligrams (mg)/kilogram (kg)/day.

2. A 13-week feeding study in mice with a NOEL for systemic effects at 80 ppm (equivalent to 12 mg/kg/day).

3. A 2-year feeding oncogenicity study in rats fed dosages of 0, 156, 625, 2,500, and 10,000 ppm (eqivalent to 0, 7.8, 31.25, 125, and 500 mg/kg/day) with no oncogenic effects observed under the conditions of the study.

4. A lifetime feeding/oncogenicity study in mice fed dosages of 0, 16, 80, 400, 2,000, and 10,000 ppm (equivalent to 0, 2.4, 12, 60, 300, and 1,500 mg/kg/day) with no oncogenic effects observed under the conditions of the study.

5. A three-generation reproduction study in rats with a NOEL for reproductive effects greater than 160 ppm (highest dose tested).

6. Teratology studies in rats and rabbits with NOEL's for maternal, fetotoxic, and teratogenic effects greater than 4 mg/kg (highest dose tested).

7. Mutagenicity studies including Ames testing with TA–98, TA–100, and TA–1537 strains of *Salmonella* (negative at levels up to 1,000 micrograms per plate); an *in vitro* cytogenetic study with no evidence of mutagenicity up to 1,500 mg/kg; and an *in vitro* study in mice lymphoma cells and unscheduled DNA synthesis with human WI–38 cells with no evidence of inducing mutagenicity.

The acceptable daily intake (ADI), based on the 1-year feeding study in dogs (NOEL of 2 mg/kg/day) and using a 100-fold safety factor, is calculated to be 0.02 mg/kg of body weight (bw)/day. Published tolerances utilize 3.6 percent of the ADI. The tolerance for range grass will not increase the theoretical maximum residue contribution (TMRC) for diflubenzuron since currently established tolerances for meat and milk are adequate to cover any residues resulting from use of the treated commodity as animal feed. The current action for walnuts will utilize an additional 0.002 percent of the ADI.

The nature of the residues is adequately understood, and an adequate analytical method, gas chromatography using an electron capture detector, is available in FDA's *Pesticide Analytical Manual* (PAM), Vol. II, for enforcement purposes. There are currently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency, the tolerances established by amending 40 CFR 180.377 would protect the public health. Therefore, it is proposed that the tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 5E3174, 8E3582/P464]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

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

Dated: September 20, 1988.

Edwin F. Tinsworth,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.377 is amended in paragraph (a) by adding and alphabetically inserting the raw agricultural commodity walnuts and in paragraph (b) by adding and alphabetically inserting a tolerance for regional registration for range grass to read as follows:

§ 180.377 Diflubenzuron; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Walnuts	0.1

(b) * * *

Commodities	Parts per million
* * * * *	
Grass, range	3.0

[FR Doc. 88–22815 Filed 10–4–88; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 180

[PP 6E3440/P463; FRL–3459–4]

Pesticide Tolerance for Diazinon

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for residues of the insecticide diazinon in or on the raw agricultural commodity Chinese radish (roots and tops). The proposed regulation to establish a maximum permissible level for residues of the insecticide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR–4) in support of regional registration.

DATES: Comments, identified by the document control number [PP 6E3440/P463], must be received on or before November 4, 1988.

ADDRESSES: By mail, submit written comments to:

Public Docket and Freedom of Information Section, Field Operations Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

In person, bring comments to: Rm. 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with

procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Hoyt Jamerson, 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: Rm. 716C, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2310.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition (PP) 6E3440 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the Agricultural Experiment Stations of California and Florida.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for residues of the insecticide diazinon (*O,O*-diethyl *O*-[6-methyl-2-(1-methylethyl)-4-pyrimidinyl]phosphorothioate) in or on the raw agricultural commodity Chinese radish (roots and tops) at 0.1 part per million (ppm). The petitioner proposed that use on this commodity be limited to California and Florida based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include:

1: A rat 90-day subchronic feeding study with a no-observed-effect level (NOEL) of 0.009 milligram (mg)/kilogram (kg)/day for inhibition of plasma cholinesterase (ChE) activity.

2. National Cancer Institute (NCI) bioassays in mice which did not indicate oncogenic effects at both levels tested (100 and 200 ppm, equivalent to 15 and 30 mg/kg) and in rats which did not indicate oncogenic effects at dose levels up to and including 800 ppm (highest dose tested).

3. Rat and rabbit teratology studies which were negative for teratogenic and fetotoxic effects at 100 mg/kg (highest dose tested).

4. A battery of acceptable mutagenicity and genotoxicity assays with no constant evidence of mutagenic effects in the several studies available.

Data considered desirable but lacking include the following: a delayed neurotoxicity study in hens, subchronic and chronic feeding studies in two species, a multigeneration reproduction study in rats, and selected nutagenicity studies (*in vitro* mammalian gene mutation studies, a structural chromosomal aberrations study, and studies assessing the potential for inducing sister chromatid exchanges in both *in vivo* and *in vitro* systems).

The provisional acceptable daily intake (PADI), based on inhibition of plasma cholinesterase (ChE) in a 90-day rat feeding study (NOEL of 0.009 mg/kg/day for plasma cholinesterase inhibition, and using a 100-fold safety factor) is calculated to be 0.00009 mg/kg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances, when adjusted for percent of crop treated or anticipated residue contribution (ARC), is calculated to be 0.000767 mg/kg/day; the current action will increase the ARC by <0.000001 mg/kg/day (0.1 percent). The Agency concludes that the amount of diazinon added to the diet from the proposed use will not significantly increase dietary exposure.

The nature of the residues is adequately understood, and an adequate analytical method, gas chromatography, is available for enforcement purposes. An analytical method for enforcing this tolerance has been published in the *Pesticide Analytical Manual* (PAM), Vols. I and II. No secondary residues in meat, milk, poultry, or eggs are expected since Chinese radish is not considered a livestock feed commodity. There are currently no actions pending against the continued registration of this chemical.

EPA issued in the **Federal Register** of January 15, 1986 (51 FR 1842), a Notice of Special Review and Preliminary Determination to cancel registration and deny application for uses of diazinon on golf courses and turf farms. This action was based on a serious hazard to birds and a potential hazard to fish with the application of granular diazinon to large expanses of turf. In the **Federal Register** of April 5, 1988 (53 FR 11119), a final decision was made to prohibit pest control use of diazinon on golf courses and sod farms.

Based on the above information considered by the Agency, the tolerances established by amending 40 CFR 180.153 would protect the public health. Therefore, it is proposed that the tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 6E3440/P463]. All written comments filed in response to this petition will be available in the Public Docket and Freedom of Information Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

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

Dated: September 26, 1988

Edwin F. Tinsworth,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.153 is amended by designating the current paragraph and list of tolerances as paragraph (a) and by adding a new paragraph (b), to read as follows:

§ 180.153 Diazinon; tolerances for residues.

* * * * *

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for residues of the insecticide diazinon (*O,O*-diethyl *O*-[6-methyl-2-(1-methylethyl)4-pyrimidinyl]-phosphorothioate; CAS Reg. No. 33–41–5) in or on the following raw agricultural commodities:

Commodities	Part per million
Radish, Chinese (roots)	0.1
Radish, Chinese (tops)	0.1

[FR Doc. 88–22911 Filed 10–4–88; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 180

[PP 8E3625/P465; FRL–3459–5]

Pesticide Tolerance for Permethrin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposed that a tolerance be established for the combined residues of the insecticide permethrin and the sum total of its metabolites DCVA and 3–PBA in or on the raw agricultural commodity crop group cucurbit vegetables. The proposed regulation to establish maximum permissible levels for residues of the insecticide in or on the commodities was requested in a petition submitted by the Interregional Research Project No. 4 (IR–4).

DATE: Comments, identified by the document control number [PP 8E3625/P465], must be received on or before November 4, 1988.

ADDRESS: By mail, submit written comments to:

Public Docket and Freedom of Information Section, Field Operations Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holdiays.

FOR FURTHER INFORMATION CONTACT:

By mail:

Hoyt Jamerson, 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: Rm. 716C, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–2310.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 8E3625 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project, and the Agricultural Experiment Stations of Arkansas, California, Florida, Hawaii, Oklahoma, and Puerto Rico, and the United States Department of Agriculture.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the insecticide permethrin [(3-phenoxyphenyl)methyl-3(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylate] and the sum of its metabolites 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylic acid (DCVA) and (3-phenoxyphenyl)-methanol (3-PBA) in or on the raw agricultural commodity crop group cucurbit vegetables, as defined in 40 CFR 180.34(f)(9)(ix)(A), at 3.0 parts per million (ppm).

Tolerances are currently established for residues of the insecticide in or on the following raw agricultural commodities in the crop group cucurbit vegetables: Cantaloupes at 3.0 ppm and pumpkins at 2.0 ppm. With the establishment of the crop group tolerance, tolerances would be established at a uniform level for residues of the insecticide at 3.0 ppm in or on cantaloupes and pumpkins and, additionally, in or on the remaining commodities within the crop group including balsam pear, Chinese waxgourds, citron melon, cucumber, edible gourds, melons (including hybrids and cantaloupe, casaba, crenshaw, honeydew melons, honey balls, mango melon, muskmelon, and Persian melon), pumpkin, summer squash, winter squash, and watermelon (including hybrids).

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerances are sought. The toxicological data considered in support of the proposed tolerances were discussed in a final rule document (PP 8F2099/R422), published in the **Federal Register** of October 13, 1982 (47 FR 45008). Tolerances for residues of the insecticide on various raw agricultural commodities have been previously established ranging from 0.05 to 60.0 ppm.

The acceptable daily intake (ADI), based on the 2-year rat chronic feeding/oncogenicity study (NOEL of 5.0 mg/kg/day or 100 ppm) and using a 100-fold safety factor, is calculated to be 0.05 mg/kg of body weight (bw)/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg daily diet is calculated to be 0.015481 mg/kg/day; the current action will increase the TMRC by 0.000700 mg/kg/day (4.5 percent) to 0.016181 mg/kg/day. Published tolerances utilize 30.96 percent of the ADI; the current action will utilize an additional 1.40 percent.

The nature of the residues is adequately understood and adequate analytical methods, gas-liquid chromatography, are available in the *Pesticide Analytical Method* (PAM), Vol. II, for enforcement purposes. Any secondary residues occurring in meat, milk, poultry, or eggs will be covered by existing tolerances for these commodities. There are currently no actions pending against the continued registration of this chemical.

Based on the above information and data considered by the Agency, the tolerance established by amending 40 CFR 180.378 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 8E3625/P465]. All written comments filed in response to this petition will be available in the Public Docket and Freedom of Information Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administration practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 27, 1988.

Edwin F. Tinsworth,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.378 is amended by deleting the entries for the commodities cantaloupes and pumpkins and adding and alphabetically inserting an entry for the raw agricultural commodity crop group cucurbit vegetables to read as follows:

§ 180.378 Permethrin; tolerances for residues.

* * * * *

(b) * * *

Commodities	Parts per million
* * * * *	
Vegetables, cucurbit	3.0
* * * * *	

[FR Doc. 22910 Filed 10-4-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Child Support Enforcement

45 CFR Parts 302, 303, 304 and 305

Child Support Enforcement Program; Cooperative Arrangements

AGENCY: Office of Child Support Enforcement (OCSE), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes six provisions that must be contained in all cooperative arrangements between IV-D agencies and courts and law enforcement officials. It also requires that cooperative arrangements meet these criteria in order to be eligible for Federal financial participation. These requirements would be effective immediately for all new cooperative arrangements. States would have one year from publication of the final rule to comply with the proposed requirements for their existing arrangements.

DATES: Consideration will be given to comments received by December 5, 1988.

ADDRESS: Address comments to: Director, Office of Child Support Enforcement, Department of Health and Human Services, Room 2090 Switzer Building, 330 C Street, SW., Washington, DC 20201, Attention: Director, Policy and Planning Division. Comments will be available for public inspection Monday through Friday, 8:30 a.m. to 5:00 p.m., in Room 2090 of the Department's office at the above address.

FOR FURTHER INFORMATION CONTACT: Betsy Matheson, Policy Branch, OCSE (202) 252-5364.

SUPPLEMENTARY INFORMATION:

Background

State and local IV-D agencies enter into cooperative arrangements to obtain the assistance of courts and law enforcement agencies in carrying out the functions of the IV-D program: the location of absent parents, the establishment of paternity and support obligations and the collection and enforcement of those obligations.

Under the current regulation at 45 CFR 302.34, cooperative arrangements must be in the form of a written agreement and must contain certain criteria. These criteria include providing courts and law enforcement officials with pertinent information needed in locating absent parents, establishing paternity and securing support, including the immediate transfer of the information obtained from the State IV-A agency, pursuant to 45 CFR 235-70. Cooperative arrangements must also provide for assistance to the IV-D agency in carrying out the program and may relate to any other matters of common concern. Cooperative arrangements may include provisions for the investigation and prosecution of fraud directly related to paternity and child and spousal support and provisions to reimburse courts and law enforcement officials for their assistance.

In May of 1980, OCSE issued a publication that addressed the major considerations and elements of a cooperative arrangement as part of its "Techniques for Effective Management of Program Operations (TEMPO)" series. The TEMPO publication contains specific recommendations and sample language for use in the development of effective cooperative arrangements. However, it appears that many States have not used the TEMPO's recommendations when entering into cooperative arrangements and program performance may have been affected as a result.

Program audits and Regional Office reports indicate that some States do not ensure that the functions delegated under cooperative arrangements are carried out properly, efficiently and effectively. Since one third of all child support workers are employed through cooperative arrangements, we believe that greater accountability and control are necessary for arrangements between State or local IV-D agencies and other entities. Therefore, this proposed rule includes additional specifications for cooperative arrangements as a condition for Federal financial participation in the costs incurred under those arrangements.

Two separate surveys were conducted on cooperative arrangements—in 1984 and again in late 1987. In the initial 1984 survey, we solicited, both internally and from State IV-D directors, information and recommendations on the identification of problem areas and

suggestions for improvements in the quality of cooperative arrangements. Copies of cooperative arrangements in effect in 1984 were obtained for comparison to those arrangements made after the initial survey. In late 1987, we analyzed arrangements made after the initial survey to determine if awareness of the problem and new informational tools for improving performance under cooperative arrangements were sufficient to improve the quality of the cooperative arrangements negotiated since 1984. That analysis indicated no measurable improvement in the quality of the cooperative arrangements.

Because there has been little voluntary improvement and strengthening of cooperative arrangements to ensure accountability and efficient and effective operation of the IV–D program, we believe more specific requirements based on those elements of cooperative arrangements recommended in the 1980 TEMPO are essential. These proposed requirements would improve the accountability of agencies providing IV–D services under cooperative arrangements and increase program cost effectiveness by ensuring that the delegated or contracted functions are carried out efficiently and effectively.

The proposed requirements would be effective upon publication of the final rule for new arrangements and one year from publication of the final rule for existing arrangements. The delayed effective date for existing cooperative arrangements would allow States adequate time to renegotiate existing agreements to ensure compliance with these requirements.

Statutory Authority

This proposed rule is published under the authority of section 1102 of the Social Security Act (the Act) which requires the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which he is responsible under the Act.

Section 454(7) of the Act requires that each State plan for child and spousal support must "provide for entering into cooperative arrangements with appropriate courts and law enforcement officials (A) to assist the agency in administering the plan, including the entering into of financial arrangements with such courts and officials in order to assure optimum results under such program, and (B) with respect to any other matters of common concern to such courts or officials and the agency administering the plan."

Regulatory Provisions

Section 302.34 State plan requirement.

Current regulations at 45 CFR 302.34 require States to enter into written agreements for cooperative arrangements with appropriate courts and law enforcement officials to provide certain services in carrying out the functions of the Child Support Enforcement program.

This proposed regulation redesignates this section in its entirety as paragraph (a), and makes minor editorial changes to the language.

Proposed new paragraph (b) would require that all cooperative arrangements contain the provisions required under the new 45 CFR 303.107.

Section 303.107 Requirements for cooperative arrangements.

This proposed regulation would add a new § 303.107 entitled "Requirements for cooperative arrangements." This section would specify certain information which States must include in all cooperative arrangements, in addition to the criteria required under § 302.34, as follows:

1. *Section 303.107(a): Arrangements must contain a clear description of the specific duties, functions and responsibilities of each party.*

Any arrangement must clearly describe the duties, functions and responsibilities of each of the parties. The selection and definition of the duties, functions and responsibilities depends upon the identity, resources, and skills of the parties involved. Once identified, those responsibilities must be clearly stated to avoid confusion by either party. In other words, the arrangement must specify clearly what will be done and who will do it. One responsibility of the State IV–D agency is monitoring cooperative arrangements to ensure effective implementation of the terms of the arrangement and to identify any problems that may affect the delivery of services promised under the arrangement.

2. *Section 303.107(b): Arrangements must specify clear and definite standards of performance which meet Federal requirements.*

An arrangement must specify clear and precise performance standards by which the terms of the arrangement and quality of services provided under the arrangement are measured. All arrangements should contain standards of performance that are measurable, consistent with Federal requirements, and acceptable to each party. These standards should be related specifically to the duties outlined.

The arrangements should contain both qualitative and quantifiable performance standards. Some examples of qualitative standards are accuracy and thoroughness. Examples of quantifiable standards are: how many specific actions must be taken; what time frame is allowable for completion of a task, for example, paternity establishment; what collection levels must be maintained; or what ratio of costs to collections must be achieved. Reimbursement for services should be conditioned upon meeting the standards, as discussed further under the discussion on financial arrangements.

Any performance standards contained in Federal regulations governing areas covered under cooperative arrangements must be met by the party who has entered into the arrangement with the IV–D agency. Because the IV–D agency remains responsible for the implementation of the program, it must also retain authority for the interpretation of this material. Since program success depends upon mutual cooperation, there should be a common effort to develop reasonable standards which are ambitious, attainable, and consistent with Federal requirements.

3. *Section 303.107(c): Arrangements must specify that the parties will comply with title IV–D of the Act, implementing regulations and any other applicable Federal regulations and requirements.*

To ensure that all IV–D functions are performed in accordance with approved State plans and all relevant Federal requirements, the proposed rule would require all arrangements to specify that applicable Federal requirements will be met by the parties to the arrangement. The State should ensure that key Federal and State laws or regulations that apply to the services and actions provided under the arrangement are available to the parties.

4. *Section 303.107(d): Arrangements must specify the financial arrangements including budget estimates, covered expenditures, methods of determining costs, procedures for billing the State or local IV–D agency and any relevant Federal and State reimbursement requirements and limitations.*

The financial section of the arrangement establishes the resources necessary to accomplish program objectives. In addition, the financial section not only controls expenditures but also ensures the propriety of those expenditures. Therefore, the proposal would require all arrangements to specify in detail the financial terms under which the parties will carry out the arrangement.

We strongly encourage States to link funding to performance in the terms and conditions of their cooperative arrangements. This link can be both positive and negative, e.g., increased funding for better performance and passing on any audit or other penalties sustained by the State as an outgrowth of inadequate performance under the agreement. Ideally, States should negotiate terms that would allow them to pass on to the other parties to the arrangement the impact of those parties' performance.

We also suggest that arrangements contain detailed financial arrangements such as:

(1) The proportion in which expenditures are divided between the parties, e.g., State/county matching rate;

(2) If indirect costs are to be included in the arrangement, a statement on the computation of those indirect costs, including whether or not:

(A) A fixed rate is to be used and, if so, what that rate will be; or

(B) An estimate is to be used and, if so, how it is to be determined and how and when a final rate will be set; or

(C) A "lump sum" amount is to be negotiated each year;

(3) The base costs to which the indirect rate will be applied to determine the amount of eligible indirect costs that can be claimed;

(4). The type or cost of equipment purchases that will require prior approval;

(5) The method and cost threshold of depreciation; and

(6) If applicable, the method for passing through an appropriate share of the incentive payments to political subdivisions that participate in the costs of the program.

5. *Section 303.107(e): Arrangements must specify the kind of records that must be maintained and the appropriate Federal, State and local reporting and safeguarding requirements.*

In framing the requirements for record maintenance and reporting, the State must comply with State and Federal reporting and record keeping requirements. The State also has the right to require that the parties to an arrangement keep and present information in a format compatible with its needs. Local needs may require still other kinds of information to be reported or variations in the reporting format. Therefore, the proposed regulation would require that the arrangement specify whatever reports or records are needed to meet Federal, State and local requirements.

Confidentiality of records deserves separate treatment in arrangements. It is vital that case information be disclosed only to authorized individuals and only for authorized purposes. The arrangement should specify who is to have access to information in case records and for what purpose. Federal and State legislation and regulations are controlling. Federal requlations at 45 CFR 303.21 provide general guidance for the safeguarding of information. 45 CFR 303.70 requires agencies to take protective measures to safeguard personal information transmitted and received through the Federal Parent Locator Service. Additionally, States and localities which obtain certain address or asset information from the Internal Revenue Service are subject to the more stringent recordkeeping and safeguarding requirements of the Internal Revenue Code at 26 U.S.C. 6103(p)(4). Therefore, arrangements would be required to specify that these requirements will be met.

6. *Section 303.107(f): Arrangements must specify the dates on which the arrangement begins and ends, any conditions for renewal, and the circumstances under which the arrangement may be terminated.*

To ensure that an existing arrangement responds to current conditions and needs, the proposed regulation would require that the arrangement contain dates signifying when it begins and ends. A State might wish to limit the time frame on arrangements to one or two years. In addition, to protect the State from inadequate and deficient services, all arrangements would be required to contain provisions that specify the conditions for renewal and the circumstances under which the arrangement can be terminated. We suggest that the arrangement provide, at a minimum, for termination as a result of clear violations of Federal or State law or of the agreement itself, or for failure to take appropriate corrective action. States may also wish to include a provision for a monetary penalty to avoid termination of an arrangement. Such a penalty could be used to boost performance and as an alternative to outright termination of the arrangement.

We also encourage States to include in arrangements a provision for corrective action and procedures for implementing any necessary corrective action to be used at the discretion of the State. This will enable parties to correct deficiencies when review indicates that they are not meeting the terms of the arrangement or are performing poorly with respect to the defined performance standards. If the State requires the subgrantee to take corrective action, the corrective action period should be limited to a specified length of time. We suggest that States limit the corrective action period to three months since we believe that this time frame is generally sufficient to correct inadequate performance or other noted problems. Because there may be situations in which a State believes immediate termination is the best solution, corrective action may not be appropriate in all cases of poor performance.

Section 304.21 Federal financial participation.

Current regulations at 45 CFR 304.21 state the conditions that must exist to make Federal financial participation available for costs incurred under cooperative arrangements.

This proposed regulation makes minor editorial changes to the title of this section for purposes of consistency with § 302.34 and adds a new paragraph (b)(6).

The proposed new paragraph (b)(6) would require that all cooperative arrangements contain the provisions in the new 45 CFR 303.107 as a condition for Federal financial participation. Regional office staff will evaluate any of these arrangements when necessary to ensure compliance with the new cooperative arrangement standards. If the review by Regional staff finds a cooperative arrangement is not in compliance with the proposed requirements of 45 CFR 303.107, Federal financial participation will not be available for the costs associated with such until a determination is made that the cooperative arrangement meets the proposed standards.

Section 305.34 Audit requirements.

Current regulations at 45 CFR 305.34 require that States enter into written cooperative arrangements with appropriate courts and law enforcement officials when necessary for the purpose of carrying out the functions of the Child Support Enforcement program. This regulation would add a new sentence to require that all cooperative arrangements conform to the requirements at § 303.107.

Paperwork Reduction Act

This proposed rule at 45 CFR 302.34, 303.107, 304.21 and 305.34, contains information collection requirements which are subject to OMB review under the Paperwork Reduction Act of 1980 (Pub. L. 96-511). As required by section 3504(h) of Pub. L. 96–511, we have submitted a copy of this proposed rule to OMB for its review of the information collection requirements listed above. Other 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 this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, DC 20503, Attention: Desk Officer for HHS.

However, the information collection requirements contained in the proposed regulation at 45 CFR 303.107 would not increase the annual burden on States because the time and financial resources necessary to comply with this collection of information would be incurred by the parties to the arrangement in the normal process of negotiation of the arrangement and ratification. According to regulations at 5 CFR 1320.7(b)(1), the time and financial resources necessary to comply with a collection of information that would be incurred by persons in the normal course of their activities is excluded from the definition of "burden" as it refers to paperwork reduction.

Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), we are required to prepare a regulatory flexibility analysis for those rules which will have a significant economic impact on a substantial number of small entities. The principle impact of this proposed regulation is on State IV–D agencies which will be required to revise only those existing cooperative arrangements which do not meet the new requirements. This proposed regulation could potentially save money for both the Federal Government and the States by controlling amounts spent on and ensuring adequate performance under cooperative arrangements.

States enter into cooperative arrangements to obtain the assistance of courts and law enforcement officials in carrying out the functions of the Child Support Enforcement program: The location of absent parents, the establishment of paternity, the establishment of support obligations, and the enforcement and collection of those obligations.

Federal regulations at 45 CFR 304.021 provide that Federal financial participation, at the applicable matching rate, is available for the costs of cooperative arrangements. The intent of this proposed regulation is to specify certain conditions all cooperative arrangements must meet to increase the effectiveness of the Child Support Enforcement program and to ensure that States get what they pay for.

This proposed regulation strengthens the existing regulation and may result in initial additional costs when States renegotiate and revise their existing cooperative arrangements. However, we believe that the renegotiated arrangements will result in services being provided at a substantial net savings to State and Federal governments due to the increased specificity and effectiveness of such arrangements. States will be in a better position to ensure effective operation of the program by controlling the performance of those under cooperative arrangements.

Therefore, these regulations would not have a significant economic impact on a substantial number of small entities and a regulatory flexibility analysis is not required.

Regulatory Impact Analysis

The Secretary has determined, in accordance with Executive Order 12291 that this rule does not constitute a "major" rule for the following reasons:

(1) The annual effect on the economy is less than $100 million;

(2) This rule will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and

(3) This rule will not result in significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

As discussed above, this regulation will result in net savings for State and Federal governments because of improved performance of services specified under cooperative arrangements, and improved accountability under those arrangements.

Federalism Impact Analysis

Executive Order 12612 requires Federal agencies, in formulating and implementing policies and regulations, to assess the impact of these on federalism. For those rules that have a significant effect on the roles, rights, and responsibilities between the States and the Federal government, a federalism impact analysis is required.

There is one federalism issue we have identified in this analysis that may affect the institutional relationship between the States and the Federal government. This relates to the addition of the six provisions which would be required in all cooperative arrangements.

The six proposed provisions as submitted in this regulation are designed to improve the accountability of agencies providing IV–D services under cooperative arrangements to the State. These new provisions would strengthen the State's authority by ensuring that delegated or contracted functions are carried out as the State intended and by delineating the consequences of a subgrantee's failure to meet their responsibilities. The Federal government holds States accountable for program services and the States need the authority to hold those actually providing those services accountable. These six new provisions are in no way intended to preempt State law. They are minimal standards which should be part of any contract.

List of Subjects

45 CFR Part 302

Child support, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Unemployment compensation.

45 CFR Part 303

Child support, Grant programs—social programs, Reporting and recordkeeping requirements.

45 CFR Part 304

Child welfare, Grant programs—social programs, Reporting and recordkeeping requirements.

45 CFR Part 305

Accounting, Child support, Grant programs—social programs, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program No. 13.783, Child Support Enforcement Program)

Dated: June 29, 1988.

Wayne A. Stanton,

Director, Office of Child Support Enforcement.

Approved: July 20, 1988.

Otis R. Brown,

Secretary.

For the reasons set out in the preamble, Title 45 Chapter III of the Code of Federal Regulations is amended as follows:

PART 302—[AMENDED]

1. The authority citation for Part 302 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p) and 1396(k).

2. Section 302.34 is revised to read as follows:

§ 302.34 Cooperative arrangements.

(a) The State plan shall provide that the State will enter into written agreements for cooperative arrangements with appropriate courts and law enforcement officials. Such arrangements may be entered into with a single official covering more than one court, official, or agency, if the single official has the legal authority to enter into arrangements on behalf of the courts, officials, or agencies. Such arrangements shall contain provisions for providing courts and law enforcement officials with pertinent information needed in locating absent parents, establishing paternity and securing support, including the immediate transfer of the information obtained under § 235.70 of this title to the court or law enforcement official, to the extent that such information is relevant to the duties to be performed pursuant to the arrangement. They shall also provide for assistance to the IV–D agency in carrying out the program, and may relate to any other matters of common concern. Under matters of common concern, such arrangements may include provisions for the investigation and prosecution of fraud directly related to paternity and child and spousal support, and provisions to reimburse courts and law enforcement officials for their assistance.

(b) Cooperative arrangements must meet the criteria prescribed under § 303.107 of this chapter.

PART 303—[AMENDED]

3. The authority citation for Part 303 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

4. Part 303 is amended by adding § 303.107 to read as follows:

§ 303.107 Requirements for cooperative arrangements.

The State must ensure that all cooperative arrangements:

(a) Contain a clear description of the specific duties, functions and responsibilities of each party;

(b) Specify clear and definite standards of performance which meet Federal requirements;

(c) Specify that the parties will comply with title IV–D of the Act, implementing Federal regulations and any other applicable Federal regulations and requirements;

(d) Specify the financial arrangements including budget estimates, covered expenditures, methods of determining costs, procedures for billing the State or local IV–D agency, and any relevant Federal and State reimbursement requirements and limitations;

(e) Specify the kind of records that must be maintained and the appropriate Federal, State, and local reporting and safeguarding requirements; and

(f) Specify the dates on which the arrangement begins and ends, any conditions for renewal and the circumstances under which the arrangement may be terminated.

PART 304—[AMENDED]

5. The authority citation for Part 304 continues to read as follows:

Authority: 42 U.S.C. 651 through 654, 657, 660, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

6. Section 304.21 is amended by revising the section heading, replacing the period at the end of paragraph (b)(5) with "; and" and adding a new paragraph (b)(6) to read as follows:

§ 304.21 Federal financial participation in the costs of cooperative arrangements with courts and law enforcement officials.

* * * * *

(b) * * *

(6) Costs of cooperative arrangements that do not meet the requirements of § 303.107 of this chapter.

* * * * *

PART 305—[AMENDED]

8. The authority citation for Part 305 continues to read as follows:

Authority: 42 U.S.C. 603(h), 604(d), 652(a)(1) and (4), and 1302.

9. Section 305.34 is revised to read as follows:

§ 305.34 Cooperative arrangements.

For the purpose of this part, in order to be found in compliance with the State plan requirement for cooperative arrangements (45 CFR 302.34), a State must enter into written cooperative arrangements with appropriate courts and law enforcement officials when necessary to establish and enforce support obligations, collect support and cooperate with other States in these functions. The cooperative arrangements must meet the reouirements at § 303.107 of this chapter.

[FR Doc. 88–22830 Filed 10–4–88; 8:45 am]

BILLING CODE 4150–04–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 88–373]

Amendment of the Commission's Rules To Permit Business Radio Use of Certain Channels in the 150 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; order extending comment period.

SUMMARY: The Chief, Private Radio Bureau has adopted an *Order* extending the time period in which to file comments and reply comments to the *Notice of Proposed Rule Making* in this proceeding. The new dates are October 14, 1988, for comments and October 31, 1988, for reply comments. This action is necessary because the previous deadlines did not provide interested parties with 30 days after the publication date to prepare formal comments.

DATES: Comments due October 14, 1988, reply comments due October 31, 1988.

FOR FURTHER INFORMATION CONTACT: Michael Lewis, Rules Branch, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634–2443.

SUPPLEMENTARY INFORMATION: The summary of the *Notice of Proposed Rule Making* in this proceeding was printed in the **Federal Register** on September 13, 1988, at 53 FR 35359.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 88–22859 Filed 10–4–88; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 177

[Docket HM–203, Advance Notice No. 88–3]

Highway Routing Standards for Hazardous Materials; Extension of Comment Period

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Extension of time to file comments.

SUMMARY: On April 7, 1988, RSPA published an advance notice of proposed rulemaking (ANPRM) in the

Federal Register (53 FR 11618); Docket HM–203, (Notice No. 88–3) which invited public comment on the possible need to establish routing criteria, requirements, and methodologies for analyzing alternative routes for the highway transportation of non-radioactive hazardous materials. RSPA has received petitions from the Chemical Manufacturers Association (CMA) and the Institute of Makers of Explosives (IME) requesting extension of the comment period in order to evaluate the proposals contained in the ANPRM. RSPA concurs with their request and this notice extends that comment period.

DATE: The date for filing the comments is extended from October 11, 1988 to December 13, 1988.

ADDRESS: Address comments to Docket Unit (DHM–30), Office of Hazardous Materials Transportation, RSPA, U.S. Department of Transportation, Washington, DC 20590. Comments should identify the docket and notice number and be submitted, when possible, in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. The Dockets Unit is located in Room 8421 of the Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Office hours are 8:30 am to 5:00 pm Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Joseph Nalevanko, Policy Development and Information Systems Division, (202) 366–4484, or Beth Romo, Standards Division, (202) 366–4488, Office of Hazardous Materials Transportation, 400 Seventh Street SW., Washington, DC 20590.

Issued in Washington, DC on September 29, 1988 under authority delegated in 49 CFR Part 106, Appendix A.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 88–22952 Filed 10–4–88; 8:45 am]

BILLING CODE 4910–60–M

National Highway Traffic Safety Administration

49 CFR Part 531

[Docket No. FE–87–02; Notice No. 2]

Fuel Economy Standards; Petition Denied

AGENCY: National Highway Traffic Safety Administration, (NHTSA), Department of Transportation (DOT).

ACTION: Denial of petition.

SUMMARY: This notice denies a petition from General Motors (GM) to amend retroactively the 1985 passenger car fuel economy standard. NHTSA denied two similar petitions: one from GM and one from Mercedes-Benz (Mercedes) in April 1988. GM asked the agency to reconsider its denial, providing some new arguments and new information. After careful consideration of the new material, the agency has denied the new request for the reasons described below.

FOR FURTHER INFORMATION CONTACT: Stephen P. Wood, Assistant Chief Counsel, NHTSA, 400 Seventh Street SW., Washington, DC 20590, (202) 366–2992.

SUPPLEMENTARY INFORMATION:

Background

On April 28, 1988, NHTSA published a denial of two petitions for rulemaking filed by GM and Mercedes seeking retroactive reductions in passenger car fuel economy standards. Mercedes had asked the agency to reduce the model year 1984 and 1985 standards to 26.0 miles per gallon or lower. GM asked the agency to reduce the model year 1985 standard to 26.0 miles per gallon or lower.

NHTSA based its denial on several grounds, all of which can be summarized as a determination that retroactive amendment would be inconsistent with the statutory scheme of the Federal fuel economy law, Title V of the Motor Vehicle Information and Cost Savings Act. 53 FR 15241, at 15243. (April 28, 1988). As NHTSA explained in the denial notice, Title V provides full discretion to the agency to amend the fuel economy standards; however, this discretion must not be abused nor can it be exercised in such a way that would disturb the statutory scheme.

The Petition

On May 27, 1988, GM filed a petition, which it characterized as a petition for reconsideration of the agency's denial. The petition presents two alternative bases for reconsideration. The first basis suggested by GM is that the agency was fundamentally in error in finding that the statutory scheme precludes retroactive amendment of a fuel economy standard. The second basis, which the petition calls "the major focus of [the] request for reconsideration," itself contains two alternative theories, both of which would accommodate the agency's general interpretation that CAFE amendments should be prospective only. The first theory is that NHTSA's announcement of its view regarding retroactive amendment was made too late to permit timely petitions by the industry for model year 1985, and thus, should not be applied retroactively to preclude amendments to the standard for that model year. Under this theory, GM argues that the agency should agree to a "one-time-only" retroactive amendment of the 1985 standard. GM's second theory is related to the recent (but now vacated) *en banc* decision of the U.S. Court of Appeals for the District of Columbia Circuit in *Center for Auto Safety v. Thomas*, which would have had the effect of ordering the Environmental Protection Agency (EPA) to conduct retroactive rulemaking to amend a fuel economy test procedure rule. (Case No. 85–1515, D.C. Cir., May 17, 1988). GM states that the *en banc* decision "affirmatively contemplates that NHTSA will exercise its discretion to redress what the Court evidently recognized as an unfair result." The first *en banc* decision was released after the NHTSA petition denial was announced. Subsequently, on September 16, 1988, the full court vacated that decision. *Center for Auto Safety v. Thomas*, No. 85–1515 (D.C. Cir. September 16, 1988). This, of course, occurred after the new GM petition was filed with NHTSA.

Summary and Rationale of Agency Decision

The agency has decided to deny the GM petition for rulemaking. At the outset, the agency notes that its rulemaking procedural rules do not contemplate a petition for reconsideration of a rulemaking petition denial. See generally 49 CFR Part 552; compare with 49 CFR 553.35. The denial of such petitions is a final agency action. Therefore, the agency has treated the GM request as a new petition for rulemaking. In that context, the agency has considered the arguments put forth by GM and will explain why it is not opening a rulemaking proceeding to amend the 1985 CAFE standard. We note that the new GM petition does not address the petition filed by Mercedes (which was denied together with the first GM petition in April). The Mercedes petition raised substantially different issues than the grounds for the first GM petition, and covered an additional model year. Since Mercedes did not file a new petition, nor did it join in the GM petition, today's decision does not include any discussion of issues addressed in the denial of the Mercedes petition, except to the extent that identical issues were raised in the new GM petition.

A. Reconsideration of the Basis of the Original Decision

GM's first position is that the agency should reevaluate the legal theory underlying the original petition denial. GM states that NHTSA's original

decision does not explain adequately the basis for the petition denial. Specifically, GM said that it does not understand whether the agency believed it had authority to amend retroactively, but was choosing not to exercise any such authority; or alternatively whether the agency thought that it did not have any authority to amend CAFE standards retroactively.

The agency believes that its original decision was quite clear about the basis of its decision, but will describe again its reasons. This explanation incorporates by reference the reasons provided in the original decision, including those reasons not repeated or specifically described in this document. As the original decision stated, Section 502 of Title V generally provides the agency full discretion to amend CAFE standards; however, the agency is guided in exercising that discretion by the Administrative Procedure Act (APA), which commands that agency actions must not be arbitrary, capricious, an abuse of discretion or otherwise contrary to law. The agency's original decision said that, in its view, it would be an abuse of the discretion granted by Title V if the agency were to exercise that discretion in a manner that would disturb the statutory scheme. In support of this conclusion, NHTSA identified numerous provisions of Title V that would be disturbed by retroactively amending a generally applicable standard, including, but not limited to, the credit and penalty provisions of the law.

GM expressed frustration with this analysis, complaining that NHTSA never identified the "specific statutory ban" against retroactive rulemaking. There is no single statement in Title V that clearly bans retroactive amendment, but the agency believes that the correct interpretation of the statute does not permit such amendments. As the Supreme Court recently noted,

> Statutory construction, however, is a holistic endeavor. A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme—because the same terminology is used elsewhere in a context that makes its meaning clear, . . . or because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law

United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd., 484 U.S. xx, 108 S. Ct. 626, 630. (1988).

Like the statute under review in *Timbers of Inwood Forest*, Title V contains a provision—section 502(a)(4)—which some believe is ambiguous. The Title V provision in question authorizes amendment of the statutorily set standard for model year 1985 and thereafter, but does not expressly provide a time limit by which such amendments must be made. GM and others have argued that the absence of an express time limit means that amendments may be made at any time, including long after the end of the model year at issue. NHTSA believes, however, that this provision cannot be viewed in isolation. Like the statute in *Timbers of Inwood Forest*, this provision is "clarified by the remainder of the statutory scheme," because "only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law." The agency detailed in its original opinion the reasons why retroactive amendment would be incompatible with the rest of the CAFE law, and will not repeat those reasons here. NHTSA reaffirms its view of that incompatibility, and firmly believes that any exercise of amendment discretion in a manner that is incompatible with the statutory scheme will not survive judicial review, either because it is viewed, in APA terms, as an "abuse of discretion," or because it is seen as "otherwise contrary to law," or both.

In sum, NHTSA agrees that Title V provides the agency with full discretion to amend CAFE standards, but also notes that the exercise of that discretion is bounded by the the statutory scheme and by the APA. The agency may not abuse its discretion or exercise its discretion in a manner that is inconsistent with the statutory scheme.

GM also believed that the rationale for the original decision could not be reconciled with the agency's own statements regarding the "mandate" of Title V for "maximum feasible" fuel economy standards. GM believes that the "maximum feasible" guidance in the statute governs *both* the decision to amend and the level at which the standard should be set, if amended. GM characterized as a "curious device" the analytic approach used by NHTSA, in which the agency considers the sufficiency of manufacturer efforts to reach the statutorily set level of 27.5 mpg in deciding whether to amend the standard (which is called the "reasonable efforts" test), and suggests that the "reasonable efforts" test lacks any frame of reference in the statute, unless it is to the requirement that standards be set at the "maximum feasible" level. GM implies that NHTSA could not lawfully decline to reduce a standard if the standard were higher than the "maximum feasible" level, and suggests that NHTSA could not lawfully grant a petition to reduce a standard during an energy crisis.

Since this aspect of the agency's decision was explained at length in the original decision, NHTSA will not repeat that discussion, except to reaffirm that the agency specifically rejects the implication that it has any *duty* to amend the CAFE standards. However, the agency notes that GM prepared its petition without the benefit of the views of the U.S. Court of Appeals for the DC Circuit when it upheld the agency's decision to reduce the Model Year 1986 standard to 26.0 mpg. In that opinion, the court stated:

> Lowering the statutory standard whenever the larger manufacturers assert current inability to meet that standard would, without doubt, *completely vitiate the statutory scheme;* recognizing this, NHTSA stressed its determination that the inability of GM and Ford to meet the higher standard did not result from their 'previously declining to take appropriate steps to improve their average fuel economy as required by the Act.' Public Citizen v. National Highway Traffic Safety Administration, 848 F.2d 256, 264 (D.C. Cir. 1988). Emphasis supplied.

Thus, the court relied on NHTSA's "reasonable efforts test" as part of the reasoning supporting its decision to uphold the agency's amendment. Far from being viewed as a "curious device," the test seemed to impress the court as important evidence that the agency exercised its amendment authority in a reasonable way.

Returning for a moment to the first argument set out by GM, in which GM suggested that the agency cannot rely on its view of the "statutory scheme as a whole" to support its interpretation of its authority, NHTSA notes that the Court of Appeals did precisely that in the passage quoted above when it observed that simple standard reductions in the absence of analytic support would "without doubt, *completely vitiate the statutory scheme*." NHTSA continues to believe that it may appropriately interpret its amendment authority in light of the statutory scheme as a whole and reaffirms the interpretation as set out in the original decision.

Further, GM complains that "a complete prohibition on retroactive standard-setting permits, if not invites, the imposition of penalties based on factors that have nothing whatever to do with the legislative goals." This argument is expanded later in the GM memorandum, where GM objects to the NHTSA observation that "[i]f retroactive rulemaking amounted to an indirect attempt by the agency to remit penalties, it would be contrary to the

statutory scheme." This agency statement followed a discussion about the specific statutory restrictions on the Secretary's authority to mitigate civil penalties in the event of a shortfall that is not offset by credits. GM complains that NHTSA "nowhere explains how as a practical matter amending the MY 1985 standard . . . would contravene any limitations on its mitigation authority." GM pointed out that a prospective amendment can also have the effect of reducing potential penalties, and would not be invalid on that score.

It is obvious that an amendment reducing a standard prospectively will reduce or eliminate any civil penalties that might have been assessed for failure to meet a higher standard, but it is also obvious from the face of the statute that Congress intentionally *both* authorized such prospective reductions *and* limited strictly the Secretary's authority to mitigate civil penalties, after a maufacturer has not met an applicable standard. Thus, NHTSA sees nothing inconsistent between its reaffirmation of its prospective amendment authority and its finding that the restrictions on the Secretary's authority to mitigate penalties would be undermined if the agency amended retroactively the 1985 CAFE standard, especially when some manufacturers have been notified of liability for civil penalties for failure to comply with that year's standard.

As discussed elsewhere in this decision, some of those manufacturers have already paid civil penalties for failing to meet the model year 1985 passenger car CAFE standard. Since a retroactive amendment now of the 1985 standard would have the same effect as a penalty mitigation for those manufacturers, NHTSA dose not believe that it can exercise its discretion in such a manner as to undermine or render redundant that provision of the statute. It is especially noteworthy to consider this question in light of the primary basis for the GM petition. GM has asked the agency to rely on its own findings of unexpected changes in consumer demand toward large cars and longer engines in the mid-1980's as the justification for a retroactive amendment. As discussed in the original decision, NHTSA freely acknowledges that events in the early-to-mid-1980's created compliance difficulties as result of unanticipated consumer demand changes. However, when viewed in the context of justifying a retroactive amendment of the 1985 standard, NHTSA must also be mindful of the fact that Congress considered, and expressly rejected, including just such factors in the law as an allowable justification for penalty mitigation. When the Senate passed the first bill establishing the CAFE program in 1975, the bill contained a provision that would have authorized the Secretary of Transportation to waive or remit penalties to the extent that the noncompliance was attributable to an unanticipated sales mix. This provision was deleted in conference. As the bill was enacted, it contained only the three strictly limited conditions under which the Secretary could mitigate CAFE penalties, and "unanticipated sales mix" is not one of them. The agency recognizes that decisions by conference committees to drop provisions included in one house's bill are imperfect indicators of Congressional intent. The agency describes that action only for the purpose of illustrating support for its view that the statutory language limiting penalty mitigation was deliberately crafted by Congress to be narrow.

If Congress had intended to permit retroactive amendments anytime a civil penalty appeared to present some difficulties for a manufacturer, it would not have needed to provide this specific and narrow penalty mitigation authority. As the Supreme Court noted in construing the word "discovery" as used in a portion of the tax code,

> . . . If 'discovery' were so wide in scope, there would be no need for the provision in subparagraph (C). . . . To borrow the homely metaphor of Judge Aldrich in the First Circuit, 'If there is a big hole in the fence for the big cat, need there be a small hole for the small one?' The statute admits a reasonable construction which gives effect to all of its provision. In these circumstances we will not adopt a strained reading which renders one part a mere redundancy

Jarecki v. G.D. Searle & Co. 367 U.S. 303, 307 (1961).

Since the penalty mitigation provisions would be at best, "a mere redundancy" if the agency could address manufacturer compliance problems caused by unanticipated mix shifts by retroactively amending the standard, the agency affirms its view that the penalty mitigation provisions must be given effect by declining to exercise its amendment authority in such a way as to vitiate those provisions.

As to GM's complaint that the agency's concern about undermining the penalty mitigation provisions is an "irrelevant hypothetical," the agency notes that as to several manufacturers, the issue is neither irrelevant nor hypothetical. Indeed, as GM's own petition makes clear, its interest in pressing for retroactive amendment of the 1985 standard is precisely to mitigate penalties that would have attached if the Court had required EPA to adjust its test procedure regulations. See, for example, GM's Memorandum in Support of its Petition for Reconsideration, which states that possible EPA rulemaking "might subject GM to millions of dollars in undeserved penalties for that year." Memorandum at page 5. See, also, the GM Petition for Reconsideration, which argues ". . . GM should not be subjected to millions of dollars of penalties for MY 1985 because it lacks the power of clairvoyance." Petition at page 8. Far from being an "irrelevant hypothetical," the agency's understanding that retroactive amendment is an indirect means of penalty mitigationis confirmed by GM's own arguments. As we now know, however, the court vacated its earlier decision on September 16, 1988 and effectively reinstated EPA's original regulation. Accordingly, the issue remains hypothetical for GM, but, as noted elsewhere, is quite real for other manufacturers.

GM raised other specific objections to aspects of the agency's original decision; however, since these objections do not present new information, the agency will not repeat here the rationale contained in that original decision.

GM's Request for a "One-Time-Only" Retroactive Amendment

In addition to seeking general reconsideration of the agency's basis for its original decision, GM requested that the agency initiate rulemaking on a narrower basis, which it called the "mayor focus" of its petition. GM believes that the agency could use its equitable powers to amend the 1985 standard, even if the agency wished to reaffirm for the future its view that CAFE standards should be amended prospectively. (GM did not describe what equitable powers it believes the agency has, or the source of those powers.) GM presented two alternative grounds for such a one-time-only amendment, and argued that neither basis was discussed in the Agency's original decision. GM's first theory is that the agency was applying retroactively its interpretation that retroactive amendments are inconsistent with the statutory scheme, and that the agency should not so apply the interpretation. GM's second theory is drawn from the DC Circuit's recent decision ordering EPA to reconsider its CAFE test procedure rules.

As to the "retroactive application" of the agency's interpretation, GM pointed out that the agency itself declared its interpretation to be for "future guidance". Thus, GM argues, the agency

should not be applying that interpretation retroactively to preclude amendment of the 1985 standard. NHTSA does not argue that its reference to "future guidance" precludes denying the GM petition. As GM points out, this issue arose in connection with a petition from Ford Motor Company for reduction of the MY 1984 and MY 1985 CAFE standards for light trucks. The petition was filed after the beginning of model year 1984, and the agency's tentative decision was to deny the petition as to model year 1984 on grounds of untimeliness, but to grant the petition for model year 1985. Shortly after that tentative decision was published, Ford decided not to pursue the petition for 1984, but raised concerns about the agency's tentative interpretation. Ford also wrote a letter requesting that the agency issue a definitive interpretation about its amendment authority. In August, NHTSA responded to Ford, confirming the agency's interpretation that amendments to reduce a standard must be issued before the beginning of the model year. This interpretation was repeated in the October rule reducing the light truck standard for model year 1985, in order to provide "future guidance" to the industry on the timing of subsequent petitions to amend the standards. However, as NHTSA's August letter made clear, the agency would also have applied that interpretation to Ford's petition for 1984, had Ford not withdrawn it. Thus, the reference to "future guidance" was meant only to explain why the agency repeated the interpretation in the final rule reducing the light truck standard for Model Year 1985. The agency also thought that the public would appreciate having the guidance in considering the timing of filing future petitions to amend a standard. While General Motors argues that the issue of amendment timing was "left open" until the final rule was issued reducing the Model Year 1985 standard, the agency does not agree that the industry was caught by surprise by the interpretation. The agency's concerns about retroactive amendment were publicly discussed well before the beginning of Model Year 1985—and any interested persons could have petitioned for amendment of the 1985 passenger car standard as soon as they saw the tentative view of the agency about the timing of such amendments. As to the GM suggestion that the agency was somehow discouraging such petitions, the agency strenuously disagrees that there was any such discouragement, and repeats the point noted above that this entire issue arose in connection with a petition to reduce the light truck standards for Model Years 1984 and 1985. Contrary to GM's assertion that the agency was discouraging such petitions, the agency granted the Ford petition for the Model Year 1985 light truck standard, and subsequently reduced the standard. This allegation about discouraging petitions is discussed more fully below.

GM also argues that the question of retroactively applying the interpretation was not addressed in the April 1988 decision denying the first GM petition. The agency disagrees. GM itself quotes in its petition a passage from the original decision that specifically discussed the timing of the announcement of the interpretation. (See 53 FR 15245). While it is true that the agency characterized the interpretation as one of "first impression," that means only that the specific question raised by GM had never been put to the agency before. (The Ford petition which first raised the issue before the agency was filed after the beginning of the affected model year, not long after the *end* of the model year, as is the case with the GM petition.) In and of itself, characterizing the issue as one of "first impression" does not bestow upon the agency any authority to amend retroactively in derogation of the agency's view of the statutory scheme.

As noted briefly above, GM also argues that NHTSA somehow "affirmatively discouraged" the manufacturers from filing timely petitions, citing testimony from then-Deputy Administrator Steed to the House Energy and Commerce Committee in 1983. (Hearings on Auto Fuel Efficiency Standards Before the Subcomm. on Energy Conservation and Power of the House Committee on Energy and Commerce, 98th Cong., 1st Sess., ser. 68 (1983)) GM's petition notes that Ms. Steed testified that NHTSA did "not believe that manufacturers would incur penalties" for CAFE shortfalls. This belief was based on the availability of credits and not on any suggestion that NHTSA was then considering lowering the standards on its own initiative. GM's description of that hearing is, however, incomplete. Ms. Steed actually testified that the *manufacturers* were predicting that they would not achieve 27.5 mpg in MY 1985, but that they had stated that they were choosing to comply by means of carryback credits. She did *not* testify that NHTSA had independently concluded that 27.5 mpg was an achievable standard. See, for example, the Committee Report at pages 14, 15, 33 and 34.

Indeed, GM itself testified at the same 1983 hearing that it would likely experience a shortfall for the Model Year 1985. See, for example, the Committee Report at page 66 and 67. There is absolutely nothing in Ms. Steed's testimony or in her answers to questions at that hearing to support GM's assertion that they were "discouraged" by this testimony or any other statement by the agency from filing a rulemaking petition.

GM complains later in its petition that "only a clairvoyant" could have predicted in 1984 or early 1985 that NHTSA would reach the conclusion it did about the statutory scheme. Thus, it believes that it was unfairly deprived of the opportunity to file a timely petition. The record does not support GM's complaint, however. As just described above, GM was fully aware of its compliance problems far enough in advance of model year 1985 to provide ample opportunity to submit a timely petition to reduce the standard for that model year. GM itself testified in 1983 that it would not achieve 27.5 mpg in 1985. On December 19, 1984, four months after NHTSA issued its interpretation and two months after NHTSA repeated it in the final rule reducing light truck standards for Model Year 1985, GM filed its "pre-model year report" for Model Year 1985, again predicting a significant shortfall for its passenger car fleet that year but reiterating its decision to rely on carryback credits from model years 1986–1988. Indeed, those credits were projected to be earned against a *27.5 mpg* standard—because NHTSA had not acted as of the date of that report to reduce the 1986–1988 standards to 26.0 mpg. Notwithstanding this clear record that GM knew in 1983 that it would not meet the 1985 standard (except by means of credits) and knew by 1984 of NHTSA's interpretation of the statutory scheme, it did not petition then for reduction of the 1985 standard. Also, GM did not formally seek reconsideration or review of the NHTSA interpretation at that time. Until Mercedes and GM filed their petitions for retroactive amendment in late 1987, no manufacturer formally sought reconsideration of NHTSA's interpretation or otherwise challenged it formally. (The agency notes, however, that both GM and Ford made it clear in various filings with the agency that they did not agree with the interpretation.)

GM's second theory was based upon a recent ruling by the D.C. Circuit Court of Appeals, sitting *en banc*, in *Center for Auto Safety* v. *Thomas*, (citation provided above) which GM characterizes as signaling an "expectation" that NHTSA will use available authority to address the

compliance difficulties of the manufacturers. GM found significance in the wording of the *Thomas* court's first *per curiam* order, which appeared to remand the issue (erroneously) to the "National Highway Transportation Safety Board." GM believes that the court intended to signal that NHTSA should use retroactive rulemaking authority to repair the inequities caused by the Court's delay in resolving the *Thomas* case. NHTSA does not agree that the *per curiam* order was an invitation for NHTSA to conduct retroactive standard-setting. The erroneous reference to NHTSA was, at best, dictum and cannot be seen as supply authority for retroactive rulemaking under this statute. In any event, on September 16, 1988, the full court vacated its earlier *per curiam* decision and restored the effectiveness of the original EPA decision. Accordingly, whatever significance might have attached to the remand language in the first *per curiam* decision is an academic issue, since that decision has been vacated.

It is important to keep in perspective that GM is not, at the present time, in a noncompliance situation with respect to Model Year 1985. GM continues to project compliance with the 1985 standards by means of carryback credits, and GM's plan to do so has been approved by NHTSA in accordance with the statutory provision for such plans. GM does not now have "compliance difficulties" for model year 1985, and it now appears unlikely to face civil penalties for that year (although further review of *Thomas* is possible). On a related point, GM notes that *Thomas* (had it stood) would have been the third time that a court has ordered EPA to conduct retroactive rulemaking under Title V. NHTSA does not agree that this is significant, however, since court-ordered retroactive rulemaking to cure a rule that a court has found to be invalid or unlawful is not the same as retroactive rulemaking conducted in the discretion of an agency.

In sum, NHSTA has carefully considered the arguments presented by GM, but has decided to deny the petition for rulemaking. NHTSA affirms the rationale of its original decision to deny the petition. Having carefully considered GM's arguments in favor of a "one-time-only" retroactive amendment, the agency does not agree with GM that a one-time-only retroactive amendment would be consistent with the statutory scheme.

(15 U.S.C. 2002; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: September 30, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88-22977 Filed 9-30-88; 4:59 pm]

BILLING CODE 4910-59-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1207 and 1249

[Ex Parte No. MC-190] [1]

Elimination of Accounting and Reporting Requirements for Private Carriers

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission proposes to revise its regulations at 49 CFR Parts 1207 and 1249 governing the classification of Class I and Class II common and contract motor carriers of property to exclude certain operating revenues from the annual operating revenues ("AOR"). This proposal was initiated in response to petitions from the National-American Wholesale Grocers' Association and the Private Truck Council of America, Inc, the disposition of which have been consolidated in this proceeding. In addition to seeking to exclude various revenue categories from AOR, petitioners also seek to change the annual reporting period of 49 CFR 1207 from the calendar year or a fiscal year of thirteen 4-week periods ending on one of the last 7 days of the calendar year to thirteen 4-week periods whose final day may be any day of any month.

Our proposal includes a part of petitioners' revenue exclusion proposal but declines to incorporate any change in the annual reporting period. We also propose to adopt petitioners' suggestion to exclude from the classification process revenues derived from the performance of interstate and/or intrastate private carriage and compensated intercorporate hauling. These revenues are derived from activities which would not normally trigger an accounting and reporting obligation to the Commission if private carriers did not possess interstate common or contract motor carrier authority. Since we never intended incidental for-hire carriage authority of private carriers to trigger Commission accounting and reporting requirements contained in 49 CFR Parts 1207 and 1249 unless for-hire revenues become significant, the recommended revisions would help resolve this problem. Revenues from private carriage and from compensated intercorporate hauling must be included in those reports, and must be included in a proposed new account in order to identify those revenues which will not be included in AOR for classification purposes. Therefore, we can relieve from reporting those carriers whose AOR does not reach the classification thresholds. These proposed changes are set forth below.

DATE: Comments are due on November 4, 1988.

ADDRESS: Send an original and 10 copies of comments referring to Ex Parte No. MC-190 to: Case Control Branch, Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder (202) 275-7510 or Richard Hartley (202) 275-7786 or William F. Moss III (202) 275-7510.

(TDD for hearing impaired: (292) 275-1721)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call or pick up in person from: Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 275-7428. (Assistance for the hearing impaired is available through TDD services (202) 275-1721.)

Energy and Environmental

We preliminarily conclude that the proposed rules will not significantly affect the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility

We certify that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects

49 CFR Part 1207

Motor carriers, Uniform system of accounts.

49 CFR Part 1249

Motor carriers, Reporting and recordkeeping requirements.

Decided: September 27, 1988.

[1] This proceeding embraces Ex Parte No. MC-190 (Sub-No. 1). These proceedings are consolidated for disposition and Ex Parte No. MC-190 (Sub-No. 1) will be discontinued.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips.

Kathleen M. King,

Acting Secretary.

Title 49 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1207—CLASS I AND CLASS II COMMON AND CONTRACT MOTOR CARRIERS OF PROPERTY

1. The authority citation for Part 1207 continues to read as follows:

Authority: 49 U.S.C. 10321, 10751, 11142, and 11145; 5 U.S.C. 553.

§ 1207.2 [Amended]

2. Section 1207.2, Instruction 1(b)(1), under *CLASS I AND CLASS II MOTOR CARRIERS INSTRUCTIONS*, is proposed to be revised as follows:

1. Classification of carriers.

* * * * *

(b)(1) The class to which any carrier belongs shall be determined by annual carrier operating revenues (excluding revenues from private carriage and compensated intercorporate hauling, Account 3990) after applying the revenue deflator formula in Note A. Upward and downward reclassification will be effected as of January 1 of the year immediately following the third consecutive year of revenue qualification.

* * * * *

3. A new account 3990 is proposed to be added to Revenue Account Explanations to read as follows:

3990 Private Carriage and Compensated Intercorporate Revenues

This account shall include all private carriage and compensated intercorporate revenues, both interstate and/or interstate. Private carriage and compensated intercorporate revenues shall not be included in accounts 3100–3900.

* * * * *

PART 1249—REPORTS OF MOTOR CARRIERS

1. The authority citation for Part 1249 continues to read as follows:

Authority: 49 U.S.C. 11142 and 11145; 5 U.S.C. 553.

§ 1249.2 [Amended]

2. Section 1249.2 (b)(1) is proposed to be revised as follows:

§ 1249.2 Classification of carriers—motor carriers of property, household goods carriers, and dual property carriers.

* * * * *

(b)(1) The class to which any carrier belongs shall be determined by annual carrier operating revenues (excluding revenues from private carriage and compensated intercorporate hauling, Account 3990) after applying the revenue deflator formula in Note A. Upward and downward reclassification will be effected as of January 1 of the year immediately following the third consecutive year of revenue qualification.

* * * * *

[FR Doc. 88–22876 Filed 10–4–88; 8:45 pm]

BILLING CODE 7035–01–M

Notices

Federal Register
Vol. 53, No. 193
Wednesday, October 5, 1988

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

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

September 30, 1988.

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 Office of your intent as early as possible.

Extension

Forest Service

Fuelwood and Post Production in Selected States

Annually

Individuals or households; Small businesses or organizations; 8,003 responses; 800 hours; not applicable under section 3504(h)

James E. Blyth, (612) 777–5131

Larry K. Roberson,

Acting Departmental Clearance Officer.

[FR Doc. 88–22951 Filed 10–4–88; 8:45 am]

BILLING CODE 3410–01–M

National Commission on Agriculture and Rural Development Policy; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776), the Department of Agriculture announces the following meeting will be held contingent upon establishment of the National Commission on Agriculture and Rural Development Policy:

Name: National Commission on Agriculture and Rural Development Policy.

Date: October 7, 1988.

Time and Place: 9:00 a.m. to 5:00 p.m., Room 104–A, Administration Building, Department of Agriculture, 14th Street and Independence Avenue, SW., Washington, DC.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person shown below.

Purpose: The Commission will be discussing the structure, procedures, and methods of formulating and administering agricultural policies, programs, and practices and conditions in rural areas and the manner in which such conditions relate to the provision of public services by Federal, State and local governments.

Contact Person: For further information, contact Rob Richards, (202) 447–2261, or Leslie Schuchart, (202) 447–5371, Office of the Under Secretary for Small Community and Rural Development, Room 219–A, Administration Building, Department of Agriculture, 14th Street and Independence Avenue, SW., Washington, DC 20250.

Done in Washington, DC, this 30th day of September, 1988.

Roland R. Vautour,

Under Secretary for Small Community and Rural Development.

[FR Doc. 88–22953 Filed 10–4–88; 8:45 am]

BILLING CODE 3410–01–M

Federal Grain Inspection Service

Designation Renewal of the Los Angeles (CA) Agency

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of Los Angeles Grain Inspection Service, Inc. (Los Angeles), as an official agency responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: November 1, 1988.

ADDRESS: James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that Los Angeles' designation terminates on October 31, 1988, and requested applications for official agency designation to provide official services within specified geographic areas in the May 3, 1988, **Federal Register** (53 FR 15721). Applications were to be postmarked by June 6, 1988. Los Angeles was the only applicant for designation in its area and applied for designation renewal in the entire area currently assigned to that agency.

The Service announced the applicant name in the June 30, 1988, **Federal Register** (53 FR 24752) and requested comments on the applicant's designation. Comments were to be postmarked by August 15, 1988; none were received.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and, in accordance with section 7(f)(1)(B), determined that Los Angeles is able to provide official services in the geographic area for which the Service is renewing it's designation. Effective November 1, 1988, and terminating October 31, 1991, Los Angeles will provide official inspection services in their specified geographic area, previously described in the May 3 **Federal Register.**

Interested persons may obtain official services by contacting the agency at the following telephone number: (213) 721–9216.

Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: September 26, 1988.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 88–22867 Filed 10–4–88; 8:45 am]

BILLING CODE 3410-EN-M

Request for Comments on Designation Applicants in the Geographic Area Currently Assigned to the State of Virginia (VA) and the Lima Agency (OH)

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the geographic areas currently assigned to the Virginia Department of Agriculture and Consumer Services (Virginia) and the Lima Grain Inspection Service, Inc. (Lima).

DATE: Comments to be postmarked on or before November 17, 1988.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken, Jr., RM, FGIS, USDA, Room 0628 South Building, P.O. Box 96454, Washington, DC 20090–6454.

Telemail users may respond to
[LLEBAKKEN/FGIS/USDA]
telemail.

Telex users may respond as follows:
TO: Lewis Lebakken
TLX:7607351, ANS:FGIS UC.

All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 475–3428.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service requested applications for official agency designation to provide official services within the specified geographic areas in the August 2, 1988, **Federal Register** (53 FR 29075). Applications were to be postmarked by September 1, 1988. Virginia and Lima were the only applicants for designation in their areas and each applied for designation renewal in the entire area currently assigned to that agency.

This notice provides interested persons the opportunity to present their comments concerning the applicants' designation. Commenters are encouraged to submit reasons for support or objection to these designation actions and include pertinent data to support their views and comments. All comments must be submitted to the Resources Management Division, at the above address.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicants will be informed of the decision in writing.

Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: September 21, 1988.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 88–22868 Filed 10–4–88; 8:45 am]

BILLING CODE 3410-EN-M

Request for Designation Applicants To Provide Official Services in the Geographic Area Currently Assigned to the Ohio Valley (IN) and Quincy (IL) Agencies

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of two agencies will terminate, in accordance with the Act, and requests applications from parties interested in being designated as the official agency to provide official services in the geographic area currently assigned to the specified agencies. The official agencies are the Ohio Valley Grain Inspection (Ohio Valley), and Quincy Grain Inspection & Weighting Department (Quincy).

DATE: Applications to be postmarked on or before November 3, 1988.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. All applications received will be made available for public inspection at this address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Ohio Valley, located at Robin Hill Road, Newburgh, IN 47630; and Quincy, located at 630 South 8th Street, Quincy, IL 62301; were each designated under the Act as an official agency on April 1, 1986, to provide official inspection functions.

Each official agency's designation terminates on March 31, 1989. Section 7(g)(1) of the Act states that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Ohio Valley, in the States of Indiana, Kentucky, and Tennessee pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

In Indiana: Daviess, Dubois, Gibson, Knox (except the area west of U.S. Route 41 (150) from Sullivan County south to U.S. Route 50), Pike, Posey, Vanderburgh, and Warrick Counties.

In Kentucky: Caldwell, Christian, Crittenden, Henderson, Hopkins (west of State Route 109 south of the Western Kentucky Parkway), Logan, Todd,

Union, and Webster (west of Alternate U.S. Route 41 and State Route 814) Counties.

In Tennessee: Cheatham, Davidson, and Robertson Counties.

Exceptions to Ohio Valley's assigned geographic area are the following locations inside Ohio Valley's area which have been and will continue to be serviced by the following official agency:

Cairo Grain Inspection Agency: Hopkinsville Elevator Company, Inc., Hopkinsville, and the L&N Railroad Siding on Alternate U.S. Route 41, 5 miles south of Hopkinsville, both in Christian County, Kentucky.

The geographic area presently assigned to Quincy, in the State of Illinois, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Adams, Brown, Greene, Macoupin (southwest of a straight line from the junction of State Route 111 and the northern Macoupin County line southeast to the junction of Interstate 55 and State Route 16), and Pike Counties.

Exceptions to Quincy's assigned geographic area are the following locations inside Quincy's area which have been and will continue to be serviced by the following official agencies:

1. Keokuk Grain Inspection Service, Inc.: Ursa Farmers Coop, Meyer, and Ursa Farmers Coop, Ursa, both in Adams County; and

2. Springfield Grain Inspection Department: Pillsbury Co., Florence, Pike County.

Interested parties, including Ohio Valley and Quincy, are hereby given opportunity to apply for official agency designation to provide the official services in each geographic area, as specified above, under the provisions of section 7(f) of the Act and § 800–196(d) of the regulations issued thereunder. Designation in each specified geographic area is for the period beginning April 1, 1989, and ending March 31, 1992. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: September 21, 1988.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 88–22869 Filed 10–4–88; 8:45 am]

BILLING CODE 3410-EN-M

Cancellation of Designation Issued to the Connecticut Department of Agriculture (CT)

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice announces that the Connecticut Department of Agriculture (Connecticut) has requested and been granted cancellation of its designation. It also announces that no official agency will be designated to provide official inspection services in the State of Connecticut.

EFFECTIVE DATE: August 23, 1988.

ADDRESS: James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Connecticut, located at 165 Capitol Avenue, Hartford, CT 06106, was designated under the U.S. Grain Standards Act (Act) as an official agency on January 1, 1987, to provide official inspection functions. The geographic area presently assigned to Connecticut pursuant to section 7(f)(2) of the Act, is the entire State of Connecticut.

Connecticut's designation terminates December 31, 1989; however, Connecticut requested the cancellation of its designation, to be effective August 23, 1988. Connecticut requested this action since there have been no requests for official service within Connecticut's assigned geographic area since November 1986. As a result, the Service has granted Connecticut's request for cancellation effective August 23, 1988. Also, based upon available information, the Service has determined that at this time there is no need for an official agency to be designated as a replacement to provide official inspection services within the State of Connecticut.

Any future requests for service from persons or firms located within the State of Connecticut should be directed to the FGIS Baltimore Field Office at (301) 962–3968.

Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: September 21, 1988.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 88–22870 Filed 10–4–88; 8:45 am]

BILLING CODE 3410-EN-M

Designation of Little Rock Grain Exchange Trust (AR) in the Little Rock, AR, Geographic Area

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation of Little Rock Grain Exchange Trust, as an official agency responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act), in the Little Rock, Arkansas, geographic area.

EFFECTIVE DATE: November 1, 1988.

ADDRESS: James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that the designation of the Little Rock Grain Exchange Trust would not be renewed on June 1, 1988, and requested applications for official agency designation to provide official services within specified geographic area in the May 3, 1988, **Federal Register** (53 FR 15721). Applications were to be postmarked by June 6, 1988. There were four applicants for designation in the available geographic area: Aaron Anthony, Oran, Missouri, proposing to do business as Little Rock Grain Inspection; Bryant J. Cochran, Sr., Little Rock, Arkansas, proposing to do business as Little Rock Grain Inspection Service; Little Rock Grain Exchange, North Little Rock, Arkansas, proposing to do business as Little Rock Grain Exchange Trust; and Memphis Grain

and Hay Association, Memphis, Tennessee, a designated official agency. All applicants planned to establish a specified service point to provide official services within the Little Rock area. Subsequently, Memphis Grain and Hay Association withdrew its application.

The Service announced the applicant names in the June 30, 1988, **Federal Register** (53 FR 24753) and requested comments on the applicants for designation. Comments were to be postmarked by August 15, 1988. Fourteen comments were received from various entities or persons, expressing a preference for a particular applicant without further comment.

Two official agencies supported the designation of Aaron Anthony; one private individual supported the designation of Bryant J. Cochran, Sr.; eight grain trade firms supported the designation of Little Rock Grain Exchange Trust, and two congressmen requested that this proposed agency be given due consideration; and one grain trade firm supported the designation of Memphis Grain and Hay Association.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and, in accordance with section 7(f)(1)(B), determined that Little Rock Grain Exchange Trust is better able to provide official services in the geographic area for which the Service is designating it. Effective November 1, 1988, and terminating October 31, 1991, Little Rock Grain Exchange Trust will provide official inspection services in the entire specified geographic area, previously described in the May 3 **Federal Register.**

Interested persons may obtain official services by contacting the agency at the following telephone number: (501) 372–5302.

Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: September 28, 1988.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 88–22871 Filed 10–4–88; 8:45 am]

BILLING CODE 3410-EN-M

Designation Renewal of the Tischer (IA) Agency

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of A.V. Tischer and Son, Inc. (Tischer) as an official agency responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: October 1, 1988.

ADDRESS: James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that Tischer's designation would terminate on June 30, 1988, and requested applications for official agency designation to provide official services within a specified geographic area in the December 31, 1987, **Federal Register** (52 FR 49460). Applications were to be postmarked by January 29, 1988. Tischer was the only applicant for designation in its area and applied for designation renewal in the entire area currently assigned to that agency.

The Service announced the applicant name in the March 1, 1988, **Federal Register** (53 FR 6167) and requested comments on the applicant for designation. Comments were to be postmarked by April 15, 1988; a total of seven comments were received regarding Tischer's designation renewal. These comments were discussed in the June 30, 1988, **Federal Register** (53 FR 24754).

In an effort to look more closely at the status of Tischer's grading accuracy and the basis for the grain firms' comments, the Service granted Tischer a designation for a 3-month interim period to allow the Service additional time to evaluate Tischer and review the grain firms' concerns. Effective July 1, 1988, and terminating September 30, 1988, Tischer was designated to provide official inspection and Class X or Class Y weighing services in its specified geographic area. The June 30 **Federal Register** also provided interested persons the additional opportunity to present their comments concerning Tischer's designation.

The Service received five additional comments from applicants for service within Tischer's area in response to the June 30 **Federal Register.** Two of these comments were from the same persons who had commented in the initial period.

All five commenters cited dissatisfaction with Tischer's service, mostly about rigid grade results but one also commented about high fees.

The Service has thoroughly reviewed and analyzed all aspects of Tischer's operation. The Service has not found any problems that would indicate that Tischer fails to meet the designation criteria or that would serve as a basis for not renewing its designation. With respect to Tischer's fees for onsite inspection the Service has previously approved these fees as being reasonable and nondiscriminatory.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and, in accordance with section 7(f)(1)(B), determined that Tischer is able to provide official services in the geographic area for which the Service is renewing its designation. Effective October 1, 1988, and terminating June 30, 1991, Tischer will provide official inspection services and Class X or Class Y weighing services in its specified geographic area, previously described in the December 31 **Federal Register.**

Interested persons may obtain official services by contacting the agency at the following telephone number: (515) 955–7012.

Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: September 30, 1988.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 88–22872 Filed 10–4–88; 8:45 am]

BILLING CODE 3410-EN-M

Forest Service

Forest Arterial Route; Uinta National Forest, UT

AGENCY: Uinta National Forest, USDA, Utah and Wasatch Counties, Utah.

ACTION: Amendment to the notice of intent to Prepare an Environmental Impact Statement.

SUMMARY: A Notice of Intent to prepare an environmental impact statement for a proposal to develop a Forest Arterial Route running north-south within the Uinta National Forest was published in the **Federal Register**, September 21, 1988. This notice was incomplete. The location of the proposed project was omitted from the announcement.

The approximate location of the proposed Forest Arterial Route follows:

Starting from the intersection of the Sheep Creek-Indian Creek Road with US Highway 50 in Spanish Fork Canyon (T. 10 S., R. 5 E., Section 2), proceed in a north-easterly

direction along Sheep Creek 7 miles to the Indian Creek Cutoff Road; then east 3.5 miles to the Indian Creek Road; then north 7 miles to the west-side of the Strawberry Reservoir Road; then north 12.3 miles to U.S. Highway 40; then east 1.5 miles along U.S. 40 to the Coop Creek Road turn-off; then north 9 miles along Coop Creek and Sleepy Hollow to the Smith Basin Road; then north 4 miles to the Currant Creek Road; then north-west 7.5 miles through Roundy Basin to Lake Creek Road, then north-east 4.5 miles through Harvey Meadow to Duchesne Ridge. The proposed Arterial Route would then continue in a northerly direction 20–25 miles until it meets Utah Highway 15, or the Mirror Lake Highway (Utah Highway 150). Alternatives to complete this last 20–25 miles of the proposed Arterial Route range from going north from the Lake Creek Summit down the Mill Hollow Road to the Wolf Creek Highway, then north-west to the point where it meets Utah Highway 35; or proceeding east on the Duchesne Ridge Road to where it meets the Wolf Creek Highway, then north down the Soapstone Road to it's intersection with the Mirror Lake Highway (Utah Highway 150).

All other information pertaining to this proposal was included in the original Notice of Intent.

DATE: The Supervisors Office in Provo, Utah, and the Ranger District offices in Heber City, Pleasant Grove, and Spanish Fork, Utah, will hold open houses during the hours of 1:00 p.m. to 6:30 p.m. on Friday, October 14, 1988, to explain the alternatives studied in detail and receive comments.

The analysis is expected to conclude in December 1988. The draft environmental impact statement should be available for public review by February 1989. The final environmental impact statement is scheduled to be completed by April 1989.

ADDRESSES: Don T. Nebeker, Forest Supervisor of the Uinta National Forest, is the responsible official. Written comments and suggestions concerning the analysis should be sent to him by December 5, 1988, at the Uinta National Forest, P.O. Box 1428, 88 West 100 North, Provo, Utah, 84602.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and environmental impact statement should be directed to Larry B. Call, Forest Planner, Uinta National Forest, phone (801) 337–5780.

Dated: September 27, 1988.

Don T. Nebeker,

Forest Supervisor.

[FR Doc. 88–22846 Filed 10–4–88; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Export Now Advisory Committee; Open Meeting

AGENCY: Department of Commerce.

The final meeting of the Export Now Advisory Committee will be held on October 13, 1988, 10:00 am–12:15 pm, at the University Club, Faculty Room, 21st Floor, 1034 South Brentwood Boulevard, Richmond Heights (St. Louis), Missouri. This meeting will be in lieu of the September 13, 1988 meeting previously announced in the **Federal Register** (53 FR 16177, May 5, 1988). The meeting will be open to the public with a limited number of seats available. Any member of the public may submit written comments concerning the Committee's affairs at any time before or after the meeting.

The Committee was established by the Secretary of Commerce on February 25, 1988, to advise Department officials on the objectives and conduct of the Export Now Program, including methods of increasing public awareness of the advantages of exporting, improving Federal coordination with state, local and private sector export activities, and implementing programs of education and training to increase the export effectiveness of all segments of the U.S. economy.

The purpose of the meeting is to report on the status of the Export Now Program, to receive advice from the public on the conduct and future implementation of the program, and to provide a briefing on the draft report to the Secretary on Export Now. A more specific agenda will be available to the public at the beginning of the meeting.

For further information or copies of the minutes, contact Lew W. Cramer or John Hayes, Export Now Program, Herbert C. Hoover Building, Room 5835, 14th Street and Constitution Avenue, NW., Washington, DC 20230, (202) 377–2073.

Date: September 29, 1988.

Robert H. Brumley,

General Counsel.

[FR Doc. 88–22932 Filed 10–4–88; 8:45 am]

BILLING CODE 3510–CW–M

Bureau of Export Administration

Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Computer Systems Technical Advisory Committee will be held Oct. 26, 1988, 9:00 a.m., Herbert C. Hoover Building, Room 1617, 14th & Constitution Avenue, NW., Washington, DC.

The Committee advises the Office of Technology & Policy Analysis with respect to technical questions which affect the level of export controls applicable to computer systems or technology.

Agenda

Open Session

1. Opening Remarks by the Chairman.
2. Presentation of Papers or Comments by the Public.
3. Briefing on Progress of new Joint Factory Computing and Communications Subcommittee.
4. Presentation on Parallel Computers.
5. Status Report on Industry Definition and Parameters for Supercomputers—Including the Current Working Definition and Parameters.

Executive Session

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified material listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public. A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, contact Betty Anne Ferrell on 202/377–2583.

Dated: September 29, 1988.

Betty Anne Ferrell,

Acting Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 88–22885 Filed 10–4–88; 8:45 am]

BILLING CODE 3510–DT–M

Licensing Procedures and Regulations Subcommittee of the Computer Systems Technical Advisory Committee; Open Meeting

A meeting of the Licensing Procedures and Regulations Subcommittee of the Computer Systems Technical Advisory Committee, will be held Oct. 27, 1988, 1:00 p.m., Room 1617, Herbert C. Hoover Building, 14th Street & Constitution Avenue, NW., Washington, DC. The subcommittee was formed to review the procedural aspects of export licensing and recommend areas where improvements can be made.

Agenda:

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Discussion on ICOTT Paper on ECCN 1565.
4. Update on the 1988 Trade Act.
5. Discussion on New ITA 6031P Form.

The entire meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

For further information or copies of the minutes, call Betty A. Ferrell at 202/377–2583.

Dated: September 29, 1988.

Betty Anne Ferrell,

Acting Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 88–22886 Filed 10–4–88; 8:45 am]

BILLING CODE 3510-DT-M

Software Subcommittee of the Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Software Subcommittee of the Computer Systems Technical Advisory Committee will be held October 27, 1988, 9:00 a.m., Room 1617, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC. The Software Subcommittee was formed with the goal of making recommendations to the Department of Commerce relating to the appropriate parameters for controlling exports for reasons of national security.

Agenda:

Open Session

1. Opening Remarks by the Chairman.
2. Presentation of Papers or Comments by the Public.
3. Progress report on the Data Encryption Standard (DES) Proposal.
4. Update on Technical Data Redraft.
5. Discussions on Multi-Data-Stream Processing.

Executive Session

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified material listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public. A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, contact Betty Anne Ferrell on 202/377–2583.

Dated: September 29, 1988.

Betty Ferrell,

Acting Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 88–22887 Filed 10–4–88; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration, Commerce.

[Application No. 88–00009]

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce Department.

ACTION: Notice of issuance of an Export Trade Certificate of Review.

SUMMARY: The Department of Commerce has issued an export trade certificate of review to the Port of Montana Port Authority (POMPA). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: Thomas H. Stillman, Director, Office of Export Trading Company Affairs, International Trade Administration, 202–377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97–290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade Products, all products.

Export Trade Facilitation Services (as they Relate to the Export of Products).

Consulting, international market research, advertising, marketing, product research and design, transportation (including trade documentation and freight forwarding), communication and processing of foreign orders, warehousing, foreign exchange, financing, and taking title to goods.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonweatlh of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

POMPA may:

1. Require exporters obtaining Export Trade Services from or through POMPA to

a. Use POMPA as an intermediary in arranging for transportation and/or financing; and/or

b. Export through the Port of Montana.

2. Study the feasibility of joint export ventures by collecting

a. From any or all of the prospective participants commercial, financial, or

industry information that is already generally available to the trade or public, and

b. From prospective participants that produce or supply similar or substitutable Products commercial, financial, or industry information that is not generally available to the trade or public, provided, however, that POMPA shall:

(1) Solicit such information from at least three companies that produce or supply each Product to be exported,

(2) Not disclose the number or identities of companies solicited, and

(3) Limit access to the information collected to POMPA and appropriate POMPA staff.

3. Distribute separately to each prospective participant the results of its feasibility study, which may contain, if materially related to the joint export venture:

a. Information that is already generally available to the trade or public;

b. Information (such as selling strategies, prices, projected demand, and customary terms of sale) solely about the Export Markets;

c. Information on expenses specific to exporting to the Export Markets (such as ocean freight, inland freight to the terminal or port, terminal or port storage, wharfage and handling charges, insurance, agents' commissions, export sales documentation and service, and export sales financing); and

d. Averages of all other information, except that nothing in subparagraph (d) permits the disclosure of the following information, whether past, current, or projected, or for an individual firm or an average across firms: domestic prices, costs of production, production capacity, production volume, domestic sales volume, and inventories.

4. Require prospective participants or participants in a joint export venture to agree not to compete, upon withdrawal from the venture, for export orders for which the venture has bid or announced its intention to bid.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Date: September 30, 1988.

Thomas H. Stillman,

Director, Office of Export Trading Company Affairs.

[FR Doc. 88-22938; Filed 10-4-88; 8:45 am]

BILLING CODE 3510-DR-M

Short-Supply Review on Certain Steel Tubing; Request for Comments

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for short-supply determination under Paragraph 8 of the U.S.-Japan Arrangement concerning Trade in Certain Steel Products, with respect to certain tubing used in the manufacture of automotive brake lines, fuel lines, and power steering lines.

DATE: Comments must be submitted on or before October 17, 1988.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230, (202) 377-0159.

SUPPLEMENTARY INFORMATION: Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products provides that if the U.S. "* * * determines that because of abnormal supply or demand factors, the United States steel industry will be unable to meet demand in the United States of America for a particular category or sub-category (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such category or sub-category * * *"

We have received a short-supply request for the following types of steel tubing:

(1) Copper-brazed tubing meeting American Society of Testing Materials (ASTM) specification A 254, measuring 4.76, 6.35, or 8.00 millimeters (mm) in diameter, with an outside coating of zinc and polyvinyl fluoride (PVF) and an inside coating of tin/zinc, for use in the manufacture of automotive brake and fuel lines;

(2) Copper-brazed tubing meeting ASTM specification A 254, measuring 4.76 mm in diameter, with an outside coating of zinc and PVF, for use in the manufacture of automotive brake lines; and

(3) Welded steel tubing meeting ASTM specification A 539, measuring 6.35 or 10.00 mm in diameter, with an outside coating of zinc and PVF, for use in the manufacture of automotive fuel and power steering lines.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than (Insert date 10 days after date of publication in the **Federal Register**). Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B-099, Import Administration, U.S. Department of Commerce at the above address.

September 27, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 88-22940 Filed 10-4-88; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council will convene a public meeting on October 12, 1988, at 8:30 a.m., at the Danford's Inn at Bayles Dock, 25 East Broadway, Port Jefferson, NY (telephone: 516-928-5200), to discuss habitat and other fishery management and administrative matters. The public meeting will adjourn on the afternoon of October 13 but may be lengthened or shortened depending upon progress of the agenda. The Council may convene a closed session (not open to the public) to discuss personnel and/or national security matters.

For further information, contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, 300 South New Street, Room 2115, Federal Building, Dover, DE 19901-6790; telephone: (302) 674-2331.

Dated: September 29, 1988.

Joe P. Clem,

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

[FR Doc. 88-22851 Filed 10-4-88; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council will convene a public meeting on October 17, 1988, at noon of the Inter-Council Swordfish Committee at the South Atlantic Fishery Management Council's Office (address below). The Committee will review the status of the swordfish stock and consider management options for Amendment #1 to the Swordfish Fishery Management Plan. The public meeting will adjourn on October 19 at noon; a detailed agenda will be available to the public on or about October 6, 1988.

For further information contact Carrie R.F. Knight, Public Information Specialist, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407; telephone: (803) 571-4366.

Dated: September 29, 1988.

Joe P. Clem,

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

[FR Doc. 88-22852 Filed 10-4-88; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an information collection requirement concerning Information Reporting to the Internal Revenue Service (IRS) (Taxpayer Identification Number).

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Roger M. Schwartz, Office of Federal Acquisition and Regulatory Policy, (202) 523-4779, or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697-7268.

SUPPLEMENTARY INFORMATION:

a. Purpose: The Federal Acquisition Regulation is being revised by adding Subpart 4.9, Information Reporting to the Internal Revenue Service (IRS) and the provision at 52.204-1, Taxpayer Identification, for the purpose of implementing statutory and regulatory requirements pertaining to taxpayer identification and reporting.

b. Annual reporting burden: The annual reporting burden is estimated as follows: Respondents, *225,000;* responses per respondent, *12;* total annual responses, *2,700,000;* preparation hours per response, *0028;* and total response burden hours, 7,560.

Obtaining Copies of Proposals

Requesters may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523-4755. Please cite OMB Control No. 9000-00XX, Information Reporting to the Internal Revenue Service (IRS) (Taxpayer Identification Number).

Dated: September 20, 1988.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 88-22949 Filed 10-4-88; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Foreign Assistance; Determination

Pursuant to section 515(c) of the Foreign Assistance Act of 1961 relating the overseas management of assistance and sales programs, and in accordance with the authority delegated by Executive Order 12163 and redelegated on February 12 and February 24, 1972, to the Director, Defense Security Assistance Agency, the Acting Director, Glenn A. Rudd, has determined that United States national interests require that more than six members of the Armed Forces be assigned under Section 515 of that Act to carry out international security assistance programs in Yemen, and therefore waive the limitation that the number of members of the Armed Forces assigned to a foreign country under section 515 of that Act may not exceed six unless specifically authorized by Congress.

The increase from six to seven in the total number of military personnel authorized for the Office of Military Cooperation (OMC), Yemen, shall be effective thirty days after the date on which this determination is reported to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 30, 1988.

[FR Doc. 88-22955 Filed 10-4-88; 8:45 am]

BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Tuesday, 25 October 1988.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Becky Terry, AGED Secretariat, 2011 Crystal Drive, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The working Group B meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. The Microelectronics area includes such programs as integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92-463, as amended, (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that

accordingly, this meeting will be closed to the public.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 30, 1988.

[FR Doc. 88-22956 Filed 10-4-88; 8:45 am]

BILLING CODE 3810-01-M

Defense Logistics Agency

Privacy Act of 1974: New Record System

AGENCY: Defense Logistics Agency (DLA), DoD.

ACTION: Notice of a new record system subject to the Privacy Act.

SUMMARY: The Defense Logistics Agency proposes to add a new record system subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

DATE: The proposed action will be effective without further notice November 4, 1988, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to Mr. Dave Henshall, DLA-XAM, Defense Logistics Agency, Cameron Station, Alexandria, VA 22304-6130. Telephone (202) 274-62324.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (U.S.C. 552a) have been publish in the **Federal Register** as follows:

FR Doc. 85-10237 (50 FR 22897) May 29, 1985 (DoD 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
FR Doc. 87-22481 (52 FR 37495) October 7, 1987
FR Doc. 88-03220 (53 FR 04442) February 16, 1988
FR Doc. 88-06658 (53 FR 09965) March 28, 1988
FR Doc. 88-12863 (53 FR 21511) June 8, 1988
FR Doc. 88-15473 (53 FR 26105) July 11, 1988
FR Doc. 88-19066 (53 FR 32091) August 23, 1988

A new system report, as required by 5 U.S.C. 552a(o) of the Privacy Act was submitted on September 21, 1988, pursuant to paragraph 4b of Appendix 1 to OMB Circular No. A-130. "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985, to the Administrator, Office of Information and Regulatory Affairs, OMB; the President of the Senate; and the Speaker of the House of Representatives.

L.M. Bynum,

Alternate OSD Federal Register Liason Officer, Department of Defense.

September 30, 1988.

S322.09 DLA-LZ

SYSTEM NAME:

Joint Duty Assignment Management Information System.

SYSTEM LOCATION:

Primary Location: Defense Manpower Data Center, 1600 Wilson Blvd., Suite 400, Arlington, VA 22209-2593; Decentralized segments: Joint Chiefs of Staff and Military Personnel Centers of the services.

CATEGORIES OF INDIVIDUALS IN THE SYSTEM:

All active duty officers who: Are serving or have served in billets designated as joint duty assignment positions; are attending or have completed joint professional military education schools; are joint specialty officers or nominees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The information on billets includes service, unit identification code, normal tour length, rank, job title, skill and critical billet. Information on individuals includes social security number, joint duty qualification, departure reason, joint professional military education status, promotion board results, service, occupation, sex, date of rank and duty station.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136; 10 U.S.C. 667.

PURPOSE:

To allow the Department of Defense to monitor Joint Duty Assignment positions and personnel and to report to the Congress as required by Title IV, Chapter 38, Section 667 (Annual Report to Congress) of the DoD Reorganization Act of 1986, Pub. L. 99-433.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The blanket routine use statements set forth at the beginning of the DLA listings of systems of records are also applicable to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on disk.

RETRIEVABILITY:

Records may be retrieved by individual identifier such as social security number or by demographic characteristic.

SAFEGUARDS:

Data is stored in automated form in locked limited access areas and may be accessed only by user code and password.

RETENTION AND DISPOSAL:

Records are historical in nature and as such are retained indefinitely.

SYSTEM MANAGER AND ADDRESS:

Director, Defense Manpower Data Center, 1600 N. Wilson Blvd., Suite 400, Arlington, VA 22209-2593, telephone (202) 696-5816. Autovan 226-5816.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager.

RECORD ACCESS PROCEDURE:

Request 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.

CONTESTING RECORD PROCEDURES:

The record accuracy may be contested through the administrative processes of military service personnel centers. Individual should follow the contesting record procedures of the applicable system of record of the particular military service involved.

RECORD SOURCE CATEGORIES:

The military services and Office of the Joint Chiefs of Staff.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 88-22957 Filed 10-4-88 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

National Board of the Fund for the Improvement of Postsecondary Education; Meeting

AGENCY National Board of the Fund for the Improvement of Postsecondary Education.

ACTION Notice of Meeting.

SUMMARY This notice sets forth the proposed agenda of a forthcoming meeting of the National Board of the Fund for the Improvement of Postsecondary Education. This notice

also describes the functions of the Board. Notice of this meeting is required under section 10 (a)(2) of the Federal Advisory Committee Act.

DATE: October 20, 1988 beginning at 1:00 p.m. to October 23, 1988 at 12:00 p.m.

ADDRESS: Grand Hyatt Hotel, 1000 H Street, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Charles Karelis, Director, Fund for the Improvement of Postsecondary Education, 7th & D Streets, SW., Washington, DC 20202, (202) 732–5750.

SUPPLEMENTARY INFORMATION: The National Board of the Fund for the Improvement of Postsecondary Education is established under section 1001 of the Higher Education Amendments of 1980, Title X (20 U.S.C. 1135a–1). The National Board of the Fund is authorized to recommend to the Director of the Fund and the Assistant Secretary for Postsecondary Education priorities for funding and approval or disapproval of grants of a given kind.

The meeting of the National Board will be open to the public. The proposed agenda includes:

—An orientation and introduction of new Board members;
—Recapitulation of FY 1988 competitions;
—Report by evaluation specialist Dora Marcus on "Lessons Learned," a monograph ot 1987 Comprehensive projects;
—Discussion of the Fund during the presidential transition; and
—Vote on the compensation of Board members.
—Observation and participation in the Fund for the Improvement of Postsecondary Education Annual Project Directors' Meeting.

Records are kept of all Board proceedings, and are available for public inspection at the office of the Fund for the Improvement of Postsecondary Education, Room 3100, Regional Office Building #3, 7th & D Streets, SW., Washington, DC 20202 from the hours of 8:00 a.m. to 4:30 p.m.

Dated: September 29, 1988.

Kenneth D. Whitehead,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 88–22892 Filed 10–4–88; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

[CAL–004]

Energy Conservation Program for Consumer Products; Petition for Waiver and Application for Interim Waiver of Central Air Conditioner Test Procedures from Airlex Industries, LTD.

AGENCY: Conservation and Renewable Energy Office, DOE.

SUMMARY: Today's notice publishes a "Petition for Waiver" from the Airlex Industries, LTD (Airlex), of Hackensack, New Jersey, requesting a waiver from the existing Department of Energy (DOE) test procedure for central air conditioners. In addition, today's notice publishes the granting of Airlex's application for an Interim Waiver. Airlex manufactures residential central air conditioners and heat pumps. The petition requests the Department to grant relief from the DOE test procedure relating to testing of its ductless split system heat pumps model series ERA/S—RC/RH in the heating mode. Airlex requests this relief because the models specified do not have defrost controls and rely on electrical resistance heat; therefore they are not capable of being tested in accordance with the DOE test procedures. DOE is soliciting comments, data and information respecting the petition.

DATE: DOE will accept comments, data and information not later than November 4, 1988.

ADDRESS: Written comments and statements shall be sent to: Department of Energy, Office of Conservation and Renewable Energy, Case No. CAC–004, Mail Stop CE–132, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Douglass S. Abramson, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE–132, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–12, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9507.

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Pub. L. 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Pub. L. 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Pub. L. 100–12, and the National Appliance Energy Conservation Amendment of 1988 (NAECA 1988), Pub. L. 100–357, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including central air conditioners and heat pumps. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

DOE has amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process, 45 FR 64108. DOE further amended the Department's appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986. The waiver process allows the Assistant Secretary for Conservation and Renewable Energy to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of a waiver.

The interim waiver provisions, added by the 1986 amendment, allow the Assistant Secretary to grant an interim waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the petition for waiver will be granted and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver.

Airlex's petition seeks a waiver from the DOE test provisions that require a low temperature test at 17°F and a frost accumulation test at 35°. Instead, Airlex requests the allowance to perform the

low temperature test at 47°F and omits the Frost Accumulation Test at 35°F when testing its Heat Pumps model series ERA/S-RC/RH to determine the Heating Seasonal Performance Factor (HSPF). Airlex states that the heating ability of its heat pumps is disengaged and replaced by electric resistance heating for temperatures below 40°F. Since current DOE test procedures do not address this control feature, Airlex asks that the waiver be granted.

The Department finds that the design of the Airlex model series ERA/S-RC/RH cannot be rated using the DOE test procedures. This is caused by a design feature which disengages the heat pump and switches to electric resistance heat when the outdoor temperature falls below 40°F. The absence of a defrost control system and the inability to operate the basic model for the low temperature test at 17°F and the frost accumulation test at 35°F makes rating the unit with the current test procedures impossible. For this reason DOE believes that the Airlex Petition for Waiver will be successful.

Airlex expressed economic hardship in its correspondence caused by the inability to import models already produced, its investment in inventory of materials on hand, and its outstanding orders. The DOE definition of economic hardship for granting an interim waiver requires that the manufacturer demonstrate an adverse impact on the company caused by the inability to sell its product for the time required to process the petition for waiver. DOE believes that the information provided by Airlex satisfies the requirements of economic hardship.

Therefore, Airlex's Application for an Interim Waiver requesting relief from the DOE test procedures for its central air conditioning heat pump models ERA/S-RC/RH is granted.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. DOE solicits comments, data, and information respecting the petition.

In addition, pursuant to paragraph (e) of § 430.27 of the Code of Federal Regulations, the following letter granting the Application for Interim Waiver was issued to Airlex Industries, LTD.

Issued in Washington, DC, September 21, 1988.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 88-22965 Filed 10-4-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. MT88-2-002]

Questar Pipeline Co.; Proposed Changes in FERC Gas Tariff Pursuant to Order No. 497

September 29, 1988.

Take notice that on September 29, 1988, Questar Pipeline Company tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Original Volume No. 1-A:

Second Substitute First Revised Sheet No. 101.

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211. All such motions or protests must be filed by October 6, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-22874 Filed 10-4-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3458-3]

Municipal Financing and Construction Conference; Open Meeting

Notice is hereby given that a meeting of the State and U.S. Environmental Protection Agency Municipal Program Managers will be held at the Chase Park Plaza Hotel, 212 North Kingshighway, St. Louis, Missouri 63108. The meeting will begin at 1:00 p.m. in November 15 and end about 11:00 a.m. on November 17, 1988.

The purpose of the meeting is to discuss implementation of the State revolving fund and administration and closeout activities in the construction grants program. Attendees will include staff of the Environmental Protection Agency and State Environmental Program Managers.

This meeting is open to the public. Any person wishing to attend or submit a written statement for the Municipal Financing Construction Conference should contact Ms. Carol Crow at the Environmental Protection Agency (WH-547), 401 M Street SW., Washington, DC. 20460. The telephone number is (202) 382-5824.

Rebecca W. Hanmer,

Acting Assistant Administrator for Water (WH-556).

Date: September 23, 1988.

[FR Doc. 88-22914 Filed 10-4-88; 8:45 am]

BILLING CODE 6560-50-M

[PF-505; FRL-3459-6]

Uniroyal Chemical Co.; Amendment of Petitions for Triflumizole

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that the Uniroyal Chemical Co. has filed an amendment to pesticide petition (PP) 6F3372 and food additive petition (FAP) 6H5497 for the fungicide triflumizole and its metabolites containing the 4-chloro-2-trifluoromethyl-aniline moiety (calculated as triflumizole).

ADDRESS: By mail, submit written comments to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Registration Division (TS-767C), Attention: Product Manager

(PM) 21, Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

In person, Lois Rossi (PM 21), Rm. 227, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

SUPPLEMENTARY INFORMATION: EPA has received an amendment to PP 6F3372 from the Uniroyal Chemical Co., 74 Amity Rd., Bethany CT 06525, amending 40 CFR Part 180 by establishing a regulation to permit the residues of the fungicide triflumizole (1-(1-((4-chloro-2-(trifluoromethyl)phenyl)imino)-2-propoxyethyl)-1H-imidazole and its metabolites containing the 4-chloro-2-trifluoromethylaniline moiety (calculated as triflumizole) in or on the following raw agricultural commodities: Apples at 0.5 part per million (ppm), grapes at 2.0 ppm, pears at 0.5 ppm, meat and fat of cattle, goats, hogs, horses, poultry, and sheep at 0.05 ppm, milk and eggs at 0.05 ppm, meat by-products of poultry at 0.05 ppm and meat by-products of cattle, goats, hogs, horses, and sheep at 0.5 ppm. EPA also received an amendment to FAP 6H5497 from Uniroyal Chemical Co. proposing to amend 21 CFR Part 193, which was redesignated as 40 CFR Part 185 in the **Federal Register** of June 29, 1988 (53 FR 24666), to establish a regulation to permit the residues of the fungicide triflumizole and its metabolites containing the 4-chloro-2-trifluoromethylaniline moiety (calculated as triflumizole) in or on the following processed commodities: Apple pomace at 2.0 ppm, grape pomace at 25.0 ppm, and raisin waste at 8.0 ppm.

Authority: 21 U.S.C. 346a.

Dated: September 23, 1988.

Edwin F. Tinsworth,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-22909 Filed 10-4-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-36159A; FRL-3459-3]

Strychnine; Notice of Temporary Cancellation

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: On April 11, 1988, the United States District Court for the District of Minnesota issued an order which required the Environmental Protection Agency (EPA) to temporarily cancel the registrations of pesticide products containing strychnine for above-ground use. This Notice is being issues in compliance with the court's order.

FOR FURTHER INFORMATION CONTACT: Robert Perlis, Office of General Counsel (LE-132P), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 382-7505.

SUPPLEMENTARY INFORMATION: On April 11, 1988, the United States District Court for the District of Minnesota issued an order in the case of *Defenders of Wildlife* v. *Administrator, EPA*, Civil No. 4-86-687. A copy of that order was published in the **Federal Register** of May 25, 1988 (53 FR 18952). The order enjoins the Administrator of EPA from continuing the registrations of strychnine for above-ground use within the range of listed species protected by the Endangered Species Act (ESA), the Migratory Bird Treaty Act, and the Bald and Golden Eagle Protection Act until certain actions specified in the court's order have been taken by EPA. The court made the following conclusions.

The failure of the Administrator of the EPA to implement the 1983 Notice of Intent to Cancel, 48 FR 48522 (1983) and implementation instead of the March 1987 Notice, 52 FR 6762 (1987) without adequate scientific evidence and public explanation, was arbitrary and capricious in violation of 5 U.S.C. sec. 706. It is further declared and adjudged that:

The Administrator's continued registration of strychnine for above-ground use within the ranges of birds protected by the Migratory Bird Treaty Act (MBTA) and the Bald and Golden Eagle Protection Act (BGEPA) results in impermissible taking of birds protected by these Acts, in violation of 5 U.S.C. sec. 706. It is further declared and adjudged that:

The Administrator is in continuing violation of ESA, Section 9, 1538(a)(B) by registering for above-ground use for ground squirrel, prairie dog and meadow mouse control, strychnine which might be used within an area also inhabited by any threatened or endangered species determined to be likely jeopardized or which has suffered a strychnine kill documented in the non-target kill book.

The Administrator also is in continuing violation of ESA by permitting strychnine use in a manner which may cause the incidental taking of an endangered or threatened species without prior authorization of the Secretary of the Department of the Interior as provided in 16 U.S.C. sec. 1536(b)(4).

The text of the Court's order is as follows:

A. To remedy violations of the APA, the Administrator of the EPA and his agents shall retain the March 1987 Notice insofar as it prohibits and restricts strychnine registrations. They shall also temporarily impose the changes in registrations proposed by the 1983 Notice of Intent to Cancel for all registrations for ground squirrel, prairie dog and meadow mouse control to the extent that they restrict strychnine use or enhance the protection to endangered and threatened species. This shall include the cancellation of registrations for prairie dogs and meadow mouse control. The Administrator shall reexamine the registrations for prairie dog, ground squirrel and meadow mouse control. If continued strychnine use is proposed, the Administrator or his agents must make findings regarding the adequate geographic area needed as a buffer between endangered or threatened species habitat and areas where strychnine use will be permitted. Any final notice, if it should permit continued above-ground strychnine use, shall explain how jeopardy will be avoided to each potentially jeopardized species noted in any Position Document. If label restrictions are relied on to decrease potential jeopardy, the Administrator and his agents must provide an explanation based on reasonable study of the practical value of label restrictions to prevent strychnine use in areas or by methods not permitted.

The temporary restrictions on registrations shall expire when the review is completed and a notice of determination is published.

B. To remedy violations of the MBTA and BGEPA, the Administrator and his agents are enjoined from continuing the registrations of strychnine for above-ground use as a pesticide or rodenticide within the ranges of the bald eagle and golden eagle unless the Administrator certifies that methods by which strychnine might be applied will not cause injury or death to any bald or golden eagle. This injunction shall not apply to any taking of eagles incidental to strychnine use, authorized by the Secretary of the Interior pursuant to 16 U.S.C. sec. 668a.

The Administrator of the EPA and his agents are enjoined from continuing the registrations of strychnine for above-ground use as a pesticide or rodenticide in a manner which may result in a non-target taking of the following migratory birds: Bald eagle, golden eagle, peregrine falcon, California condor, blackbird, grack blackbird, redwing blackbird, rusty blackbird, brewer blackbird, bluebirds, bluejay, steller's bluejay, cardinal, coot, cowbird, mourning dove, finch, gold finch, house finch, purple finch, black-back gull, glaucous gull, herring gull, ringbilled gull, meadow lark, magpie, mallard duck, nuthatch, pigeon, lark sparrow, green towhee, wood duck, prairie falcon, gyrfalcon, hawks, Swainsons hawk, marsh hawk, redtailed hawk, roughlegged hawk, barn owl, great horned owl, snowy owl, gallinule, Canada goose, junco, kildeer, horned lark.

The Administrator may register strychnine for above-ground use in a manner that may result in the taking of a bird protected by the MBTA only pursuant to a permit issued according to 16 U.S.C. Sec. 703, and 50 CFR Part 21.

C. To remedy violations of the ESA, the Administrator of the EPA and his agents are enjoined from continuing the registrations of strychnine for above-ground use within the range of the following endangered species: Utah prairie dog, salt marsh harvest mouse, masked bobwhite, Cape Sable sparrow, Puerto Rican plain pigeon, California condor, San Joaquin kitfox, grizzly bear, Morro Bay kangaroo rat, red wolf, dusky seaside sparrow, Mississippi sandhill crane, Attwater's prairie chicken, black-footed ferret, gray wolf.

The Administrator of the EPA and his agents are enjoined from continuing the

registrations of strychnine within the range of the bald eagle and peregrine falcon until the ongoing formal consultation with the Fish and Wildlife Service is completed and a final notice of determination is issued in response. Thereafter, registrations for use in these ranges is permitted only if no taking by strychnine used under these registrations will occur, and the Administrator explains how this will be prevented.

The Administrator of the EPA and his agents are enjoined from continuing the registration of any strychnine product for above-ground use until the Secretary assesses the resulting likelihood of an incidental taking of any endangered or threatened species, and issues an 'incidental take' statement permitting any such take that might occur.

EPA's appeal from the district court's order is currently pending in the United States Court of Appeals for the Eighth Circuit. EPA's Motion to Stay the district court's order pending appeal has been denied.

Accordingly, in compliance with, and under the authority of, the district court's order, as set forth above, EPA hereby orders that all registrations of strychnine pesticide products registered for any above-ground use are temporarily cancelled. This temporary cancellation is effective immediately and will remain in effect until further action is taken by EPA. Because this Notice is being published solely under the authority of, and to comply with, the district court's order, and is not an independent regulatory action under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), this Notice does not give rise to any administrative hearing rights under FIFRA.

Strychnine pesticide products subject to this Notice may not be distributed, sold, or used. Because collectively the species referenced in the court's order are found in all the States and territories, this Notice applies to all States and territories. Pursuant to the district court's order, EPA will continue to review all strychnine registrations and will take further regulatory action as appropriate.

Any person who has or comes into possession of any strychnine product subject to this Notice, including registrants distributors and users, are bound by the district court's order pursuant to Rule 65(d) of the Federal Rules of Civil Procedure. Such persons may be subject to contempt of court proceedings if they do not comply with the terms of this Notice.

Dated September 28, 1988.

Lee M. Thomas,

Administrator.

[FR Doc. 88-22912 Filed 10-4-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3458-4]

National Sewage Sludge Survey; Availability of Sampling and Analytical Methods Documents

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of sampling and analytical methods documents.

SUMMARY: EPA announces the availability of sampling and analytical methods for use in determining pollutant concentrations in sewage sludge. These sampling and analytical methods will be used in the National Sewage Sludge Survey being conducted to support the development of the technical sewage sludge regulation under section 405(d) of the Clean Water Act (CWA) of 1977, as amended by the Water Quality Act of 1987. The statutory authority to conduct this survey is provided by CWA section 308. Results of this survey may also form the basis for future rulemaking under CWA section 405(d).

Availability of Documents

Copies of the following sampling and analytical methods documents may be obtained from the U.S. Environmental Protection Agency, Office of Water Regulations and Standards, Sample Control Center, P.O. Box 1407, Alexandria, VA 22313 (phone number (703) 557-5040).

1. Sampling Procedures and Protocols for the National Sewage Sludge Survey, March 1988.

2. Analytical Methods for the National Sewage Sludge Survey, March 1988.

FOR FURTHER INFORMATION CONTACT: William A. Telliard, Office of Water Regulations and Standards, (WH-585), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (202 382-7131.

SUPPLEMENTARY INFORMATION:

Background

Section 405(d) of the CWA of 1977, as amended by the Water Quality Act of 1987, requires EPA to develop regulations to govern the use and disposal of municipal sewage sludge. The technical 40 CFR Part 503 regulation currently under development by EPA will address five use and disposal practices, any combination of which potentially can be selected by a municipality for use and disposal of sewage sludge. The five use and disposal practices are: (1) Distribution and marketing; (2) land application; (3) monofill; (4) incineration; (5) ocean disposal. The Agency may regulate other practices in the future, including sludge surface impoundments.

The EPA must regulate—when possible on a pollutant specific basis—the use and disposal of sewage sludges to prevent adverse effects to human health and the environment. The technical regulation will include numeric limitations for specific pollutants for each of the use and disposal practices. If the concentration of a pollutant exceeds this numeric limitation for a given use and disposal practice, then the particular sludge cannot be used or disposed of via that practice, unless the practice can be appropriately modified to limit exposure to pollutants.

To collect current national data on pollutant concentrations in sewage sludge, analytical sampling will be conducted by EPA at approximately 200 publicly owned treatment work (POTWs) selected by a stratified random sample from the universe of approximately 11,000 POTWs employing secondary or better treatment. Samples will be analyzed for a total of 419 analytes (Appendix A).

Today EPA is announcing the availability of the sampling and analytical methods that EPA is using in determining pollutant concentrations in sewage sludge as part of the National Sewage Sludge Survey. Sampling of the POTWs began this summer.

POTWs planning to collect sewage sludge data for submission to EPA are encouraged to use these sampling and analytical methods. Use of these methods will help ensure that the data is compatible with that collected in the National Sewage Sludge Survey and of quality to allow reasonable comparison.

Dated: September 21, 1988.

William A. Whittington,

Acting Assistant Administrator for Water.

Appendix A—List of Analytes

Key to List of Analytes for the NSSS

01 September 1988.

CAS NO

The Chemical Abstracts Service (CAS) Registry Number for the analyte. In certain instances, CAS has assigned a number to a compound class and this number is used.

Note: where CAS has not assigned a number to an analyte or class, a synthetic numbering system has been used. This number begins with a single digit followed by an underscore or hyphen followed by three digits (e.g., 1__001) and assures that an analyte can be unambiguously identified in relationship to the class from which it is derived. The three digits following the underscore identify its position on the parent list and match the ORIGIN SEQUENCE number. At present, the following leading

digits are used (definitions of acronymns follow):

1__ Identifies the RCRA Appendix VIII List
1- Identifies analytes on ITD's List
2__ Identifies the RPAR List
2- Identifies the AIR List
3- Identifies the SWDA List
3__ Identifies the VTOX List
4- Identifies the SEC__313 List
4__ Identifies the OAG__SRB List
5- Identifies the SEC__112 List

COMMON NAME

This field usually contains the common name for the analyte. If the common name appears as the NAME IN REGULATION (as occurs in some cases), the technical name may appear as the COMMON NAME.

TECHNIQUE

As derived from data provided by EPA's Athens laboratory and other sources. In those instances where the analytical technique is known, it has been encoded. The following analysis types are encoded:

CGCEC Combination method using gas chromatography with electron capture detector.
CGCFPD Combination method using gas chromatography with flame photometric detector.
CGCHSD Combination method using gas chromatography with a halogen specific detector.
CS2 Analysis of a carbamate by liberation of carbon disulfide.
CVAA Cold vapor Atomic Absorption Spectromety
HRGCMS High Resolution GCMS Analysis for dibenzo-p-dioxins and dibenzofurans
FURNAA Furnace Atomic Absorption Spectrometry
GCMS Analysis by gas chromatography/mass spectrometry
ICP Analysis by inductively coupled plasma spectrometry
WET Analysis by a classical wet method such as a titrametric, colorimetric or gravimetric method

METHOD

The EPA Method number where it is known.

ASRCH This analyte is determined by searching the acid (or combined acid and base/neutral) fraction.
BSRCH This analyte is determined by searching the base/neutral (or combined acid and base/neutral
SRCH This analyte might be capable of being determined by search of an analyte specific library in GCMS data.
VSRCH This analyte is determined by searching the volatile fraction.

List of Analytes for the National Sewage Sludge Survey—Fraction: Volatile Organics

[01 September 88]

CAS No.	Common Name	Technique	Method
71432	Benzene	GCMS	1624.
75274	Bromodichloromethane	GCMS	1624.
74839	Bromomethane	GCMS	1624.
78933	2-Butanone	GCMS	1624.
108907	Chlorobenzene	GCMS	1624.
75003	Chloroethane	GCMS	1624.
110758	2-Chloreoethylvinyl ether	GCMS	1624.
67663	Chloroform	GCMS	1624.
74873	Chloromethane	GCMS	1624.
124481	Dibromochloromethane	GCMS	1624.
75343	1,1-Dichloroethane	GCMS	1624.
75354	1,1-Dichloroethene	GCMS	1624.
107062	1,2-Dichloroethane	GCMS	1624.
156605	trans-1,2-Dichloroethene	GCMS	1624.
78875	1,2-Dichloropropane	GCMS	1624.
10061026	Trans-1,3-Dichloropropene	GCMS	1624.
60297	Diethyl ether	GCMS	1624.
123911	1,4-Dioxane	GCMS	1624.
100414	Ethylbenzene	GCMS	1624.
75092	Methylene chloride	GCMS	1624.
67641	2-Propanone	GCMS	1624.
107028	2-Propenal	GCMS	1624.
107131	Acrylonitrile	GCMS	1624.
56235	Tetrachloromethane	GCMS	1624.
79345	1,1,2,2-Tetrachloroethane	GCMS	1624.
127184	Tetrachlorethene	GCMS	1624.
108883	Toluene	GCMS	1624.
75252	Tribromomethane	GCMS	1624.
71556	1,1,1-Trichloroethane	GCMS	1624.
79005	1,1,2-Trichloroethane	GCMS	1624.
79016	Trichloroethene	GCMS	1624.
75014	Vinyl chloride	GCMS	1624.
75150	Carbon disulfide	GCMS	VSRCH.
126998	1,3-Butadiene, 2-chloro	GCMS	VSRCH.
107142	Chloroacetonitrile	GCMS	VSRCH.
106934	1,2-Dibromoethane	GCMS	VSRCH.
74953	Dibromomethane	GCMS	VSRCH.
110576	trans-1,4-Dichloro-2-butene	GCMS	VSRCH.
10061015	cis-1,3-Dichloropropene	GCMS	VSRCH.
107120	Ethyl cyanide	GCMS	VSRCH.
97632	Ethyl methacrylate	GCMS	VSRCH.
591786	2-Hexanone	GCMS	VSRCH.
74684	Iodomethane	GCMS	VSRCH.
78831	Isobutyl alcohol	GCMS	VSRCH.
108101	4-Methyl-2-pentanone	GCMS	VSRCH.
80626	Methyl methacrylate	GCMS	VSRCH.

List of Analytes for the National Sewage Sludge Survey—Fraction: Volatile Organics—Continued

[01 September 88]

CAS No.	Common Name	Technique	Method
107186	2-Propen-1-ol	GCMS	VSRCH.
107051	3-Chloropropene	GCMS	VSRCH.
126987	2-Propenenitrile, 2-methyl-	GCMS	VSRCH.
630206	1,1,1,2-Tetrachloroethane	GCMS	VSRCH.
75694	Trichlorofluoromethane	GCMS	VSRCH.
96184	1,2,3-Trichloropropane	GCMS	VSRCH.
108054	Vinyl acetate	GCMS	VSRCH.

LList of Analytes for the National Sewage Sludge Survey—Fraction: Semivolatile Organics

CAS No.	Common name	Technique	Method
83329	Acenaphthene	GCMS	1625.
208968	Acenaphthylene	GCMS	1625.
120127	Anthracene	GCMS	1625.
131113	Dimethyl phthalate	GCMS	1625.
92875	Benzidine	GCMS	1625.
56553	Benzo(a)anthracene	GCMS	1625.
50328	Benzo(a) pyrene	GCMS	1625.
205992	Benzo(b)fluoranthene	GCMS	1625.
191242	Benzo(ghi)perylene	GCMS	1625.
207089	Benzo(k)flouranthene	GCMS	1625.
92524	Biphenyl	GCMS	1625.
101553	4-Bromophenyl phenyl ether	GCMS	1625.
85687	Butyl benzyl phthalate	GCMS	1625.
86748	Carbazole	GCMS	1625.
59507	4-Chloro-3-methylphenol	GCMS	1625.
111911	bis(2-Chloroethoxy) methane	GCMS	1625.
111444	bis(2-Chloroethyl) ether	GCMS	1625.
108601	bis(2-Chloroisopropyl) ether	GCMS	1625.
91587	2-Chloronaphthalene	GCMS	1625.
95578	2-Cholorophenol	GCMS	1625.
7005723	4-Chlorophenylphenyl ether	GCMS	1625.
218019	Chrysene	GCMS	1625.
77474	Hexachlorocyclopentadiene	GCMS	1625.
99876	p-Cymene	GCMS	1625.
124185	n-Decane	GCMS	1625.
117840	Di-n-octyl phthalate	GCMS	1625.
621647	Di-n-propylnitrosamine	GCMS	1625.
53703	Dibenzo(a,h) anthracene	GCMS	1625.
132649	Dibenzofuran	GCMS	1625.
132650	Dibenzothbiophene	GCMS	1625.
84742	Di-n-butyl phthalate	GCMS	1625.
91941	3,3'-Dichlorobenzidine	GCMS	1625.
95501	1,2-Dicholorobenzene	GCMS	1625.
106467	1,4-Dicholorobenzene	GCMS	1625.
541731	1,3-Dicholorobenzene	GCMS	1625.
120832	2,4-Dichlorophenol	GCMS	1625.
84662	Diethyl phthalate	GCMS	1625.
105679	2,4-Dimethylphenol	GCMS	1625.
51285	2,4-Dinitrophenol	GCMS	1625.
121142	2,4-Dinitrotoluene	GCMS	1625.
606202	2,6-Dinitrotoluene	GCMS	1625.
122394	Diphenylamine	GCMS	1625.
122667	1,2-Diphenylhydrazine	GCMS	1625.
101848	Diphenyl ether	GCMS	1625.
629970	n-Docosane	GCMS	1625.
112403	n-Dodecane	GCMS	1625.
112958	n-Eicosane	GCMS	1625.
117817	bis(2-Ethylhexyl) phthalate	GCMS	1625.
206440	Fluoranthene	GCMS	1625.
86737	Fluorene	GCMS	1625.
67721	Hexachloroethane	GCMS	1625.
87683	Hexachlorobutadiene	GCMS	1625.
118741	Hexachlorobenzene	GCMS	1625.
630013	n-Hexacosane	GCMS	1625.
544763	n-Hexadecane	GCMS	1625.

LList of Analytes for the National Sewage Sludge Survey—Fraction: Semivolatile Organics—Continued

CAS No.	Common name	Technique	Method
193395	Indeno(1,2,3-cd)pyrene	GCMS	1625.
78591	Isophorone	GCMS	1625.
91203	Naphthalene	GCMS	1625.
91598	beta-Naphthylamine	GCMS	1625.
98953	Nitrobenzene	GCMS	1625.
88755	2-Nitrophenol	GCMS	1625.
100027	4-Nitrophenol	GCMS	1625.
62759	N-Nitrosodimethylamine	GCMS	1625.
86306	N-Nitrosodiphenylamine	GCMS	1625.
630024	n-Octacosane	GCMS	1625.
593453	N-Octadecane	GCMS	1625.
87865	Pentachlorophenol	GCMS	1625.
85018	Phenanthrene	GCMS	1625.
108952	Phenol	GCMS	1625.
534521	Phenol, 2-methyl-4,6-dinitro-	GCMS	1625.
109068	2-Picoline	GCMS	1625.
129000	Pyrene	GCMS	1625.
100425	Styrene	GCMS	1625.
98555	alpha-Terpineol	GCMS	1625.
646311	n-Tetracosane	GCMS	1625.
629594	n-Tetradecane	GCMS	1625.
638686	n-Triacontane	GCMS	1625.
87616	1,2,3-Trichlorobenzene	GCMS	1625.
120821	1,2,4-Trichlorobenzene	GCMS	1625.
88062	2,4,6-Trichlorophenol	GCMS	1625.
95954	2,4,5-Trichlorophenol	GCMS	1625.
933755	2,3,6-Trichlorophenol	GCMS	1625.
65850	Benzoic acid	GCMS	ASRCH.
1689845	Benzonitrile, 3,5-dibromo-4-hydroxy-	GCMS	ASRCH.
106445	p-Cresol	GCMS	ASRCH.
87650	2,6-Dichlorophenol	GCMS	ASRCH.
58902	2,3,4,6-Tetrachlorophenol	GCMS	ASRCH.
62442	Phenacetin	GCMS	BSRCH.
569642	Malachite green	GCMS	BSRCH.
137177	Aniline, 2,4,5-trimethyl-	GCMS	BSRCH.
90040	o-Anisidine	GCMS	BSRCH.
23950585	Pronamide	GCMS	BSRCH.
82053	Benzanthrone	GCMS	BSRCH.
60117	p-Dimethylaminoazobenzene	GCMS	BSRCH.
62533	Aniline	GCMS	BSRCH.
106478	p-Chloroaniline	GCMS	BSRCH.
95807	Toluene, 2,4-diamino-	GCMS	BSRCH.
108985	Benzenethiol	GCMS	BSRCH.
120581	Isosafrole	GCMS	BSRCH.
243174	2,3-Benzofluorene	GCMS	BSRCH.
100516	Benzyl alcohol	GCMS	BSRCH.
56495	3-Methylcholanthrene	GCMS	BSRCH.
92671	4-Aminobiphenyl	GCMS	BSRCH.
92933	Biphenyl, 4-nitro	GCMS	BSRCH.
119904	3,3'-Dimetoxybenzidine	GCMS	BSRCH.
694804	1-Brome-2-chlorobenzene	GCMS	BSRCH.
108372	1-Brome-3-chlorobenzene	GCMS	BSRCH.
89634	4-Chloro-2-nitroaniline	GCMS	BSRCH.
121733	1-Chloro-3-nitrobenzene	GCMS	BSRCH.
95487	o-Cresol	GCMS	BSRCH.
719222	2,6-di-tert-Butyl-p-benzoquinone	GCMS	BSRCH.
96231	1,3-Dichloro-2-propanol	GCMS	BSRCH.
99309	2,6-dichloro-4-nitroaniline	GCMS	BSRCH.
608275	2,3-Dichloroaniline	GCMS	BSRCH.
3209221	2,3-Dichloronitrobenzene	GCMS	BSRCH.
1464535	1,2:3,4-Diepoxybutane	GCMS	BSRCH.
57976	7,12-Dimethylbenz(a)anthracene	GCMS	BSRCH.
68122	N,N-Dimethylformamide	GCMS	BSRCH.
1576676	3,6-Dimethylphenanthrene	GCMS	BSRCH.
67710	Dimethyl sulfone	GCMS	BSRCH.
100254	1,4-Dinitrobenzene	GCMS	BSRCH.
882337	Diphenyldisulfide	GCMS	BSRCH.
76017	Ethane, pentachloro-	GCMS	BSRCH.
91805	Methapyrilene	GCMS	BSRCH.
62555	Thioacetamide	GCMS	BSRCH.

LList of Analytes for the National Sewage Sludge Survey—Fraction: Semivolatile Organics—Continued

CAS No.	Common name	Technique	Method
98862	Acetophenone	GCMS	BSRCH.
96457	Ethylenethiourea	GCMS	BSRCH.
1888717	Hexachloropropene	GCMS	BSRCH.
2027170	2-Isopropylnaphthalene	GCMS	BSRCH.
475207	Longifolene	GCMS	BSRCH.
62500	Ethyl methanesulfonate	GCMS	BSRCH.
120752	2-Methylblenzothioazole	GCMS	BSRCH.
101144	4,4'-Methylenebis(2-chloroaniline)	GCMS	BSRCH.
203645	4,5-methylene phenanthrene	GCMS	BSRCH.
1730376	1-Methylfluorene	GCMS	BSRCH.
91576	2-Methylnaphthalene	GCMS	BSRCH.
832699	1-Methylphenanthrene	GCMS	BSRCH.
615225	2-(methylthio)benzothiazole	GCMS	BSRCH.
66273	Methyl methanesulfonate	GCMS	BSRCH.
2243621	1,5-Naphthalenediamine	GCMS	BSRCH.
130154	1,4-Napthoquinone	GCMS	BSRCH.
134327	1-Naphthylamine	GCMS	BSRCH.
99558	5-Nitro-o-toluidine	GCMS	BSRCH.
88744	2-Nitroaniline	GCMS	BSRCH.
99092	3-Nitroaniline	GCMS	BSRCH.
100016	p-Nitroaniline	GCMS	BSRCH.
55185	N-Nitrosodiethylamine	GCMS	BSRCH.
924163	N-Nitrosodi-n-butylamine	GCMS	BSRCH.
614006	N-Nitrosomethylphenylamine	GCMS	BSRCH.
10595956	N-Nitrosomethylphenylamine	GCMS	BSRCH.
59892	N-Nitrosomorpholine	GCMS	BSRCH.
100754	N-Nitrosopiperidine	GCMS	BSRCH.
72333	Mestranol	GCMS	BSRCH.
608935	Pentachlorobenzene	GCMS	BSRCH.
700129	Pentamethylbenzene	GCMS	BSRCH.
198550	Perylene	GCMS	BSRCH.
92842	Phenothiazine	GCMS	BSRCH.
605027	1-Phenylnaphthalene	GCMS	BSRCH.
612942	1-Phenylnaphthalene	GCMS	BSRCH.
96128	1,2-Dibromo-3-chloropropane	GCMS	BSRCH.
110861	Pyridine	GCMS	BSRCH.
108463	Resorcinol	GCMS	BSRCH.
94597	Safrole	GCMS	BSRCH.
7683649	Squalene	GCMS	BSRCH.
140578	Aramite	GCMS	BSRCH.
95943	1,2,4,5-Tetracholorobenzene	GCMS	BSRCH.
95158	Thianaphthene	GCMS	BSRCH.
492228	Thioxanthe-9-one	GCMS	BSRCH.
95534	o-Toluidine	GCMS	BSRCH.
95794	o-Toluidine, 5-choloro-	GCMS	BSRCH.
634366	1,2,3-Trimethoxybenzene	GCMS	BSRCH.
217594	Triphenylene	GCMS	BSRCH.
20324338	Tripropyleneglycol methyl ether	GCMS	BSRCH.
291214	1,3,5-Trithiane	GCMS	BSRCH.
7700176	Ciodrin	GCMS	BSRCH.

List of Analytes for the National Sewage Sludge Survey—Fraction: Pesticides/Herbicides

CAS No.	Command name	Technique	Method
94757	Acetic acid (2,4-dichlorophenoxy)	CGCEC	1618.
93721	2,4,5-Trichlorophenoxypropionic acid	CGCEC	1618.
93765	2,4,5-Trichlorophenoxyacetic acid	CGCEC	1618.
88857	2-sec-buty1-4,6-dinitrophenol	CGCHSD	1618.
72435	Methoxychlor	CGCHSD	1618.
510156	Chlorobenzilate	CGCHSD	1618.
319846	alpha-BHC	CGCHSD	1618.
319857	beta-BHC	CGCHSD	1618.
319868	delta-BHC	CGCHSD	1618.
2303164	Diallate	CGCHSD	1618.
58899	Lindane (gamma-BHC	CGCHSD	1618.
133062	Captan	CGCHSD	1618.
2425061	Captafol	CGCHSD	1618.
72548	4,4'DDD	CGCHSD	1618.

List of Analytes for the National Sewage Sludge Survey—Fraction: Pesticides/Herbicides—Continued

CAS No.	Command name	Technique	Method
72559	4,4'-DDE	CGCHSD	1618.
50293	4,4'-DDT	CGCHSD	1618.
60571	Dieldrin	CGCHSD	1618.
72208	Endrin	CGCHSD	1618.
309002	Aldrin	CGCHSD	1618.
959988	Endosulfan-I	CGCHSD	1618.
1031078	Endosulfan sulfate	CGCHSD	1618.
33213659	Endosulfan-II	CGCHSD	1618.
7421934	Endrin aldehyde	CGCHSD	1618.
53494705	Endrin ketone	CGCHSD	1618.
1836755	Nitrofen (TOK)	CGCHSD	1618.
465736	Isodrin	CGCHSD	1618.
57749	Chlordane	CGCHSD	1618.
76448	Heptachlor	CGCHSD	1618.
1024573	Heptachlor epoxide	CGCHSD	1618.
2385855	Mirex	CGCHSD	1618.
143500	Kepone	CGCHSD	1618.
117806	1,4-Naphthoquinone, 2,3-dichloro-	CGCHSD	1618.
12674112	PCB-1016	CGCHSD	1618.
11104282	PCB-1221	CGCHSD	1618.
11141165	PCB-1232	CGCHSD	1618.
53469219	PCB-1242	CGCHSD	1618.
12672296	PCB-1248	CGCHSD	1618.
11097691	PCB-1254	CGCHSD	1618.
11096825	PCB-1260	CGCHSD	1618.
82688	Pentachloronitrobenzene	CGCHSD	1618.
786196	Carbophenothion (Trithion)	CGCHSD	1618.
1582098	Trifluralin (Treflan)	CGCHSD	1618.
8001352	Toxaphene	CGCHSD	1618.
56724	Coumaphos	CGCFPD	1618.
7786347	Mevinphos (Phosdrin)	CGCFPD	1618.
52686	Trichlorofon	CGCFPD	1618.
52857	Fa??phur	CGCFPD	1618.
55389	Fenthion	CGCFPD	1618.
56382	Parathion	CGCFPD	1618.
60515	Dimethoate	CGCFPD	1618.
62737	Dichlorvos	CGCFPD	1618.
78308	Phosphoric acid, tri-o-tolyl ester	CGCFPD	1618.
78342	Dioxathion	CGCFPD	1618.
86500	Azinphos-methyl	CGCFPD	1618.
115902	Fensulfothion	CGCFPD	1618.
141662	Dicrotophos (Bidrin)	CGCFPD	1618.
298000	Methyl parathion	CGCFPD	1618.
298022	Phorate	CGCFPD	1618.
298044	Disulfoton	CGCFPD	1618.
300765	Naled (Dibrom)	CGCFPD	1618.
333415	Diazinon	CGCFPD	1618.
470906	Chlorofenvinphos	CGCFPD	1618.
512561	Phosphoric acid, trimethyl ester	CGCFPD	1618.
563122	Ethion	CGCFPD	1618.
680319	Phosphoric triamide, hexamethyl-	CGCFPD	1618.
732116	Phosmet	CGCFPD	1618.
961115	Tetrachlorvinphos	CGCFPD	1618.
2104645	Santox (EPN)	CGCFPD	1618.
2642719	Azinphos ethyl	CGCFPD	1618.
2921882	Chlorpyrifos	CGCFPD	1618.
6923224	Moncrotophos	CGCFPD	1618.
8065483	Demeton	CGCFPD	1618.
1307199	Terbufos	CGCFPD	1618.
13171216	Phosphamidon	CGCFPD	1618.
21609905	Leptophos	CGCFPD	1618.
121755	Malathion	CGCFPD	1618.
107493	Tetraethylpyrophosphate	CGCFPD	1618.
3689245	Tetraethyldithiopyrophosphate	CGCFPD	1618.
111546	1,2-Ethanediylbiscarbamodithioic	CS2	1618.
142596	Nabam	CS2	630.
12122677	Zineb	CS2	630.
12427382	Maneb	CS2	630.
137268	Thiram	CS2	630.

List of Analytes for the National Sewage Sludge Survey—Fraction: Pesticides/Herbicides—Continued

CAS No.	Command name	Technique	Method
137304	Zinc bis(dimethyldithiocarbamato)-	CS2	630.

CAS No.	Common name	Technique	Method
1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin	HRGCMS	8290.
41903575	Total Tetrachlorodibenzo-p-dioxins	HRGCMS	8290.
51207319	2,3,7,8-Tetrachlorodibenzofuran	HRGCMS	8290.
55722275	Total Tetrachlorodibenzofurans	HRGCMS	8290.
40321764	1,2,3,7,8-Pentachlorodibenzo-p-dioxin	HRGCMS	8290.
36088229	Total-Pentachlorodibenzo-p-dioxins	HRGCMS	8290.
57117416	1,2,3,7,8-Pentachlorodibenzofuran	HRGCMS	8290.
57117314	2,3,4,7,8-Pentachlorodibenzofuran	HRGCMS	8290.
30402154	Total Pentachlorodibenzofurans	HRGCMS	8290.
39227286	1,2,3,4,7,8-Hexachlorodibenzo-p-dioxin	HRGCMS	8290.
57653857	1,2,3,6,7,8-Hexachlorodibenzo-p-dioxin	HRGCMS	8290.
(1)	1,2,3,7,8,9-Hexachlorodibenzo-p-dioxin	HRGCMS	8290.
344654608	Total Hexachlorodibenzo-p-dioxins	HRGCMS	8290.
(1)	1,2,3,4,7,8-Hexachlorodibenzofuran	HRGCMS	8290.
(1)	1,2,3,6,7,8-Hexachlorodibenzofuran	HRGCMS	8290.
(1)	1,2,3,7,8,9-Hexachlorodibenzofuran	HRGCMS	8290.
(1)	2,3,4,6,7,8-Hexachlorodibenzofuran	HRGCMS	8290.
(1)	Total Hexachlorodibenzofurans	HRGCMS	8290.
35822469	1,2,3,4,6,7,8-Heptachlorodibenzo-p-dioxin	HRGCMS	8290.
37871004	Total Heptachlorodibenzo-p-dioxin	HRGCMS	8290.
67562394	1,2,3,4,6,7,8-Heptachlorodibenzofuran	HRGCMS	8290.
(1)	1,2,3,4,7,8,9-Heptachlorodibenzofuran	HRGCMS	8290.
38998753	Total Heptachlorodibenzofurans	HRGCMS	8290.
3268879	Octachlorodibenzo-p-dioxin	HRGCMS	8290.
39001020	Octachlorodibenzofuran	HRGCMS	8290.

Note: (1): Chemical Abstract Services had not assigned as CAS number by the time of preparation of the list. EPA will obtain CAS numbers for these isomers at a later date.

List of Analytes for the National Sewage Sludge Survey—Fraction: Metals

Cas No.	Common name	Technique	Method
7439976	Mercury	CVAA	245
7440360	Antimony	FURNAA	204
7440382	Arsenic	FURNAA	206
7782492	Selenium	FURNAA	270
7440280	Thallium	FURNAA	279
7429905	Aluminum	ICP	200.7
7440393	Barium	ICP	200.7
7440417	Beryllium	ICP	200.7
7440699	Bismuth	ICP	200.7
7440428	Boron	ICP	200.7
7440439	Cadmium	ICP	200.7
7440702	Calcium	ICP	200.7
7440451	Cerium	ICP	200.7
7440473	Chromium	ICP	200.7
7440484	Cobalt	ICP	200.7
7440508	Copper	ICP	200.7
7429916	Dysprosium	ICP	200.7
7440520	Erbium	ICP	200.7
7440531	Europium	ICP	200.7
7440542	Gadolinium	ICP	200.7
7440553	Gallium	ICP	200.7
7440564	Germanium	ICP	200.7
7440575	Gold	ICP	200.7
7440586	Hafnium	ICP	200.7
7440600	Holmium	ICP	200.7
7440746	Indium	ICP	200.7
7553562	Iodine	ICP	200.7
7439885	Iridium	ICP	200.7
7439896	Iron	ICP	200.7
7439910	Lanthanum	ICP	200.7
7439921	Lead	ICP	200.7

List of Analytes for the National Sewage Sludge Survey—Fraction: Metals—Continued

Cas No.	Common name	Technique	Method
7439932	Lithium	ICP	200.7
7439943	Lutetium	ICP	200.7
7439954	Magnesium	ICP	200.7
7439965	Manganese	ICP	200.7
7439987	Molybdenum	ICP	200.7
7440008	Neodymium	ICP	200.7
7440020	Nickel	ICP	200.7
7440031	Niobium	ICP	200.7
7440042	Osmium	ICP	200.7
7440053	Palladium	ICP	200.7
7723140	Phosphorus	ICP	200.7
7440064	Platinum	ICP	200.7
7440097	Potassium	ICP	200.7
7440100	Praseodymium	ICP	200.7
7440155	Rhenium	ICP	200.7
7440166	Rhodium	ICP	200.7
7440188	Ruthenium	ICP	200.7
7440199	Samarium	ICP	200.7
7440202	Scandium	ICP	200.7
7440213	Silicon	ICP	200.7
7440224	Silver	ICP	200.7
7440235	Sodium	ICP	200.7
7440246	Strontium	ICP	200.7
7704349	Sulfur	ICP	200.7
7440257	Tantalum	ICP	200.7
13494809	Tellurium	ICP	200.7
7440279	Terbium	ICP	200.7
7440291	Thorium	ICP	200.7
7440304	Thulium	ICP	200.7
7440315	Tin	ICP	200.7
7440326	Titanium	ICP	200.7
7440337	Tungsten	ICP	200.7
7440611	Uranium	ICP	200.7
7440622	Vanadium	ICP	200.7
7440644	Ytterbium	ICP	200.7
7440655	Yttrium	ICP	200.7
7440666	Zinc	ICP	200.7
7440677	Zirconium	ICP	200.7

List of Analytes for the National Sewage Sludge Survey—Fraction: Classicals

CAS No.	Common name	Technique	Method
57125	Cyanides (soluble salts and complexes)	WET	335.2
7723140	Phosphorus	WET	365.2
14797650	Nitrite	WET	353.2
16984488	Fluoride	WET	340.2
1–008	Residue, total	WET	160.3
1–011	Nitrate	WET	353.2
1–021	TKN	WET	351.2

[FR Doc. 88–22916 Filed 10–4–88; 8:45 am]
BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Advisory Committee on Advanced Television Service; Steering Committee Meeting

The fourth meeting of the Systems Subcommittee of the Advisory Committee on Advanced Television Service will be held at 9:00 am on October 19, 1988 at the New York Telephone Offices, 1095 Avenue of the Americas, New York City.

The agenda for the meeting will consist of:

1. Introductory Remarks—Irwin Dorros

—Review of Systems Subcommittee charter, organization and operating procedures.

—Description of work flow and general inputs from the Planning Subcommittee.

—Brief review of the FCC's recent Tentative Decision and Further Notice of Inquiry.

2. Report by Working Party 1 (Systems Analysis)—Birney Dayton

—Charter and organization.

—Work plan/status.

—Review of ATV systems submitted for consideration.

—Schedule of activities.

3. Report by Working Party 2 (System Evaluation and Testing)—Ben Crutchfield

—Charter and organization.
—Status of the overall test plan.
—Discussion of inputs from the Planning Subcommittee, including the availability of ATV test material.
—Discussion of availability of ATV testing facilities (ATTC and Canadian).
—Schedule of activities.

4. Report by Working Party 3 (Economic Assessment)—Larry Thorpe
—Charter and organization.
—Work plan/status.
—Schedule of activities.

5. Report by Working Party 4 (System Standard)—Robert Hopkins
—Charter and organization.
—Work plan/status.
—Schedule of activities.

6. Discussion of plans for Second Interim Report

7. Subcommittee meeting schedule

8. Open discussion

All interested parties are invited to attend. Those interested may also submit written statements at the meeting. Oral statements and discussion will be permitted under the direction of the Committee Chairman.

Any questions regarding the meeting should be directed to Bruce Franca at (202) 632–7060.

Federal Communications Commission.

H. Walker Feaster, III,

Acting Secretary.

[FR Doc. 88–22856 Filed 10–4–88; 8:45 am]

BILLING CODE 6712–01–M

Advisory Committee on Advanced Television Service, Planning Subcommittee; Third Meeting

1. The Planning Subcommittee will hold its third meeting on: October 24, 1988, 10:00 a.m., 1919 M Street, NW., Washington, DC 20554, Room 856.

2. The purpose of this meeting is to receive the working parties' status reports and to discuss future work.

3. The agenda of the meeting is as follows:

a. Call to order by the Chairman.

b. Adoption of the minutes of the fourth meeting.

c. Remarks by Richard Wiley, Chairman of Advisory Committee.

d. Remarks by Alex Felker, Chief, Mass Media Bureau.

e. Status reports by Chairmen of Working Parties and Advisory Groups.

f. Work plan for next three months—Joseph Flaherty.

g. Other business.

h. Date and location of next meeting.

4. This meeting is open to the public.

5. Parties may submit written statements prior to or at the time of the meeting. Oral statements and discussion will be permitted under the direction of the Chairman.

6. For further information please contact: Chairman J.A. Flaherty (212) 975–2213, or William Hassinger (202) 632–6460.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88–22857 Filed 10–4–88; 8:45 am]

BILLING CODE 6712–01–M

[FCC 88–282]

American Teltronix

AGENCY: Federal Communications Commission.

ACTION: Denial of Petition for Reconsideration.

SUMMARY: The Commission has adopted an Order denying Mobilfone of Northeastern Pennsylvania's (Mobilfone) Petition for Reconsideration of the Private Radio Bureau's Declaratory Ruling in this matter. In denying the petition, the Commission affirmed the Bureau's conclusions that American Teltronix (AMTEL) is operating a private land mobile radio system, as defined by sections 3(gg) and 331 of the Communications Act, and is, therefore, not subject to the state entry and rate regulation pursuant to section 331(c)(3). The Commission rejected Mobilfone's contention that section 331 establishes a dual-prong test that includes both a functional distinction based on resale for profit of telephone services or facilities of a common carrier and a definitional prerequisite of user eligibility.

EFFECTIVE DATE: October 5, 1988.

FOR FURTHER INFORMATION CONTACT: Rudolfo Baca, Rules Branch, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634–2444.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order in PR Docket No. 87–5, adopted August 23, 1988, and released September 7, 1988.

The full text of this Commission decision is available for inspection and copying during the normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC 20554. 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 Order

1. On March 8, 1988, the Private Radio Bureau (Bureau) released a *Declaratory Ruling (Ruling)* [1] finding that Paul Kelley d/b/a/ American Teltronix (AMTEL) is operating a private land mobile system within the meaning of section 331(c) of the Communications Act, 47 U.S.C. 332(c), and, therefore, is not subject to state entry and rate regulation.[2] Mobilfone of Northeastern Pennsylvania (Mobilfone) filed a petition for reconsideration of the Bureau's *Ruling* on April 8, 1988. AMTEL filed an Opposition to the Petition of April 18, 1988. On the same day, the National Association of Business and Educational Radio, Inc. (NABER) also filed an Opposition. The Commission denied Mobilfone's petition and affirmed the Bureau's *Ruling*.[1]

2. In the Communications Amendments Act of 1982, Congress amended section 331 of the Act to establish a functional approach for distinguishing between private land mobile and common carrier services.[3] The test, codified in 47 U.S.C. 332(c)(1), turns on whether the system resells for profit telephone services or facilities of a common carrier. Because AMTEL does not resell the services or facilities of a common carrier for profit, the Bureau correctly concluded that AMTEL is operating a private land mobile radio system.

3. Mobilfone asserts that section 331 establishes a dual-prong test that includes both the functional distinction based on resale and a definitional prerequisite of user eligibility. The Commission recognized that the resale test in section 331 applies only to private land mobile services, as defined in section 331(c)(1) itself and in section 3(gg) of the amended statute, 47 U.S.C. 332(c) (1) and 3(gg). Under these provisions, a private land mobile service entails service to eligible users. Eligibility of system users, however, is not statutorily prescribed but is within the Commission's discretion. The Commission concluded that Congress did not intend that a private land mobile licensee who, either intentionally or inadvertently, provides service to ineligible users would thereby subject itself to state regulatory authority, including possible sanctions, for operating as a common carrier. A private land mobile service licensee's violation of Commission rules concerning eligible users does not somehow transform the licensee's

[1] Not published in the Federal Register.

[2] In the Matter of Paul Kelly d/b/a American Teltronix, 3 FCC Rcd 1091 (1988).

[3] Pub. L. 97–259, 96 Stat. 1087 (September 13, 1982).

operations from private to common carriage.

4. The Commission also rejected Mobilfone's contention that state regulatory authorities may exercise jurisdiction over private land mobile service systems to investigate their regulatory status with a view toward imposing sanctions for uncertificated common carrier operations. Section 331(c)(3) explicitly provides that, "No State or local government shall have *any* authority to impose *any* rate or entry regulation upon *any* private land mobile service * * *." [4] Accordingly, any exercise of state authority over private land mobile licensees to implement state certification requirements in these circumstances is flatly prohibited.[5]

5. In its *Ruling*, the Bureau concluded that Mobilfone's allegations of violations of the Commission's rules by AMTEL did not warrant further investigation or the imposition of sanctions. Mobilfone provided no additional facts on reconsideration to persuade the Commission otherwise. Moreover, the discretion to decline to impose administrative sanctions is fully within the Commission's inherent power to enforce the Communications Act and attendant regulations. In any event were sanctions warranted, they would have taken the form of a notice of violation, forfeiture or license revocation, not reclassification of AMTEL as a common carrier.

Ordering Clause

6. Accordingly, pursuant to § 1.106 of the Commission's Rules, 47 CFR 1.106, and in view of the preceding discussion, IT IS ORDERED THAT the Petition for Reconsideration filed by Mobilfone of Northeastern Pennsylvania IS DENIED.

Federal Communications Commission

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-22122 Filed 10-4-88; 8:45 am]

BILLING CODE 6712-01-M

[4] 47 U.S.C. 332(c)(3) (emphasis added).

[5] While states are free to bring to our attention information concerning possible rule violations by Commission licensees, they cannot, in compiling such information, subject private land mobile licensees to the compulsory process of any state or local regulatory bodies. As the state PUC apparently recognized any final determination that unauthorized operation has occurred may properly be made only by this Commission. *See* 3 FCC Rcd 1091 at ¶7.

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200157

Title: Port of Oakland Terminal Agreement.

Parties: Port of Oakland, Marine Terminals Corporation (MTC).

Synopsis: The agreement provides for MTC to manage and operate the Port's Ninth Avenue Terminal for the berthing of vessels, for the loading, unloading, receipt, handling, storage, transporting and delivery of cargo, and related operations. The agreement's term expires September 30, 1991.

Agreement No.: 224-200158

Title: Port of Portland Terminal Use Agreement.

Parties: Port of Portland, Evergreen Marine Corporation (Taiwan) Ltd.

Synopsis: The agreement provides that the Port grants Evergreen the preferential right to use (1) a container yard area (approx. ten acres of land) (2) one vessel berth and (3) two container cranes during a forty-eight hour period each week. The term of the agreement shall be for a period of two years.

Agreement No.: 224-200159

Title: Port of Seattle Terminal Agreement.

Parties: Port of Seattle, American President Lines, Ltd. (APL).

Synopsis: The agreement provides APL the month-to-month lease of yard area and joint-use roadway at the Port's Terminal 5 to be used for lumber cargo storage and terminal yard support activities.

By Order of the Federal Maritime Commission.

Tony P. Kominoth,

Assistant Secretary.

Dated: September 30, 1988.

[FR Doc. 88-22926 Filed 10-4-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of August 16, 1988

In accordance with § 217.5 of its rules regarding availability of information, there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on August 16, 1988. [1] The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests that economic activity has continued to expand at a vigorous pace. Total nonfarm payroll employment grew sharply further in June and July. The civilian unemployment rate in July, at 5.4 percent, was slightly below its average level in the second quarter. Industrial production advanced considerably further in July. Growth in retail sales remained moderate last month. Business capital spending has continued to grow rapidly. Some measures of prices indicate a pickup from recent trends and labor costs have risen more rapidly in recent months.

Most interest rates have increased appreciably since the Committee's meeting on June 29-30. On August 9 the Federal Reserve Board approved an increase in the discount rate from 6 to 6½ percent.

The nominal U.S. merchandise trade deficit fell in the second quarter as exports continued to rise and non-oil imports declined. Over the intermeeting period, the trade-weighted foreign exchange value of the dollar appreciated somewhat further in terms of the other G-10 currencies.

Expansion of M2 and to a lesser extent M3 slowed in July but growth of M1 remained relatively strong. From a fourth-quarter base through July, M2 and M3 have grown at rates somewhat above the midpoints of the ranges established by the Committee for 1988. Expansion in total domestic nonfinancial debt for the year thus far appears to be at a pace somewhat below that in 1987.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability over time, promote growth in output on a sustainable basis, and contribute to an improved pattern of international transactions. In furtherance of these objectives, the Committee at its meeting in late June reaffirmed the ranges it had established in February for growth of 4 to 8

[1] Copies of the Record of policy actions of the Committee for the meeting of August 16, 1988, are available upon request to The Board of Governors of the Federal Reserve System, Washington, DC 20551.

percent for both M2 and M3, measured from the fourth quarter of 1987 to the fourth quarter of 1988. The monitoring range for growth in total domestic nonfinancial debt was also maintained at 7 to 11 percent for the year.

For 1989, the Committee agreed on tentative ranges for monetary growth, measured from the fourth quarter of 1988 to the fourth quarter of 1989, of 3 to 7 percent for M2 and 3½ to 7½ percent for M3. The Committee set the associated monitoring range for growth in total domestic nonfinancial debt at 6½ to 10½ percent. It was understood that all these ranges were provisional and that they would be reviewed in early 1989 in the light of intervening developments.

With respect to M1, the Committee reaffirmed its decision in February not to establish a specific target for 1988 and also decided not to set a tentative range for 1989. The behavior of this aggregate will continue to be evaluated in the light of movements in its velocity, developments in the economy and financial markets, and the nature of emerging price pressures.

In the implementation of policy for the immediate future, the Committee seeks to maintain the existing degree of pressure on reserve positions. Taking account of indications of inflationary pressures, the strength of the business expansion, the behavior of the monetary aggregates, and developments in foreign exchange and domestic financial markets, somewhat greater reserve restraint would, or slightly lesser reserve restraint might, be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with growth in M2 and M3 over the period from June through September at annual rates of about 3½ and 5½ percent, respectively. The Chairman may call for Committee consultation if it appears to the Manager for Domestic Operations that reserve conditions during the period before the next meeting are likely to be associated with a federal funds rate persistently outside a range of 6 to 10 percent.

By order of the Federal Open Market Committee, September 29, 1988.

Donald L. Kohn,

Secretary, Federal Open Market Committee.

[FR Doc. 88-22974 Filed 10-4-88; 8:45 am]

BILLING CODE 6210-01-M

F.N.B. Corp. et al.; Acquisitions of Companies Engaged in Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a) or (f) of the Board's Regulation Y (12 CFR 225.23(a) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of companies engaged in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the applications have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposals can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competiton, conflicts of interest, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 26, 1988.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *F.N.B. Corporation,* Hermitage, Pennsylvania; to acquire indirectly through its subsidiary, The Metropolitan Savings Bank of Youngstown, Youngstown, Ohio, 4 branch offices of Household Bank, F.S.B., Columbus, Ohio.

Board of Governors of the Federal Reserve System, September 29, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-22969 Filed 10-4-88; 8:45 am]

BILLING CODE 6210-01-M

Empire Bank Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 26, 1988.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Empire Bank Corp.,* Homerville, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Empire Banking Company, Homerville, Georgia.

2. *M & M Bancorp, Inc.,* Ellisville, Mississippi; to become a bank holding company by acquiring 100 percent of the voting shares of M & M Financial Corporation, Laurel, Mississippi, and thereby indirectly acquire Merchants & Manufacturers Bank of Ellisville, Ellisville, Mississippi.

3. *Port St. Lucie National Bank Holding Corp.,* Port St. Lucie, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Port St. Lucie National Bank, Port St. Lucie, Florida, a *de novo* bank.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First of America Bank Corporation,* and First of America Bank Corporation-Indiana, both of Kalamazoo, Michigan; to acquire 100 percent of the voting shares of Wabash Valley Bancorporation, Inc., Peru, Indiana, and thereby indirectly acquire Wabash Valley Bank & Trust Company, Peru, Indiana.

Board of Governors of the Federal Reserve System, September 29, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-22970 Filed 10-4-88; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control; Acquisition of Shares of Banks or Bank Holding Companies; Frances P. McElveen

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 19, 1988.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Frances P. McElveen*, DeRidder, Louisiana; to retain 6.60 percent of the voting shares of NBC BancShares of DeRidder, Inc., DeRidder, Louisiana, and thereby indirectly acquire National Bank of Commerce of DeRidder, DeRidder, Louisiana.

Board of Governors of the Federal Reserve System, September 29, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-22971 Filed 10-4-88; 8:45 am]

BILLING CODE 6210-01-M

Norwest Corp. et al.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 19, 1988.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation*, Minneapolis, Minnesota; to acquire Fargo Insurance Agency, Inc., Fargo, North Dakota, and thereby engage in general insurance agency activities pursuant to § 225.25(b)(8)(G) of the Board's Regualtion Y. These activities will be conducted in Fargo, North Dakota.

Board of Governors of the Federal Reserve System, September 29, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-22973 Filed 10-4-88; 8:45 am]

BILLING CODE 6210-01-M

Osterreichische Landerbank Aktiengesellschaft et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the questions whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 27, 1988.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Osterreichische Landerbank Aktiengesellschaft*, Vienna, Austria; to engage *de novo* in providing securities brokerage services, related securities credit activities pursuant to Regulation T (12 CFR Part 220) and incidental activities such as offering custodial services, individual retirement accounts, and cash management services. Such securities brokerage services will be restricted to buying and selling securities solely as agent for the account of customers and will not include securities underwriting or dealing or providing investment advice or research services pursuant to § 225.25(b)(15) of the Board's Regulation Y. Comments on this application must be received by October 20, 1988.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *United New Mexico Financial Corporation*, Albuquerque, New Mexico; to engage *de novo* through its subsidiary, United New Mexico Credit Life Insurance Company, Albuquerque, New Mexico, in underwriting, as a reinsurer, life, accident, and health insurance that is directly related to an extension of credit by the bank holding

company organization pursuant to § 225.25(b)(8) of the Board's Regulation Y. These activities will be conducted in the State of New Mexico.

Board of Governors of the Federal Reserve System, September 29, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-22972 Filed 10-4-88; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Advisory Committee on the FTS2000 Procurement; Closed Meeting

Notice is hereby given that the previously announced October 11, 1988, meeting of the General Services Administration (GSA) Advisory Committee on the FTS2000 Procurement will be held from 10:00 a.m. to 12:00 Noon.

Questions regarding this meeting should be directed to John J. Landers (202) 523-5308.

Dated: September 28, 1988.

John J. Landers,

Director, Office of Administration, Information Resources Management Service.

[FR Doc. 22947 Filed 10-4-88; 8:45]

BILLING CODE 6820-25-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Statement of Organization, Functions, and Delegations of Authority; Assistant Secretary for Management and Budget

Part A, of the Office of the Secretary Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services is being amended as follows: Chapter AMH, "Office of Procurement, Assistance and Logistics," as last amended at 52 FR 866, 1/9/87; Chapter AMS, "Office of Administrative and Management Services," at 52 FR 37016, 10/2/87; and Chapter AMN, "Office of Finance" at 49 FR 29379, 8/14/88. These Chapters are being amended to abolish Chapter AMH and transfer its functions to Chapter AMN and AMS. In addition, Chapter AMS is being retitled, the Office of Management and Acqusition to reflect its newly acquired functions. The changes are as follows:

I. Delete Chapter AMH, "Office of Procurement, Assistance and Logistics" in its entirety.

II. Delete Chapter AMS, "Office of Administrative and Management Services," in its entirety; retitle it as the "Office of Management and Acquisition," and replace with the following:

Section AMS.00 Mission. The Office of Management and Acquisition (OMA) provides Department-wide leadership and direction for management policy, acquisition and logistics, administrative and management operations, real property, occupational safety and health, emergency preparedness, and environmental and historic preservation responsibilities. Provides administrative services and facilities management services to all HHS components in the Southwest Washington, DC area complex. Plans and administers telecommunications responsibilities and carries out equal employment activities within the Office of the Secretary. This Office also provides functional management direction to the Department's Operating and Staff Divisions in the areas of procurement, discretionary grants, and logistics. Provides Departmentwide leadership in these areas through policy development, oversight and training. Awards and administers contracts in support of the program needs of the Office of the Secretary, and manages the Small and Disadvantaged Business Utilization Program for the Department. Represents the Department in dealings with OMB, GAS and other Federal agencies and Congress in the areas of procurement, discretionary grants and logistics. Fosters creativity and innovation in the administration of these functions throughout the Department.

Section AMS.10 Organization. The Office of Management and Acquisition, headed by a Deputy Assistant Secretary for Management and Acquisition who reports to the Assistant Secretary for Management and Budget and consists of the following components:

Office of the Deputy Assistant Secretary
OS Office of Equal Employment Opportunity
Office of Management and Operations
  Division of Organizational and Management Analysis
Division of Special Programs Coordination
Division of Buildings Management and Telecommunications
  Division of Administrative Services
Office of Acquisition and Grants Management
  Acquisition and Logistics Research Staff
  Division of Acquisition Policy
  Division of Contract Operations
  Office of Small and Disadvantaged Business Utilization
  Division of Grants Management and Oversight

Section AMS.20 Functions. A. Office of the Deputy Assistant Secretary provides leadership, policy, guidance and supervision, as well as coordinating long- and short-range planning to constituent organizations.

B. OS Office of Equal Employment Opportunity. The OS Office of Equal Employment Opportunity receives program direction from the Assistant Secretary for Management and Budget (ASMB), and supervision and administrative support from the Office of the Deputy Assistant Secretary for Management and Acquisition. The OS Office of Equal Employment Opportunity assists the ASMB in carrying out the delegated authority to establish and maintain equal employment opportunity progam within the Office of the Secretary. The Office is responsible for ensuring that all OS employment policies and actions are based on merit, without regard to race, color, religion, national orgin, sex, age, or physical/mental handicap. Major functions include: (1) Pre-complaint counseling, (2) formal complaint processing, (3) affirmative employment planning and implementation, and (4) technical guidance and policy development. The functions of the office also include program efforts which focus on the Federal Women's Program, the Hispanic Employment Program, and the Handicapped Employment Program.

C. Office of Management and Operations. The Office of Management and Operations advises senior departmental officials on management issues related to the effective and efficient operation of the Department's programs and components. It also acts as the Department's focal point with other Federal agencies and HHS Operating Divisions on policy and regulatory issues involving reorganization, delegation of authority, postal management, records management, real property, space management, occupational safety and health, and emergency preparedness activities. This office also provides telecommunications services, management services, administrative services, and facilities management services functions for the Department. It directs, plans, obtains and coordinates building management, space management and design, systems furniture procurement and installation, safety and health, support services, and telecommunications in the Washington-Baltimore area. It also serves as the focal point for advice and guidance on a

variety of administrative support activities for the Department, which includes Staff Divisions in the Office of the Secretary, Operating Divisions located at headquarters, and the regional offices.

The office consists of the following components:

1. Division of Organizational and Management Analysis.

a. Serves as the principal source of advice to the Secretary on all aspects of Department-wide organization analysis including: (1) Planning for new organizational elements; (2) evaluating current organizational structures for effectiveness; (3) conducting the review process for reorganization proposals; and (4) maintaining documentation of the entire HHS organization to the prescribed level.

b. Administers the Department's system for the review, approval, and documentation of delegations of authority.

c. Analyzes and makes recommendations related to legislative proposals with potential impact the Department's organizational structure or managerial procedures.

d. Manages, in accordance with the Paperwork Reduction Act of 1980, the Office of the Secretary's activities related to the review and approval of all public use reports and recordkeeping requirements which impose paperwork burden on the public.

e. Develops policies for, and manages the Office of the Secretary's Information Collection Budget and the Information Collection Budget process.

f. Develops policies and procedures for, the Office of the Secretary and carries out analytical and oversight activities related to the Department's paperwork burden reduction efforts.

g. Establishes departmental statistical policies.

h. Manages the HHS administrative directive system, with emphasis upon incorporation of Secretarial directives into that system.

i. Provides guidance, advice, and assistance in all areas of records management including forms management for the Office of the Secretary, and upon request OS regional components. Serves as OS liaison with the National Archives and Records Service. Assists the Office of the Secretary components in scheduling their records for disposition or for obtaining approval of the Archivist of the U.S. for new or revised schedules.

j. Acts as the Department Standard Administrative Code (SAC) Office. Maintains the Department SAC system. Provides advice and assistance to OPDIV Administrative Code Officers regarding problems relating to the SAC system. Assigns and controls new codes for OPDIVs SAC changes to insure that they are complete, accurate and represent the currently approved organization, and submits changes to the Office of the Assistant Secretary for Personnel Administration (ASPER). Maintains a close working relationship with ASPER to insure that the SAC listing is accurate.

k. Develops Department-wide policy and procedures governing postal management. Conducts quarterly surveys to estimate annual cost of Department mail. Makes requests to the U.S. Postal Service to carry out a "mail cover." Maintains liaison with the General Services Administration and the U.S. Postal Service regarding postal management. Represents the Department in government-wide activities related to postal management.

2. Division of Special Programs Coordination.

a. Coordinates the Department's real property program through the promulgation of essential policies and administrative procedures, budgeting, acquisition, and utilization policies for all real property owned or leased by HHS.

b. Establishes and monitors guidelines for the utilization of GSA assigned space and facilities owned or leased by HHS. Prepares and monitors guidelines for the space reduction program effort in HHS on behalf of the Secretary.

c. Establishes and maintains standards and guidelines for transfers of real property as required in the Federal Property Assistance Program. Maintains necessary records to discharge the HHS responsibilities. Coordinates as necessary with the General Services Administration's Property Review Board and other Federal agencies in effecting property transfers and in monitoring each transfer through the period of restrictions outlines in the conveyances.

d. Develops policies and procedures related to the HHS Safety and Occupational Health Program. Provides technical guidance to the components of HHS. Coordinates the gathering of data necessary for mandated reports and prepares the reports on behalf of the Secretary.

e. Establishes information and reporting standards for these programs. Collects, assembles, coordinates, and analyzes required information for mandated reporting to Congress, the Office of Management and Budget, the General Services Administration, and other Federal agencies.

f. Oversees the development of Department-wide and government-wide contingency plans and programs for the Federal health and human services response to a full range of potential natural disasters and emergencies including nuclear attack. Such plans specify responsibilities and procedures for the Department of Health and Human Service, the Department of Defense, the Veterans Administration, the Ameican Red Cross, and related health and human services organizations to provide assistance to the States when called upon under the overall coordination of the Federal Emergency Management Agency.

g. Keeps the Secretary and senior staff of the Department informed of all major governmentwide developments in readiness plannning and establishes a program for developing and maintaining HHS readiness capabiilty. Oversees development and maintenance of the Department's emergency planning and operations.

h. Oversees the review and updating of classified interagency plans maintained by the Federal Emergency Management Agency with respect to the health and human services portions of the nation's response plans for a nuclear attack. Coordinates with Staff Divisions, Operating Divisons, the Regions and with other Federal agencies as required to update and upgrade the HHS input to these plans.

i. Provides leadership to the Regions in reviewing and assessing the health and human services aspects of State emergency plans. Assures that the HHS role in assisting the States in disasters is clear; that adequate plans are in place to respond when called upon; and, that HHS officials are informed of the plans and are prepared to implement them.

j. Serves as the focal point and principal contact in the Department for the White House Emergency Mobilization Prepardness Board and related working groups.

k. Oversees the design and conduct of interagency readiness exercises to test HHS plans at national and regional levels. Such exercises are designed so that plans are evaluated, problems, identified, and corrective action taken.

l. Provides policy and oversight Department-wide for employee and facility protection services.

m. Oversees HHS compliance with the National Environmental Policy Act, the National Historic Preservation Act, and related statutes and Executive Orders.

n. Coordinates the review of environmental impact statements developed by other Federal departments and agencies.

3. Division of Buildings Management and Telecommunications.

a. Responsible for the acquisition, disposition, allocation, and budgeting of space for the Office of the Secretary in Washington, DC., and OPDIVs in the Southwest Complex. Monitors and reconciles centralized RENT billings and distributes charges to responsible offices.

b. Fosters and enforces compliance with Federal space utilization principles in the Southwest Complex by the preparation of high-quality space management plans, drawings, and the arrangement of quality and timely renovation work. Provides engineering and architectural services as well as oversight in support of Southwest Complex facilities, both through in-house staff and contractors.

c. Procures systems furniture, including related design, installation, and maintenance services, for the Southwest Complex. Conducts major renovation and systems furniture installation projects, moves, and space consolidations.

d. Under delegation from GSA, is responsible for the physical plant operation and maintenance of the Hubert H. Humphrey Building and Federal Building #8, including the procurement and administration of related contracts.

e. Provides state-of-the art telecommunications management, including voice and data equipment analysis, selection, installation, alterations, and maintenance, for the Office of the Secretary. Monitors telecommunications billings, and plans and administers telecommunications budgets for the Office of the Secretary headquarters and regional offices.

f. Oversees the Office of the Secretary and Southwest Complex occupational safety and health programs, including the procurement and administration of related contracts.

g. Operates and manages the HHS Fitness Center, including the collection of and accounting for funds from the other participating Government agencies.

h. Provides physical security for employees and facility protection in the Southwest Complex through the procurement and administration of guard services and equipment.

i. Provides a variety of support services to the Office of the Secretary, including the management of conference and parking facilities, the processing of employee identification badge applications, and audio/visual and special events support.

j. Manages the Headquarters HHS Communications Center, processing all telegraph, teletype, facsimile, and mailgram transmissions.

4. Division of Administrative Services.

A. Provides the Office of the Secretary and regional offices all aspects of mail operations including receipt, routing, dispatch and control of packages mail and all other forms of written or printed communications.

b. Issues, controls and schedules employees for photographing and issuance or replacement of identification card.

c. Provides a variety of services related to production of materials for visual communications such as printing, publication, procurement, distribution and maintenance of stock levels; records changes to organizational forms, periodicals and publications and provides in-house reproduction services. Also provides for design, layout, illustration or other related services in connection with the printing of an organization publication, periodicals, briefing charts and other information or reference materials.

d. Provides library services to all HHS employees for official purposes such as reference, research, bibliographic, and advisory library programs. Also serves as an official Federal Depository for GPO publications.

e. Provides for the management of property through maintenance of records, by conducting periodic inventories, maintenance of depreciation accounts and repair cost analyses, disposal of excess property and obtaining releases from accountability for lost or stolen property.

f. Receives, stores, issues, and maintains stock levels for a wide variety of supplies and forms, and for office furniture, office machines, and other nonexpendable materials obtained through the appropriate supply organizations.

g. Maintains a fleet of motor vehicles for deliveries, messenger and shuttle services. Plans and schedules drivers to accommodate the Secretary, senior officials and agency needs.

h. Provides for the purchase, storage, and issuance of office forms and unique supplies.

D. Office of Acquisition and Grants Management. Provides functional management direction to the Department's Operating and Staff Divisions in the areas of procurement, discretionary grants, and logistics. Provides Departmentwide leadership in these areas through policy development, oversight and training. Awards and administers contracts in support of the program needs of the Office of the Secretary. Manages the Small and Disadvantaged Business Program for the Department. Represents the Department in dealings with OMB, GSA and other Federal agencies and Congress in the areas of procurement, discretionary grants and logistics. Fosters creativity and innovation in the administration of these functions throughout the Department.

1. Division of Acquisition Policy.

a. Formulates Departmentwide acquisition policies governing the award and administration of procurement activities. Publishes these in regulations and manuals. Recommends and participates in development of government-wide acquisition policy.

b. Provides advice and technical assistance on procurement activities and policy matters to the Department's Operating and Staff Divisions.

c. Develops, participates in and evaluates procurement training programs for Department staff; develops and participates in training activities for Department's program people who act as project officers on the Department's contracts.

d. Monitors the adoption of acquisition policies by the Department's Operating and Staff Divisions to ensure consistent policy interpretation and application.

e. Oversees the Department's procurement system to assure compliance with procurement laws and policies and efficient acquisition of the Department's program needs.

f. Makes studies of problems requiring creation of new policies or revision of current policies, including the application of Departmental management controls and reports related to the Department's procurement activities; resolves issues arising from implementation of those policies; maintains similar relationships with associations of public and private contractor organizations.

g. Provides support for the Department's Competition Advocate in fostering competition in contrating. Develops the annual report to Congress on the Department's actions and accomplishments in promoting competition.

h. Manages the Department's procurement planning system to avoid excessive and unnecessary year-end spending.

2. Division of Grants Management and Oversight.

a. Manages oversight of the award and administration of discretionary grants and other forms of Federal assistance throughout the Department.

b. Conducts special studies of discretionary grants issues to identify and implement improvements in the way the Department awards and administers

discretionary grants and other forms of Federal assistance; designs and assists in execution of demonstrations, experimentation and tests of innovative approaches to discretionary grants management.

c. Works with Department's operating and staff divisions in developing policies and procedures governing the award and administration of discretionary grants and other forms of Federal assistance.

d. Provides general advice and assistance to the Department's Operating and Staff Divisions on matters relating to the administration of discretionary grants, other forms of Federal assistance and costing.

e. Serves as the Department's liaison in the area of discretionary grants and maintains working relationships with OMB and other Federal agencies to coordinate and assist in the development of policies.

3. Division of Contract Operations.

a. Plans, directs and carries out the centralized contracting program for the Office of the Secretary, the Office of Consumer Affairs, all small purchasing for the Office of Human Development Services, and (in the case of certain consolidated and centralized commodities and services) for components of the Department located in Southwest Washington, DC.

b. Administers and manages performance of the contracts of the Office of the Secretary to assure that it receives the timely and quality performance and the products which it has contracted for.

c. Is responsible for (a) award and administration of procurements up to $25,000 on the "open market", (b) placing delivery orders for any amount against federal supply schedule contracts, (c) processing cash orders, oral orders, and training orders and delivery orders, (e) award of Blanket Purchase Agreements, and (f) closeout of purchase orders from date of award through final archiving.

d. Assists the director of the Office of Acquisition and Grants Management in providing procurement functional management to the regional contracting offices.

4. Acquisition and Logistics Research Staff.

a. Researches, analyzes and tests innovative ideas, techniques and policies in the area of acquisition. Establishes and directs ad hoc teams to work on special projects to develop creative approaches to problems in the dynamic areas of acquisition and logistics. Constantly fosters creativity throughout the Office of Acquisition and Grants Management and the Department in the administration of procurement, discretionary grants and logistics.

b. Serves as the Department's liaison in the areas of acquisition and logistics, and maintains working relationships with OMB, GSA, OPM and other Federal agencies to coordinate and assist in the development of policy and to participate in Governmentwide tests of procurement innovations.

c. Serves as a liaison between the Director, Office of Acquisition and Grants Management and the policy and operations divisions within that office. Serves as the Office of the Secretary Competition Advocate.

d. Conducts special projects to develop improved mechanisms for Departmentwide management of procurement, discretionary grants and logistics. For example, establishes and manages improved procurement and grants information and monitoring systems.

e. Serves as the Department's focal point and liaison with the Operating and Staff Divisions for policy development, technical assistance, oversight and training in the area of logistics.

5. Office of Small and Disadvantaged Business Utilization

a. Has responsibility within the Department for policy, plans and oversight of execution of the functions under section 8 and 15 of the Small Business Act as amended and Executive Orders 12073 and 12138, relating to preference programs for small business, disadvantaged businesses, labor surplus area concerns and women-owned businesses. Under provisions of Pub. L. 95–507, the Director reports directly to the Office of the Under Secretary. Pursuant to Under Secretarial direction, the day-to-day operational review will be provided by the Director of the Office of Acquisition and Grants Management in order to assure effective departmental coordination and execution of these programs.

b. Acts as the advocate for the Secretary and Under Secretary within the Department for matters relating to sections 8 and 15 of the Small Business Act and Executive Orders 12073 and 12138 and represents the Department in dealings with other agencies on those matters.

c. Acts as focal point and advocate for the small business, disadvantaged business, labor surplus area and women-owned business firms in their dealings with the Department.

d. Formulates, recommends and monitors implementation of policies for the Department's small business, Small Business Innovation Research, disadvantaged business, labor surplus area and women-owned business programs.

e. Coordinates and prepares the Department's goals for assigned programs, recommends Secretarial approval of such goals and subsequent to Secretarial approval, negotiates, establishes and reports on goals for the assigned programs with the cognizant Federal agencies.

f. Encourages the awarding of contracts and subcontracts to small business, disadvantaged business, labor surplus area and women-owned business firms by providing information and assistance to all the Department's organizational units.

g. Prepares documentation and reports to the Executive Office of the President, the Congress, Office of Management and Budget, the Small Business Administration and other agencies, as required.

h. Ensures effective implementation by the Department of the mandatory plans and/or contract clauses as required by Pub. L. 95–507 for small business and disadvantaged business firms and monitors the activities relating to such plans.

i. Provides input for coordinated departmental positions on proposed legislation and Government regulations on matters affecting cognizant socioeconomic programs and maintains liaison with the Congress through established departmental channels.

j. Manages the Department's Small Business Innovation Research Program (SBIR) established under Pub. L. 97–219 and provides liaison between the Department and the Small Business Administration on SBIR matters.

k. Provides oversight to and monitors the departmental review and screening of planned procurements by programs and procurement offices to ensure that preference programs are given thorough consideration throughout the decision-making process.

III. Make the following changes to Chapter AMN:

A. Section AMN.00 Mission. Delete in its entirety and replace with the following:

AMN.00 Mission. The Office of Finance provides guidance on budget execution, accounting systems, financing, financial and cost reporting, cash management, debt and credit management, and travel management. The office is responsible for operating four Departmental automated financial systems and for operating the accounting system and providing accounting and fiscal services to the Office of the Secretary and the Office of Human Development Services. The

Office also manages Departmental operations involving the negotiation and approval of cost allocation plans and indirect cost rates, resolves cross-cutting audit findings, and formulates cost principles, grant and contract cost reimbursement policy and audit resolution policy. Serves as advisor to the Assistant Secretary for Management and Budget in these areas.

B. Section AMN.10 Organization. Delete in its entirety and replace with the following:

AMN.10 Organization. The Office of Finance is headed by the Deputy Assistant Secretary, Finance, who reports to the Assistant Secretary for Management and Budget. Its organization includes:

Immediate Office
Office of Financial Operations
Office of Financial Policy
Office of Financial Systems
Budget Execution Staff
Program Coordination Staff
Office of Grant and Contract Financial Management

C. Section AMN.20 Functions. "The Office of Finance." Delete paragraph "N" and insert the following new paragraphs.

N. Formulates cost principles and other cost policies and procedures for determining and reimbursing the costs of grantee and contractor organizations applicable to HHS awards, including procedures necessary for indirect cost and similar cost negotiations. Also formulates Departmental policy for resolving audit findings on grantee/contractor organizations.

O. Provides direction and oversight of the cost allocation/indirect cost negotiations performed by Department's Regional Divisions of Cost Allocation, including development of policies, standards and procedures.

P. Resolves monetary audit findings and findings involving deficiencies in grantee/contractor accounting and management systems which affect awards made by more than one HHS Operating Division or Federal agency.

Q. Evaluates ADP facilities operated by State and local units of government, colleges and universities and other grantee/contractor organizations to determine whether charges for ADP services to Federal programs are reasonable, equitable, and allowable under Federal cost principles.

D. Section AMN.20 Functions, paragraphs "2. Office of Financial Policy," delete Items 2b and 2f, reletter Items 2c thru 2j as 2b thru 2h; and add the following new Items 2i and 2j.

i. Maintains liaison with the Office of Management and Budget, the Treasury Department, the General Accounting Office, and other agencies on matters involving accounting policy and procedures and grantee and contractor expenditure reporting and accountability for federal cash received.

j. Provides functional management direction to the Department's Operating and Staff Divisions in the area of entitlement grants. Provides Department-wide leadership in this area through policy development, oversight and training. Represents the Department in dealings with OMB, Department of Treasury and other Federal agencies and Congress in the area of entitlement grants.

E. Section AMN.20 Functions. Insert the following after Item 4e:

5. Program Coordination Staff.

a. Develops and executes Department-wide policies and procedures relating to implementation and management of internal controls under the Federal Manager's Financial Integrity Act (FMFIA). Also exercises Department-wide operational and oversight responsibility for Department-wide internal controls activities for Section 2. Represents the Department in government-wide activities related to FMFIA.

b. Directs (performs) special studies and analyses involving financial policy, systems, and operations. These focus on issues internal to the Office of Finance, internal to the Department or government-wide.

c. Supervises the administrative office for the Office of Finance, providing centralized support on personnel, budget, management and general administrative functions.

d. Represents the Deputy Assistant Secretary for Finance as alternate on boards and committees. This includes the Chief Financial Officers Council, the Joint Financial Management Improvement Program Steering Committee and the Federal Financial Managers Council.

e. Directs or coodinates special projects or initiatives which cut across activities or programs within the Office of Finance, in the Department and for government-wide initiatives.

6. Office of Grant and Contract Financial Management (OGCFM):

(1) Resolves audit findings on grantee/contractor organizations which affect the programs of more than one Operating Division or Federal department/agency. Makes recommendations to the Secretary and other officials on safeguards or other actions against grantee/contractor organizations when necessary to protect the interests of the Department.

(2) Exercises functional management responsibilities over indirect cost and cost allocation negotiations performed by the Department's regional Divisions of Cost Allocation.

(3) Formulates cost principles and other cost policies and procedures for determinating and reimbursing the costs of grantee/contractor organizations applicable to HHS awards, including procedrues necessary for indirect cost and similar cost negotiations.

(4) Formulates HHS policy on the resolution of audit findings on grantee/contractor organizations.

(5) Reviews ADP facilities operated by State and local governments, universities, and other grantee/contractor organizations to determine whether charges for ADP services to Federal programs are reasonable, equitable, and allowable under Federal cost principles.

(6) Develops and presents training programs for Department staff and grantee/contractor organizations on audit resolution, cost principles, indirect costs and other areas related to the financial management of grants and contracts.

(7) Provides technical assistance to the Operating Divisions, grantee/contractor organizations, and other Federal agencies on the financial management of grants and contracts.

The Office is comprised of the following:

A. Division of Audit Resolution:

a. Reviews audit reports containing monetary findings or findings involving deficiencies in the management systems of grantee/contractor organizations which affect the programs of more than one Operating Division or Federal department; conducts or arranges for additional reviews or acquires additional information to the extent necessary to determine the actions required to resolve the findings and correct the deficiencies.

b. Coordinates, where necessary, with other affected Federal departments and agencies to estalish a uniform Federal position on the actions needed to resolve the findings and correct the deficiencies.

c. Negotiates or determines the settlement of the findings and the actions needed to correct the deficiencies with grantee and contractor organizations. As designated by OMB, performs these functions on behalf of all affected Federal department and agencies.

d. As necessary, makes recommendations to the Secretary and other officials on safeguards or other actions against a grantee or contractor

to protect the Department's interests where the organization is unwilling to correct serious deficiencies in a timely manner or fails to comply with previous agreements on corrective actions.

e. Provides and arranges for technical assistance to grantees and contractors on the correction of deficiencies and on other matters related to the financial management of grant and contract activities.

f. Upon request, reviews and approves accounting or other systems developed by grantees and contractors to comply with Federal cost principles and policies.

g. Provides technical assistance to the Operating Division audit resolution staffs on the resolution of audit reports assigned to them and on other matters related to the financial managment of grant and contract activities.

h. Develops and presents training programs for Department staff and grantee/contractor orgianzations on audit resolution, cost principles, and other areas related to the financial management of grant and contract activities.

B. Division of ADP Review.

a. Evaluates a wide range of sophisticated ADP facilities operated by State and local governments, colleges and universities, and other types of grantee/contractor organizations to determine whether charges for ADP services to Federal programs are reasonable, equitable, and allowable under Federal cost principles. These reviews cover the propriety of cost accounting methods and billing algorithms, operational efficiency, hardware configurations and need, software, hardware and software compatibility, internal controls, etc.

b. Recommends and participates in the negotiation or determination of ADP cost recoveries and changes to costing/billing methods and internal controls where reviews disclose unreasonable, inequitable or unallowable charges to Federal programs. Recommends modifications to grantee and contractor ADP systems to improve operational efficiency based on state-of-the-art and advances in techniques.

c. Develops guidelines and analysis techniques for the Department's regional Divisions of Cost Allocation (DCAs) in their evaluation of grantee/contractor ADP costs and costing/billing methods. Provides technical assistance and training to DCAs in ADP operations and cost analysis techniques.

d. Develops and assists in the implementation of ADP systems and techniques in support of DCA and OGCFM operations.

e. Provides technical assistance to grantee/contractor organizations in analyzing and improving their ADP costing/billing systems.

f. Identifies common ADP costing/billing problems from a national perspective; recommends and participates in the development of policies, guidelines, model systems, etc. to overcome these problems and promote improvements in ADP costing/billing systems.

C. Division of Cost Determination Management.

a. Exercises functional management responsibilities over indirect cost and cost allocation negotiations performed by the Department's regional Divisions of Cost Allocation (DCA):

(a) Acts as principal Headquarters contact in day-to-day activities of the DCAs; provides management oversight of function; and, resolves problems relating to individual negotiations or organizational conflicts between the DCAs and the OIG, the OPDIVs or other Federal agencies.

(b) Provides direction in development of DCA budget and staffing needs and performance requirements.

(c) Provides technical assistance and guidance to the DCAs in negotiating cost allocation plans, indirect cost rates, research patient care rates and other special rates with State and local governments, universities and other grantee/contractor organizations.

(d) Conducts on-site reviews of DCA activities to ensure that proposal evaluations and negotiations are performed effectively and in compliance with Department and Governmentwide policies; monitors the correction of deficiencies disclosed by the reviews.

(e) Evaluates tentative DCA determinations on issues which may be appealed by grantees or contractors; provides guidance on whether and how the issues should be pursued prior to the DCA's final determination.

(f) Reviews negotiation agreements on cost allocation plans, indirect cost rates, and other rates for completeness, understandability, and conformance with Department policies; and distributes them to users.

(g) Provides direction to the DCAs in the preparation of their work plans; establishes workload and other management reporting systems; receives and analyzes management reports.

(h) Performs analyses of the results of indirect cost negotiations to identify trends and problem areas and to direct review and negotiation effort to areas of greatest need.

b. Formulates cost principles and Department-wide cost policies affecting grant and contract programs and Department-wide policies on the resolution of audit findings on grantee/contractor organizations.

c. Serves as the Department's liaison with and maintain working relationships with OMB and other Federal agencies in the development of Government-wide cost principles and audit resolution policies; maintains similar relationships with associations of states, universities and other grantee/contractor organizations.

d. Develops and presents training programs for Department staff, and grantee/contractor organizations on indirect costs, cost allocation and negotiation, audit resolution, and other areas related to the financial management of grant and contract activities.

e. Provides technical advice to the Operating Divisions, grantee or contractor organizations, and other Federal agencies on the financial management of grant and contract activities.

Date: September 29, 1988.

S. Anthony McCann,

Assistant Secretary for Management and Budget.

[FR Doc. 88-22906 Filed 10-4-88; 8:45 am]

BILLING CODE 4110-60-M

Health Care Financing Administration

[BERC-399-FN]

Medicare Program; Billing and Verification Add-On Relating to Home Health Agencies Cost Per Visit Limits

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

ACTION: Final notice.

SUMMARY: This notice responds to the Public comments we received concerning the billing and verification add-on amounts that were included in the two schedules of limits on home health agency costs that were pub1ished in the **Federal Register** on July 7, 1987 (52 FR 25562). The first schedule of limits was applicable to cost reporting periods beginning on or after July 1, 1986 but before July 1, 1987 and the second to cost reporting periods beginning on or after July 1, 1987.

FOR FURTHER INFORMATION CONTACT: Steven R. Kirsh, (301) 966-5653.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1861(v)(1) of the Social Security Act (the Act) authorizes the Secretary to establish limits on allowable costs incurred by a provider of services that may be reimbursed

under the Medicare program, based on estimates of the costs necessary for the efficient delivery of needed health services. The limits may be applied to direct or indirect overall costs or to the costs incurred for specific items or services furnished by the provider. This provision of the statute is implemented under regulations at 42 CFR 413.30.

Under this authority, we published the two latest schedules of limits on home health agency (HHA) costs (applicable to cost reporting periods beginning on or after July 1, 1986 but before July 1, 1987 and for cost reporting periods beginning on or after July 1, 1987) in a final notice with comment period in the July 7, 1987 **Federal Register** (52 FR 25562). A correction to these schedules of limits was published in the **Federal Register** on July 20, 1987 (52 FR 27286). The July 7, 1987 notice solicited public comments on the methodology, as described below, that we used to factor in the new billing and verification add-on required by section 9315(b)(2) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509) enacted on October 21, 1986. Section 9315(b)(2) of Pub. L. 99-509 requires that in establishing the HHA limits for cost reporting periods beginning on or after July 1, 1986, HCFA must take into account the changes in HHAs' costs for billing and verification procedures that resulted from HCFA's changes to these procedures.

In September 1985, HCFA changed the forms for HHA billing and verification procedures by instituting the HCFA 485 series of forms. This series consists of the Plan of Treatment and Home Health Certification Form (HCFA-485), the Medical Information Form (HCFA-486), Addendum to the HCFA 485 and 486 (HCFA-487), and the HHA Intermediary Medical Information Request (HCFA-488). The information on these forms is needed to determine eligibility of beneficiaries for services.

In order to satisfy the statutory requirement of section 9315(b)(2) of Pub. L. 99-509, HCFA increased the base limit values included in Table I of the July 7, 1987 notice for both the July 1, 1986 and July 1, 1987 limits. The amount of the increase was based on our estimate of the added costs incurred by HHAs in completing those forms. In making this estimate, we used the same methodology and assumptions that we had used to obtain approval from the Executive Office of Management and Budget (EOMB) for the use of these forms. We estimated that an HHA spends about one-half hour completing the forms 485 and 486 and that these forms would be completed for every other claim. We also estimated that the form 488 would be required about 20 percent of the time that a HCFA form 485 is required and takes approximately one quarter of an hour to complete.

Using 1984 claim and visit data, the one-half hour completion time for every other claim, and a standard figure of $10.00 per hour (the figure EOMB uses to estimate paperwork burden), we calculated a cost of $2.75 per claim or $.37 per visit to complete the HCFA 485 series of forms. Since the form preparation cost per visit is to apply to the cost limit schedules for cost reporting periods beginning on and after July 1, 1986 and July 1, 1987, we adjusted the costs to take into account inflation from September 30, 1985 (the effective date of the forms) through the midpoint of each schedule of limits. To adjust the cost per visit for inflation, we used inflation rates of 3.2 percent, 3.8 percent, and 4.9 percent for calendar years 1986, 1987, and 1988, respectively. This resulted in an inflation factor adjustment of 1.0267 for the schedule of limits effective July 1, 1986 and 1.0714 for the schedule effective July 1, 1987.

Calculation of Add-On for Billing Costs

1984 visits	39,660,931
1984 claims	5,258,174

1984

Forms 485/486

5,258,174 claims X .5=2,629,087 claims for which forms are completed (forms are completed on every other claim, or 50 percent of total claims)

2,629,087 claims X .5 hours=1,314,544 hours to complete the forms

Form 488

2,629,087 claims X .20=525,817 claims for which forms are completed (forms are completed on 20 percent of total claims)

525,817 claims X .25 hours=131,454 hours to complete the forms

Total hours:

1,314,544	hours Forms 485/486
+131,454	hours Form 488
1,445,998	hours on all forms

1,445,998 hours divided by 5,258,174 claims=.275 hours per claim

1,445,998 hours divided by 39,660,931 visits=.0365 hours per visit

At a cost of $10.00 per hour, $2.75 per claim or

$.365 per visit

$.365 per visit X 1.0267 inflation factor=.3747 or $.37 per visit for the base period covered by the July 1, 1986 schedule of limits.

$.365 per visit x 1.0714 inflation factor=.3910 or $.39 per visit for the base period covered by the July 1, 1987 schedule of limits.

We stated in the July 7, 1987 notice that we believe that the per visit add-on amounts for billing and verification described above are reasonable and equitable and adequately accommodate any increased costs attributable to the completion of these billing and verification forms.

II. Comments and Responses

We received seven timely items of correspondence concerning the methodology we used to calculate the billing and verification add-on. The comments were from four HHAs, two national associations representing HHAs, and one insurance company. Although the majority of commenters expressed an opinion that our estimate of the time to complete the forms was low, which resulted in low add-on values being incorporated into the limits, there was no consensus among the commenters on how long it actually takes to complete the billing and verification forms. Thus, we have decided not to revise the methodology that was used to calculate the billing and verification add-on amounts. A summary of the comments we received and our responses to them are presented below.

Comment: Five commenters stated that our estimate of 30 minutes as the time needed to complete the 485 series of forms is inadequate. These commenters suggested that the time required to complete the 485 series of forms actually ranges from 45 minutes to 90 minutes.

Response: The 485 series of forms evolved from HCFA's effort to develop standardized information collection forms. During this development, HCFA made on-site visits to both providers and fiscal intermediaries in order to gather information regarding these forms. The 30-minute estimate is a result of the analysis of information gathered as well as comments received during these visits. This estimate also takes into consideration subsequent refinements made to the initial versions of the forms.

We recognize that some preparers will require less time and some will require more. However, we believe that 30 minutes is a reasonable estimate of the average time needed to complete the forms. As stated above, the 30-minute estimate of the time needed to complete the 485 series of forms used in calculating the add-on factor for the limits is the same estimate we used in obtaining approval from EOMB for the use of these forms. Prior to EOMB's

approval, these forms and the paperwork estimates relating to them were available for review and comment by the HHA industry. At that time, we received no objections from that industry concerning our estimate of preparation time.

Comment: Three commenters expressed concern that the billing and verification add-on fails to account for the total costs associated with the 485 series of forms. However, these commenters did not indicate which costs were not accounted for in our estimate of the add-on.

Response: As we noted in the July 7, 1987 final notice with comment period, section 9315(b)(2) of Pub. L. 99–509 requires that the limits take into account changes in the costs of billing and verification procedures attributable to our changing the requirements for these procedures. The statutory language clearly requires that the limits recognize only the incremental costs directly associated with the changes HCFA made in billing and verification procedures. Costs incurred for billing and verification procedures prior to the use of the 485 series of forms are included in the cost report data that were used to set the limits. If the add-on included the total costs related to billing and verification procedures rather than just the incremental costs resulting from the new 485 series of forms, the cost limits would include the baseline costs twice, once in the limits and again in the add-on.

Comment: One national association commented that the $10 per hour used by EOMB to estimate the paperwork burden is too low. This commenter suggested that a figure of $13 per hour would more accurately reflect the cost of qualified skilled nurses.

Response: The $10 per hour figure represents the average hourly salary of all individuals involved in preparing and submitting the 485 series of forms. It is our belief that the standardized format of these forms allows HHAs to use lower-salaried clerical workers skilled in form preparation to complete certain parts of the form. We believe that a prudently managed HHA would not be using skilled nurses in all aspects of form preparation. Rather, skilled nurses would be used to complete only those areas of the form that would require their knowledge and abilities. We strongly believe that the $10 per hour figure used to calculate the add-on is fair and adequately compensates HHAs for the cost of completing the forms.

Comment: One commenter expressed the opinion that alternative methodologies for calculating the billing and verification add on should have been considered. However, this commenter failed to offer any alternatives. Another commenter noted that HCFA did not make any efforts to secure sample data from HHAs as to actual personnel costs and completion time.

Response: In adopting the billing and verification add-on, as described in the July 7, 1987 notice, we reviewed all available data. There are no baseline data on costs incurred by HHAs for billing and verification activities prior to implementation of the 485 series of forms. It is our belief that, in the absence of specific baseline data with which to measure incremental costs, using the total estimated cost of the 485 series to calculate the amount of the billing and verification add-on is a generous approach. The use of any sample surveys of HHAs as proposed by the commenter would have precluded timely publication of the add-on for cost reporting years ending June 30, 1987, the effective date of the provision.

Comment: We received several comments concerning elements of the cost limit methodology other than the methodology pertaining to the calculation of the billing and verification add-on.

Response: With the exception of the methodology used to develop the billing and verification add-on, all the other elements of the cost limit methodology have previously been published in the **Federal Register** as proposals that solicited public comment to which we responded in the ensuing final notice. (See 51 FR 19734 (May 30, 1986) and 50 FR 27734 (July 5, 1985).) We welcome suggestions on ways to improve the methodology used to calculate the HHA cost limits. However, as we noted in the July 7, 1987 notice (52 FR 25574), the only portion of the cost limit methodology that represented new policy and was subject to comment was the methodology pertaining to the billing and verification add-on. Therefore, we are not responding to comments concerning issues other than the add-on.

III. Regulatory Impact Statement

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

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

This document provides final notice of the methodology used to compute the add-on to the HHA cost limits that recognizes the costs of recently required forms. As set forth elsewhere in the preamble of this final notice and in the July 7, 1987 notice, the resulting increase in the HHA per visit cost limits should more than adequately compensate for the *incremental* costs experienced by efficient HHAs when completing the series 485 forms.

Accordingly, we anticipate that efficient HHAs will not exceed their aggregate cost limits solely because of these paperwork requirements.

For this reason, we have determined that a regulatory impact analysis is not required. Further, we have determined and the Secretary certifies, that this final notice 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. Paperwork Burden

This notice does not impose information collection requirements. Consequently, it does not need to be reviewed by EOMB under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

(Section 1861(v)(1) of the Social Security Act (42 U.S.C. 1395x(v)(1)) and 42 CFR 413.30)

(Catalog of Federal Domestic Assistance Programs No. 13.773, Medicare Hospital Insurance)

Dated: April 29, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: June 16, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88–22905 Filed 10–4–88; 8:45 am]

BILLING CODE 4120–01–M

National Institutes of Health

National Institute of Dental Research; Dental Research Programs Advisory Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Dental Research Programs Advisory Committee, National Institute of Dental Research, November 3–4, 1988, in Building 31, Conference Room 6, National Institutes of Health, Bethesda, Maryland, from 9 a.m. to recess on November 3 and from 9 a.m. to adjournment on November 4.

The entire meeting will be open to the public to discuss research progress and ongoing plans and programs. Attendance by the public will be limited to space available.

Dr. Wayne Wray, Deputy Director for Extramural Program, NIDR, NIH, Westwood Building, Room 504, Bethesda, MD 20892 (telephone 301/496–7748) will provide a summary of the meeting, roster of committee members and substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 13.121-Diseases of the Teeth and Supporting Tissues: Caries and Restorative Materials; Periodontal and Soft Tissue Diseases; 13.122-Disorders of Structure, Function, and Behavior, Craniofacial Anomalies, Pain Control, and Behavioral Studies; 13.845-Dental Research Institutes, National Institutes of Health.)

Dated: September 28, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–22863 Filed 10–4–88; 8:45 am]

BILLING CODE 4410–01–M

Public Health Service

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Monuron

The HHS' National Toxicology Program today announces the availability of the Technical Report describing the toxicology and carcinogenesis studies of monuron, used as a broad-spectrum herbicide for control of grasses and weeds along ditches and rights-of-way. Use on food crops was banned in 1973.

Toxicology and carcinogenesis studies were conducted by feeding diets containing 0, 750, or 1,500 ppm monuron to groups of 50 F344/N rats of each sex and 0, 5,000, or 10,000 ppm to groups of 50 $B6C3F_1$ mice of each sex for 103 weeks.

Under the conditions of these 2-year feed studies, there was clear evidence of carcinogenicity [1] for male F344/N rats in that monuron caused increased incidences of tubular cell adenocarcinomas of the kidney, tubular cell adenomas of the kidney, and neoplastic nodules or carcinomas (combined) of the liver. Monuron induced cytomegaly of the renal tubular epithelial cells in both male and female F344/N rats. There was no evidence of carcinogenicity for female F344/N rats or for male or female $B6C3F_1$ mice.

Copies of *Toxicology and Carcinogenesis Studies of Monuron in F344/N Rats and $B6C3F_1$ Mice (Feed Studies)* (TR 266) are available without charge from the NTP Public Information Office, MD B2–04, P.O. Box 12233, Research Triangle Park, NC 27709. Telephone: (919) 541–3991; FTS: 629–3991.

Dated: September 28, 1988.

David P. Rall,

Director.

[FR Doc. 88–22864 Filed 10–4–88; 8:45 am]

BILLING CODE 4140–01–M

[1] The NTP uses five categories of evidence of carcinogenic activity to summarize the strength of the evidence of carcinogenicity observed in each animal study: Two categories for positive results ("clear evidence" and "some evidence"); one category for uncertain findings ("equivocal evidence"), one category for no observable effects ("no evidence"); and one category for experiments which cannot be evaluated because of major flaws ("inadequate study").

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Facilities Backlog Categories and Ranking Codes

September 27, 1988.

AGENCY: Office of Construction Management, Interior.

ACTION: Notice of category and ranking code changes for the automated backlog data system.

This notice is published to change and further define the backlog categories and ranking classification (degree of severity) which shall supersede the five (5) Facility Construction Operation and Maintenance (FACCOM) class code categories for the Bureau of Indian Affairs (BIA) Facilities Improvement and Repair (FI&R) Priority Ranking System as noticed in FR 5130, February 13, 1986. All backlog items in the automated FACCOM system shall be categorized and ranked using the following:

General Category Classification:

U=Emergency
S=Deficiencies affecting life safety and occupational health
X=Violations of Environmental Protection Agency (EPA) and Indian Health Service (IHS) Health Codes and Standards
H=Violations related to Federal accessibility and use standards by the handicapped
M=Structural, mechanicl, electrical Physical plant deficiencies—include such items as roofs, walls, floors, foundations, utilities and paving, etc. Does not include finishes or programmatic needs.
E=Energy related items—includes such items as insulation, multi-glazed windows, heat recovery systems, etc.
P=Improvements related to space function and program needs in existing facilities
C=Construction (New, Replacement, Additions)

Priority Ranking Classification:

1=Serious threatening deficiency
2=Code of standards violation
3=Functional deficiency

Backlog items accumulated in the FACCOM system using these categories and ranking classification codes will provide for more definitive data to be used for ranking and prioritizing FI&R projects.

All other information and procedures as previously stated shall remain the same.

FOR FURTHER INFORMATION CONTACT: Arthur M. Love, Jr., Director, Office of Construction Managment, Department of the Interior, 18th and C Streets, NW., Mail Stop 2415, Washington, DC 20240, (202) 343–8403.

Rick Ventura,

Assistant Secretary, Policy, Budget & Administration.

[FR Doc. 88–22943 Filed 10–4–88; 8:45 am]

BILLING CODE 4310–RK–M

Bureau of Indian Affairs

Flathead Indian Irrigation Project; Montana

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed operation and maintenance rates.

SUMMARY: The purpose of this notice is to change the assessment rates for operating and maintaining the Flathead Indian Irrigation Project. The assessment rates are based on a prepared estimate of the cost of normal operations and maintenance of the irrigation project. Normal operations and maintenance is defined as the average per acre cost of all activities involved in delivering irrigation water, including maintaining pumps and other facilities.

EFFECTIVE DATE: Interested parties may submit written comments no later than on or before November 4, 1988.

FOR FURTHER INFORMATION CONTACT: Area Director, Portland Area Office, Bureau of Indian Affairs, Post Office Box 3785, Portland, Oregon 97208.

SUPPLEMENTARY INFORMATION: The current (1988) operation and maintenance charges were established and published in the **Federal Register** on June 11, 1987. These rates were then reviewed by a special review committee appointed by the Area Director. This review was result of an appeal by the Flathead Joint Board of Control objecting to the rate of $14.07 per/acre published in the **Federal Register**. The rate of $13.60 recommended by the Review Committee was established by the Area Director on July 27, 1987. The $13.60 rate was later appealed to the Assistance Secretary for Indian Affairs and at the present time no decision has been rendered.

Due to the extremely dry weather and a shortage of water in the Mission Valley Reservoirs a special levy of $0.64 per acre for the Mission Valley was proposed by the project management and agreed to by the irrigators for extended operation of the Flathead river irrigation pumps during the 1988 irrigation season.

Flathead Indian Irrigation project. Annual operation and maintenance assessment rates.

This notice of proposed operation and maintenance rates and related information is published under the authority delegated to the Assistance Secretary—Indian Affairs by the Secretary of the Interior in 230 DM 1 and redelegated by the Assistance Secretary—Indian Affairs to the Area Director in 10 BIAM 3.

This notice is given in accordance with § 17.1(e) of Part 171, Chapter 1. of Title 25 of the Code of Federal Regulations, which provides for the Area Director to fix and announce the rates for operation and maintenance assessments and related information on the Flathead Irrigation Project for Calendar Year 1989 and subsequent years.

This notice sets forth changes to the operation and maintenance charges and related information applicable to the Flathead Irrigation Project, St. Ignatius, Montana. These charges were proposed pursuant to the authority contained in the Acts of August 1, 1913 and March 7, 1928, (38 Stat. 583, 25 U.S.C. 382; 45 Stat. 210, 25 U.S.C. 387).

In compliance with the above, the operation and maintenance charges for the lands under the Flathead Irrigation Project, Montana, for the season of 1989 and subsequent years until further notice, and hereby fixed as follows:

Lands included in an Irrigation District, lands held in trust for Indian and non-District lands will be assessed operation and maintenance charges at $14.05 per acre for the season of 1989.

Payment

The operation and maintenance charges on the trust and non-District lands become due on April 1 each year and on the lands within an Irrigation District are biannually billed. To all assessments on lands in non-Indian ownership, remaining unpaid 60 days after the due date, there shall be added a penalty of one and one-half percent per month, or fraction thereof, from the due date until paid. No water shall be delivered to any farm unit until all O&M charges have been paid.

Due to drought conditions and water shortages, an additional $.64 per acre will be assessed against the Mission Valley Divisions (Mission, Post and Pablo) for pumping costs of operating the Flathead pumps to deliver the .7 acre/feet quota set for the 1988 season. This notice sets forth changes to the operation and maintenance charges and related information applicable to the Flathead Irrigation Project, St. Ignatius, Montana. These changes were proposed pursuant to the authority contained in the Acts of August 1, 1913 and March 7, 1928, (38 Stat. 583, 25 U.S.C. 382; 45 Stat 210, 25 U.S.C. 387).

The supplemental charges on the trust and non-District lands become due on April 1, 1989 along with the 1989 regular operation and maintenance bill. On lands within an irrigation District, the supplemental charges will be billed immediately after the 30 day comment period.

[FR Doc. 88-22844 Filed 10-4-88; 8:45 am]

BILLING CODE 4310-02-M

Adding Lands to Existing Reservation for the St. Croix Chippewa Indians of Wisconsin

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of reservation proclamation.

SUMMARY: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary-Indian Affairs at 209 DM 8.1.

Notice is hereby given that, under the authority of section 7 of the Act of June 18, 1934 (48 Stat. 986; 25 U.S.C. 467), the hereinafter described parcel of land, located in Barron County, Wisconsin, was proclaimed to be an Indian reservation for the St. Croix Chippewa Indians of Wisconsin on September 27, 1983.

4th Principal Meridian, Barron County, Wisconsin

That part of the S½ of the SW¼ of section 30, Township 34 North, Range 14 West, Village of Turtle Lake, Wisconsin, described as follows:

Commencing at the Southwest corner of said Section 30, thence South 88°27'58" East 1629.18 feet; thence North 1°35'32" East 472.49 feet to the point of beginning: thence continuing North 1°35'32" East 18.51 feet; thence North 55°43'35" East 468.51: thence North 34°16'25" West 275.00 feet; thence South 55°43'35" West 269.70 feet; thence South 1°35'32" West 231.80 feet; thence North 88°24'28" West 242.00 feet; thence South 1°35'32" West 290.60 feet; thence Northeasterly along a curve to the left 176.77 feet (L.C. = N 58°27'49" E 176.70 feet R = 1849.86 feet); thence North 55°43'35" East 116.02 feet to the point of beginning, INCLUDING ALL IMPROVEMENTS, subject to all valid existing easements, reservations and rights of way of record.

Ross O. Swimmer,

Assistant Secretary—Indian Affairs.

[FR Doc. 88-22944 Filed 10-4-88; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[CA-060-43-7122-08-D063]

California Desert District; Availability of Final Environmental Impact Statement/Environmental Impact Report for Western Mojave Land Tenure Adjustment Project

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that the final Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the Western Mojave Land Tenure Adjustment (LTA) Project is available for public review. Comments may be directed to Karla Swanson, Bureau of Land Management, 150 Coolwater Lane, Barstow, CA 92311. Protests on the final EIS/EIR must be submitted to the California State Director, Bureau of Land Management, 2800 Cottage Way, Room E-2841, Sacramento, CA 95825. Protests must be received no later than 30 days from the

date that the EPA published its Notice of Availability in the **Federal Register.**

SUPPLEMENTARY INFORMATION: The LTA Project is a proposal to adjust land ownership over a 2.3 million acre area of the Western Mojave Desert in San Bernardino, Kern, and Los Angeles Counties. Approximately 238,000 acres of private and State of California lands would be exchanged for approximately 108,000 acres of public lands in order to alleviate problems with the existing checkerboard ownership land pattern. All exchanges would be voluntary and the level of success would be determined by the number of interested participants and the availability of funding to implement the project. As a result of this project, the BLM would be better able to manage public lands and resources, the County of San Bernardino would be better able to oversee development of private lands, and the Air Force would face a reduced risk to continued use of airspace over the Western Mojave Desert. The final EIS/EIR is an abbreviated document that describes the agency preferred alternative for the LTA Project, alternative VII. Additions, deletions, and corrections to the draft EIS/EIR are presented; and public comment letters are reproduced as are the responses to them. The Record of Decision will be published following the 30-day protest period and the period for Governor review.

FOR FURTHER INFORMATION CONTACT: Karla Swanson, Bureau of Land Management, 150 Coolwater Lane, Barstow, CA 92311, (619) 256–3591.

H.W. Riecken,

Acting District Manager.

Date: September 29, 1988.

[FR Doc. 88–22960 Filed 10–4–88; 8:45 am]

BILLING CODE 4310–40–M

[AZ–020–08–4212–13; AZA–23425]

Realty Action; Public Land Exchange; Mohave County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—exchange, public land, Mohave County.

SUMMARY: The following described lands and interests therein have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S C. 1716:

Gila and Salt River Meridian

T. 20 N., R. 17 W.,
Sec. 8, lots 3 and 4.
T. 20 N., R. 18 W.,
Sec. 12, N½, N½NE¼SW¼, NW¼SW¼, NW¼SW¼SW¼,NW¼SW¼ SW¼SW¼, N½SE¼, NE¼SW¼SE¼, SE¼SE¼.

Containing 525.76 acres, more or less.

In exchange for these lands, the United States will acquire the following described lands from F. Roy Dunton, Scott Dunton, and Steve Sim of Kingman, Arizona, or their assigns:

Gila and Salt River Meridian

T. 15 N., R. 12 W.,
Sec. 15, SW¼SW, W½SE¼SW¼;
Sec. 17, all.
T. 15 N., R. 13 W.,
Sec. 1, lots 1 and 2, S½NE¼, SE¼.
T. 23 N., R. 17 W.,
Sec. 23, SE¼SW¼.

Containing 1,060.30 acres, more or less.

The public land to be transferred will be subject to the following terms and conditions:

1. Reservations to the United States: (a). right-of-way for ditches and canals pursuant to the Act of August 30, 1890.

2. Subject to: (a). restrictions that may be imposed by the Mohave County Board of Supervisors in accordance with county floodplain regulations established under Resolution No. 84–10 adopted on December 3, 1984, as amended.

Private lands to be acquired by the United States will be subject to the following reservations:

1. All minerals to the Santa Fe Pacific Railroad Company together with the right to prospect for, mine, and remove same with the right to appropriate rights-of-way.

2. Easement for electric transmission line.

3. Easement for a water pipeline.

4. Easement for a road.

The purpose of the exchange is to consolidate federal land to facilitate resource management in range, wildlife and recreation and to dispose of land with speculative development potential.

Publication of this Notice will segregate the subject lands from operation of the public land laws and the mining and mineral leasing laws, but not Title V of the Federal Land Policy and Management Act of 1976. This segregation will terminate upon the issuance of a deed or patent or two years from the date of publication of this Notice in the **Federal Register** or upon publication of a Notice of Termination.

Detailed information concerning this exchange may be obtained from the Kingman Resource Area Office, 2475 Beverly Avenue, Kingman, Arizona 86401. For a period of forty-five (45) days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: September 26, 1988.

Henri R. Bisson,

District Manager.

[FR Doc. 88–22848 Filed 10–4–88; 8:45 am]

BILLING CODE 4310–32–M

[CA–065–08–3110–10–DTNA; CA–20236]

Realty Action; Exchange of Public and Private Lands; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, exchange of public and private lands in San Bernardino and Kern Counties, CA 20236.

SUMMARY: The following public lands in San Bernardino County have been examined and determined suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716). Selected lands:

San Bernardino Meridian, California

T. 11 N., R. 6 W.,
Sec. 30: Lot 5.

Containing 21.88 acres of public land, more or less.

In exchange for these lands the United States will acquire the following private lands in Kern County from The Nature Conservancy. Offered lands:

Mount Diablo Meridian, California

T. 31 S., R. 38 E.,
Sec. 15: SE¼NW¼.

Containing 40 acres of non-Federal lands, more or less.

SUPPLEMENTARY INFORMATION: The purpose of the exchange is to acquire a portion of the non-Federal lands within the designated Desert Tortoise Research Natural Area. The designated area encompasses lands which have historically supported the highest and most stable population of tortoise within its range. Continued declines may lead to state or Federal listing of the species as threatened or endangered. Publication of this notice in the **Federal Register** segregates the public lands from the operation of the public land laws and the general mining laws, but not the mineral leasing laws. The segregative effect will end upon

issuance of patent or two years from the date of publication, whichever occurs first.

The exchange will be on an equal value basis. Full equalization of value will be achieved by acreage adjustment or by cash payment by The Nature Conservancy to the United States in an amount not to exceed 25 percent of the fair market value of the selected lands.

Lands transferred out of Federal ownership will be subject to the following reservations, terms and conditions.

1. A reservation of right-of-way to the United States for ditches and canals, pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

2. A right-of-way for solar-electric generation facilities, Serial Number CA-18774, held by Luz Solar Partners, Ltd.

3. A right-of-way for electric power transmission facilities, Serial Number LA-0145482, held by Southern California Edison Company.

FOR FURTHER INFORMATION CONTACT: Tom Gey, Ridgecrest Resource Area (619) 375-7125. Information relating to this exchange is available for review at the Ridgecrest Resource Area Office, 112 East Dolphin Avenue, Ridgecrest, California 93555.

DATES: For a period of up to and including November 21, 1988, interested parties may submit comments to the District Manager, California Desert District Office, Bureau of Land Management, in care of the above address. Objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of objections, this realty action will become the final determination of the Department of the Interior.

Dated: September 26, 1988.

H.W. Riecken,

Acting District Manager.

[FR Doc. 88-22850 Filed 10-4-88; 8:45 am]

BILLING CODE 4310-40-M

[UT-060-08-4212-14; UTU-59943]

Realty Action; Sale of Public Land; San Juan County, UT

AGENCY: Bureau of Land Management, Moab.

ACTION: Notice of realty action, UTU-59943, noncompetitive sale of public land in San Juan County, Utah.

SUMMARY: Notice is given that the following described parcel of public land has been examined, and through the development of local use planning decisions based upon public input, resource considerations, regulations and Bureau policies, has been found suitable for disposal by sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA) (90 Stat. 2750; 43 U.S.C. 1713) using noncompetitive (direct sale) procedures (43 CFR 2711.3-3(a)(1)). Sale will be at no less than the appraised fair market value of $1,300.

Salt Lake Meridian, Utah

T. 40 S., R. 21 E.,
Section 27, NE¼NE¼SW¼.
The described land aggregates 10 acres.

The land is being offered as a direct sale to San Juan County, Utah, in accordance with 43 CFR 2711.3-3(a)(1). San Juan County proposes to use the land for a solid waste disposal site. The parcel will be offered for sale to San Juan County not less than sixty (60) days after the date of publication of this notice.

Bidder Qualifications

Bidders must be U.S. citizens, 18 years of age or more; a State or State instrumentality authorized to hold property; or a corporation authorized to hold property; or a corporation authorized to own real estate.

Bid Standards

The Bureau of Land Management (BLM) reserves the right to accept or reject any and all offers, or withdraw the land from sale if, in the opinion of the Authorized Officer, consummation of the sale would not be fully consistent with section 203(g) of FLPMA or other applicable laws.

Publication of this notice in the **Federal Register** constitutes notice to the grazing permittee, Ray Perkins, that his grazing lease is directly affected by this action. Specifically, the permitted Animal Unit Months (AUMs) will be reduced by one AUM because of this sale, but the land (acreage) will have to be excluded from the allotment effective upon issuance of the patent.

Publication of this notice in the **Federal Register** segregates the public lands from the operation of the public land laws and the mining laws. The segregative effect will end upon issuance of a patent, or two hundred seventy (270) days from the date of the publication, whichever occurs first.

The Terms and Conditions Applicable to the Sale Are:

1. All minerals, including oil and gas, shall be reserved to the United States, together with the right to prospect for, mine and remove minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at the Moab District Office and the San Juan Resource Area Office.

2. A right-of-way will be reserved for ditches and canals constructed by the authority of the United States (Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945).

3. The sale of the lands will be subject to all valid existing rights and reservations of record. Existing rights and privileges of record include, but are not limited to, San Juan County road right-of-way UTU-62595.

DATES: For a period of forty-five (45) days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Moab District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah 84532. Objections will be reviewed by the Utah State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION: Additional information concerning the lands, the terms and conditions of the sales, and the bidding instructions may be obtained from Dave Krouskop, Area Realty Specialist, San Juan Resource Area Office, 435 North Main, P.O. Box 7, Monticello, Utah 84535, (801) 587-2141, or from Brad Groesbeck, District Realty Specialist, Moab District Office, 82 East Dogwood, P.O. Box 970, Moab, Utah 84532, (801) 259-6111.

Dated: September 26, 1988.

William C. Stringer,

Acting District Manager.

[UT-060-08-4212-14; UTU-59945]

Realty Action; Noncompetitive Sale of Public Land in San Juan County, UT

AGENCY: Bureau of Land Management, Moab, Interior.

ACTION: Notice of realty action, UTU-59945, noncompetitive sale of public land in San Juan County, Utah.

SUMMARY: Notice is given that the following described parcel of public land has been examined, and through the development of local use planning decisions based upon public input, resource considerations, regulations and Bureau policies, has been found suitable for disposal by sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA) (90 Stat. 2750; 43 U.S.C. 1713) using noncompetitive (direct sale) procedures (43 CFR 2711.3-3(a)(1)). Sale will be at

no less than the appraised fair market value of $1,300.

Salt Lake Meridian, Utah

T. 42 S., R. 19 E.,
Section 6, SE¼SE¼SW¼.
The described land aggregates 10 acres.

The land is being offered as a direct sale to San Juan County, Utah, in accordance with 43 CFR 2711.3-3(a)(1). San Juan County proposes to use the land for a solid waste disposal site. The parcel will be offered for sale to San Juan County not less than sixty (60) days after the date of publication of this notice.

Bidder Qualifications

Bidders must be U.S. citizens, 18 years of age or more; a State or State instrumentality authorized to hold property; or a corporation authorized to hold property; or a corporation authorized to own real estate.

Bid Standards

The Bureau of Land Management (BLM) reserves the right to accept or reject any and all offers, or withdraw the land from sale if, in the opinion of the Authorized Officer, consummation of the sale would not be fully consistent with Section 203(g) of FLPMA or other applicable laws.

Publication of this notice in the **Federal Register** constitutes notice to the grazing permittees, Tim and Corey Perkins, that their grazing lease is directly affected by this action. Specifically, the permitted Animal Unit Months (AUMs) will not be reduced because of this sale, but the land (acreage) will have to be excluded from the allotment effective upon issuance of the patent.

Publication of this notice in the **Federal Register** segregates the public lands from the operation of the public land laws and the mining laws. The segregative effect will end upon issuance of a patent, or two hundred seventy (270) days from the date of the publication, whichever occurs first.

The Terms and Conditions Applicable to the Sale Are

1. All minerals, including oil and gas, shall be reserved to the United States, together with the right to prospect for, mine and remove minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at the Moab District Office and the San Juan Resource Area Office.

2. A right-of-way will be reserved for ditches and canals constructed by the authority of the United States (Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945).

3. The sale of the lands will be subject to all valid existing rights and reservations of record. Existing rights and privileges of record include, but are not limited to, San Juan County road 215A, right-of-way U-53767.

DATES: For a period of up to and including November 21, 1988, interested parties may submit comments to the Moab District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah 84532. Objections will be reviewed by the Utah State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION: Additional information concerning the lands, the terms and conditions of the sales, and the bidding instructions may be obtained from Dave Krouskop, Area Realty Specialist, San Juan Resource Area Office, 435 North Main, P.O. Box 7, Monticello, Utah 84535, (801) 587-2141, or from Brad Groesbeck, District Realty Specialist, Moab District Office, 82 East Dogwood, P.O. Box 970, Moab, Utah 84532, (801) 259-6111.

Dated: September 26, 1988.

William C. Stringer,

Acting District Manager.

[FR Doc. 88-22847 Filed 10-4-88; 8:45 am]

BILLING CODE 4310-DQ-M

[WY-930-08-4212-10; WYW 111685]

Realty Action; Receipt of Exchange Proposal; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of receipt of exchange proposal between Texaco, Inc., and the Bureau of Land Management, filed in accordance with the provisions of section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716; section 510(b)(5) of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1260(b)(5); and Title 43 CFR Subparts 2203 and 3436.

SUMMARY: The proposal involves the exchange of 1,975 acres of fee coal land owned by Texaco, Inc., known as the Shell Creek Site near Lake De Smet in Johnson County, Wyoming, for unleased and unspecified Federally-owned coal. The Shell Creek Site has been determined by the Wyoming Department of Environmental Quality to contain alluvial valley floors significant to farming activities. Therefore, surface coal mining operations are prohibited by section 510(b)(5) of the Surface Mining Control and Reclamation Act because they would interrupt, discontinue, or preclude farming.

Texaco, Inc., has offered to exchange the following parcels of land:

Sixth Principal Meridian

T. 52 N., R. 82 W.,
Sec. 6, lots 6 and 7;
Sec. 7, lots 1-4, inclusive, lots 6, 7 and NE¼NW¼;
Sec. 18, lots 1-3, inclusive, lot 9, SE¼NW¼, and NE¼SW¼.
T. 52 N., R. 83 W.,
Sec. 1, S½S½ and E½NE¼;
Sec. 12, All;
Sec. 13, N½NE¼ and NW¼SE¼.

Plus portions of the following tracts adjacent to and east of the east right-of-way for Interstate 90 as defined below:

Tract	I-90 Right-of-Way Description
Sec. 2, E½SE¼	Parcel No. 2, Book 87A8, Page 250.
Sec. 11, E½E½	Parcel No. 2, Book 87A8, Page 250.
Sec. 13, NW¼ and N½SW¼.	Parcel No. 4, Book 87A8, Page 254.
Sec. 14, E½NE¼	Parcel No. 4, Book 87A8, Page 251.

The Wyoming State Office, Bureau of Land Management, is soliciting public comment on the public interest factors of this exchange proposal, in accordance with the requirements of 43 CFR 2203.1. Additional public input opportunities will be announced in the future, in accordance with 43 CFR 2203.3, after the proposed selected lands are identified. All comments should be received by October 31, 1988.

FOR FURTHER INFORMATION CONTACT: Don Brabson, Coal Project Coordinator, Wyoming State Office, Bureau of Land Management, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82003, 307-772-2571. Comments should be sent to the State Director (925) at the above address.

Date: September 26, 1988.

Hillary A. Oden,

State Director.

[FR Doc. 88-22849 Filed 10-4-88; 8:45 am]

BILLING CODE 4310-22-M

[WY-010-08-4410-08]

Availability of the Proposed Cody Resource Management Plan/Final Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the proposed Code Resource Managment

Plan/Final Environmental Impact Statement.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Proposed Cody Resource Management Plan/Final Environmental Impact Statement (RMP/EIS). The RMP describes the proposed future management direction for approximately 1.1 million acres of public land surface and 1.5 million acres of federal mineral estate administered by BLM in the Cody Resource Area. The planning area includes portions of Park and Big Horn Counties in the Bighorn Basin of north-central Wyoming.

The proposed designation of five Areas of Critical Environmental Concern (ACECs) is addressed in the proposed RMP. These are the Carter Mountain proposed (ACEC) (7,819 acres), the Chapman Bench proposed ACEC (15,400 acres), the Five Springs Falls proposed ACEC (160 acres), the Little Mountain proposed ACEC (20,510 acres), and the Sheep Mount Anticline proposed ACEC (12,285 acres).

In accordance with the provisions of 36 CFR Part 800, parties who are interested in and who wish to be involved in future activity planning and implementation of management actions that may involve or affect the archaeological and historical resource aspects addressed in the proposed plan, are requested to identify themselves. Through contacting the Cody Resource Area Office at the below address, you will be placed on a future contact list.

The Proposed Cody Resource Management Plan/Final Environmental Impact Statement has been prepared in an abbreviated format. That is, the alternatives considered in the draft RMP/EIS, and the environmental effects of those alternatives, have not been reprinted in the proposed plan/final EIS. It is necessary, therefore, to use both the draft and final documents for a complete review of the EIS. Copies of the draft RMP/EIS and the proposed plan/final EIS can be obtained from the Cody Resource Area Manager at the below address.

The proposed plan is a complete, comprehensive management proposal. It is a refinement of the preferred alternative presented in the draft RMP/EIS. Comments from the public, review by BLM staff, and new information developed since the distribution of the draft have prompted some changes in the preferred alternative. The environmental effects of the proposed plan are not substantively different from those of the preferred alternative. The proposed plan focuses on the resolution of three key resource management issues that were identified with public involvement early in the planning process. These issues are: (1) Competition for vegetation, (2) special management area designations, and (3) resource accessibility and manageability.

The Draft Cody RMP/EIS was made available for public review and comment in April 1988. Comments received on the draft RMP/EIS were considered in preparing the proposed RMP/Final EIS. All parts of the proposed Resource Management Plan may be protested by parties who participated in the planning process and who have an interest which is or may be adversely affected by the adoption of the plan. A protest may raise only those issues which were submitted for the record during the planning process.

DATE: Protests on the proposed plan/final EIS must be postmarked on or before October 30, 1988.

ADDRESS: Protests or comments on the Proposed Cody RMP/Final EIS should be sent to: Director (760), Bureau of Land Management, 18th & C Streets NW., Washington, DC 20204.

FOR FURTHER INFORMATION CONTACT: Thomas E. Enright, Cody Area Manager, Bureau of Land Management, P.O. Box 518, Cody, Wyoming 82414, Phone: (307) 587–2216.

SUPPLEMENTARY INFORMATON: The general objectives of the management prescriptions for the proposed ACECs are to maintain or enhance the following values: alpine tundra and rare plants on Carter Mountain; colonial nesting waterbirds (long-billed curlews and American plovers) at Chapman Bench; rare plants near Five Springs Falls; cave resources on Little Mountain; and educational opportunities at the Sheep Mountain Anticline. The proposed management actions in these areas also include restrictions on surface-disturbing activities and other land uses, such as oil and gas exploration and development, geophysical exploration, rights-of-way construction, and off-road vehicle use. The level of these restrictions and the types of land uses affected would be different in each proposed ACEC. Portions of the proposed ACECs, with the exception of the Carter Mountain area, would also be closed to future locatable mineral exploration and development, subject to valid existing rights.

Within the boundaries of the proposed ACECs are lands that are privately-owned or owned by the State of Wyoming. The ACEC designations would pertain only to the federally-owned land surface and mineral estate managed by the BLM and to the BLM administered federal mineral estate under State and privately-owned lands. The non-federal land surface would not be affected by the proposed ACEC designations.

September 29, 1988.

Hillary A. Oden,

State Director, Wyoming.

[FR Doc. 88–22950 Filed 10–4–88; 8:45 am]

BILLING CODE 4310-22-M

Minerals Management Service

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 telephone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone (202) 395–7340, with copies to Gerald D. Rhodes, Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Mail Stop 646, Room 6A110; Minerals Management Service; 12203 Sunrise Valley Drive; Reston, Virginia 22091.

Title: Quarterly Oil Well Test Report, Form MMS–1869

OMB Approval Number: 1010–0016

Abstract: Respondents submit Form MMS–1869 to the Minerals Management Service's (MMS) Regional Supervisors so they can evaluate the results of well tests to ascertain if reservoirs are being depleted in a manner that will lead to the greatest ultimate recovery of hydrocarbons. The form is designed to provide a quarterly test of oil well capabilities and production characteristics for use in updating and verifying maximum (optimum) permissible producing rates and to provide the basis for revising MMS's estimates of remaining recoverable reserves.

Bureau Form Number: Form MMS–1869

Frequency: Quarterly

Description of Respondents: Federal Outer Continental Shelf oil and gas

lessees performing offshore production operations
Estimated Completion Time: 2 hours
Annual Responses: 8,400
Annual Burden Hours: 16,800
Bureau clearance officer: Dorothy Christopher (703) 435–6213

Date: September 9, 1988.

Bruce G. Weetman,

Acting Associate Director for Offshore Minerals Management.

[FR Doc. 88–22945 Filed 10–4–88; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–242]

Certain Dynamic Random Access Memories, Components Thereof and Products Containing Same; Remand of Investigation to Administrative Law Judge

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to remand the above-captioned investigation to an administrative law Judge (ALJ) for further proceedings and for issuance of an initial determination.

ADDRESS: Copies of the Commission's Order, its Opinion, and all other nonconfidential documents in the record of the 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, 500 E Street SW., Room 112, Washington, DC 20436, telephone 202–252–1000.

FOR FURTHER INFORMATION CONTACT: Michael J. Buchenhorner, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1097. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202–252–1810.

SUPPLEMENTARY INFORMATION: At the conclusion of the investigation, the Commission determined that there was no violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) or of 19 U.S.C. 1337a by reason of the importation and sale by Samsung Company, Limited and Samsung Semiconductor & Telecommunications Co., Limited (collectively, Samsung) of certain dynamic random access memories (DRAMs) infringing U.S. Letters Patent 4,043,027 (the '027 patent). The claims of the '027 patent at issue were determined to be invalid as inoperative under 35 U.S.C. 101, lacking an enabling disclosure in the specification under 35 U.S.C. 112, and obvious in view of the prior art under 35 U.S.C. 103. It was also determined that the accused Samsung DRAMs would not infringe the claims of the '027 patent at issue if they were valid. The Commission's final determination was appealed by Texas Instruments, Inc. (TI) to the U.S. Court of Appeals for the Federal Circuit (CAFC), and on July 12, 1988, the CAFC reversed the Commission's inoperativeness and lack of enablement determinations and vacated and remanded the investigation for a determination of the obviousness and infringement issues consistent with its opinion. *Texas Instruments, Inc.* v. *U.S. International Trade Commission*, Appeal No. 87–1627 (Fed. Cir. July 12, 1988) (unpublished).

The Commission has issued an Order and an Opinion remanding the investigation to an administrative law judge for further proceedings and issuance of an initial determination on the questions of the obviousness and infringement of the '027 patent. The Commission has imposed a deadline for issuance of the initial determination of nine months from the date of the Commission's Order if the record is reopened and six months from the date of the Commission's Order if the record is not reopened.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: September 28, 1988.

[FR Doc. 88–22963 Filed 10–4–88; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731–TA–421 (Preliminary)]

Shock Absorbers and Parts, Components, and Subassemblies Thereof From Brazil

Determination

On the basis of the record [1] developed in the subject investigation, the Commission [2] determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil of shock absorbers,[3] provided for in item 692.32 of the Tariff Schedules of the United States (TSUS), and parts, components, and subassemblies thereof, however provided for in the TSUS, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On August 9, 1988, a petition was filed with the Commission and the Department of Commerce by Monroe Auto Equipment Co., Monroe, MI, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of shock absorbers and parts, components, and subassemblies thereof from Brazil. Accordingly, effective August 9, 1988, the Commission instituted preliminary antidumping investigation No. 731–TA–421 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of August 17, 1988 (53 FR 31113). The conference was held in Washington, DC, on August 30, 1988, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on September 23, 1988. The views of the Commission are contained in USITC Publication 2128 (September 1988), entitled "Shock absorbers and parts, components, and subassemblies thereof from Brazil: Determination of the Commission in Investigation No. 731–TA–421 (Preliminary). Under the Tariff Act of

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(i)).

[2] Commissioner Rohr did not participate in the investigation.

[3] For purposes of this investigation, the term "shock absorbers" is defined as a cylindrically-shaped motor vehicle suspension component made essentially of sheet steel, which is designed to limit the motions, vibrations, and oscillations that affect a vehicle due to uneven road surfaces, centrifugal forces, or other disturbances, provided for in item 692.3282 of the Tariff Schedules of the United States Annotated (1987) (TSUSA); they are also provided for under subheading 8708.80.50 of the Harmonized Tariff Schedule of the United States (USITC Pub. 2030).

1930, Together With the Information Obtained in the Investigation."

By order of the Commission

Kenneth R. Mason,

Secretary.

Issued: September 23, 1988.

[FR Doc. 88-22964 Filed 10-4-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-190]

Certain Softballs and Polyurethane Cores Therefor; Extension of Deadline

AGENCY: U.S. International Trade Commission.

ACTION: Fourteen day extension of deadline for Commission decision on whether to review an initial determination (ID) finding no violation of 19 U.S.C. 1337 in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Jack M. Simmons, III, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E St., SW., Washington, DC 20436, telephone 202-252-1098. Hearing-impaired individuals may contact the Commission's TDD terminal at 202-252-1810.

SUPPLEMENTARY INFORMATION: On September 22, 1988, the presiding administrative law judge issued an ID in the investigation finding no violation of 19 U.S.C. 1337. The Commission has determined to extend its deadline for determining whether to review the ID from November 9, 1988, until November 23, 1988.

Copies of all nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E St., SW., Washington, DC 20436, telephone 202-252-1000.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: September 30, 1988.

[FR Doc. 88-22961 Filed 10-4-88; 8:45 am]

BILLING CODE 7020-02-M

Appointment of Individuals To Serve as Members of Performance Review Boards

AGENCY: United States International Trade Commission.

ACTION: Appointment of individuals to serve as members of performance review boards.

EFFECTIVE DATE: October 5, 1988.

FOR FURTHER INFORMATION CONTACT: Terry P. McGowan, Director of Personnel, U.S. International Trade Commission, (202) 252-1651.

SUPPLEMENTARY INFORMATION: The Acting Chairman of the U.S. International Trade Commission has appointed the following individuals to serve on the Commission's Performance Review Board (PRB)

Chairman of PRB—Anne E. Brunsdale, Acting Chairman
Member—Commissioner Ronald A. Cass
Member—Commissioner Seeley G. Lodwick
Member—Charles W. Ervin
Member—Lorin L. Goodrich
Member—Lyn M. Schlitt
Member—Eugene A. Rosengarden
Member—John W. Suomela
Member—Erland H. Heginbotham
Member—W. Lynn Featherstone

Notice of these appointments is being published in the **Federal Register** pursuant to the requirement of 5 U.S.C. 4314(c)(4).

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 252-1810.

By order of the Acting Chairman.

Kenneth R. Mason,

Secretary.

Issued: September 28, 1988.

[FR Doc. 88-22962 Filed 10-4-88; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-290 (Sub-No. 43X)]

Norfolk and Western Railway Co.—Abandonment Exemption—Between Bowyer Creek Junction and Burma, WV

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 2.8-mile line of railroad between milepost BC-0.0, at Bowyer Creek Junction, WV, and milepost BC-2.8, at Burma, WV.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years and that overhead traffic has not moved over the line, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective November 5, 1988 (unless stayed pending reconsideration). Petitions to stay regarding matters that do not involve environmental issues [1] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [2] must be filed by October 17, 1988 and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by October 26, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Roger A. Petersen, Norfolk Southern Corporation, One Commercial Place, Norfolk, VA 23510-2191.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will serve the EA on all parties by October 11, 1988. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316.

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 41 ICC.2d 400 (1988).

[2] *See Exempt. of Rail Abaondonments—Offers of Finan. Assist.*, 4 I.C.C. 2d 164, (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48140-48446).

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: September 26, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-22652 Filed 10-4-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Resource Conservation and Recovery Act; Avesta, Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on September 28, 1988, a proposed Consent Decree in *United States of America v. Avesta, Inc.*, Civil Action No. IP87-155C was lodged with the United States District Court for the Southern District of Indiana. The proposed Consent Decree concerns violations at Avesta's Ingersoll Steel Division in New Castle, Indiana, of the Act of applicable federal and state regulations, based on its loss of interim status and other violations. The proposed Consent Decree requires the defendant to cease placing hazardous wastes into the surface impoundments at its facility, to complete and implement a plan to close the surface impoundments, to implement a groundwater monitoring program, to comply with the Act and all applicable federal and state regulations and requirements, to pay stipulated penalties for any violations of the Consent Decree, and to pay a $175,000 civil penalty.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposd decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC, 20530, and should refer to *United States of America v. Avesta, Inc.* D.J. Ref. 90-7-1-372.

The proposed *Consent Decree* may be examined at the office of the United States Attorney, Southern District of Indiana, 274 U.S. Courthouse, 46 East Ohio Street, Indianapolis, Indiana 46204 and at the Region V Office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, IL 60604. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, N.W., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $4.00 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-22942 Filed 10-4-88; 8:45 am]

BILLING CODE 4410-01-M

Lodging a Consent Decree Pursuant to the Clean Air Act; Iowa Asbestos Co.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on September 21, 1988, a proposed Consent Decree in *United States v. Iowa Asbestos Company*, Civil Action No. 86-038-B, was lodged with the United States District Court for the Southern District of Iowa.

The Complaint filed by the United States alleged that the defendants had violated the National Emission Standard for Hazardous Air Pollutants (NESHAP) for asbestos, 40 CFR Part 61, and the Clean Air Act, 42 U.S.C. 7412, and requested imposition of civil penalties. The proposed Consent Decree requires the defendant to comply with all notification provisions of the Asbestos NESHAP and to pay a total civil penalty of $6,000. The defendant will notify EPA of all future demolition activity involving friable asbestos by the company.

The Department of Justice will receive for a period of thirty days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Iowa Asbestos Company*, DOJ# Ref. 90-5-2-1-901. The proposed Consent Decree may be examined at the office of the United States Attorney, Southern District of Iowa, U.S. Courthouse, E. 1st & Walnut Streets, Des Moines, Iowa 50309. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Dipartment of Justice, Room 1517, Ninth and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environemntal Enforcement Section, Land and Natural Resources Division, Department of Justice.

Richard J. Leon,

Deputy Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-22941 Filed 10-4-88; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL ACID PRECIPITATION ASSESSMENT PROGRAM

Public Comment Period and Meeting

ACTION: Notice of public comment period and meeting.

DATE: Thursday, November 17, 1988; 9:00 A.M. 5:00 P.M. (Will be continued at 9:00 A.M. on Friday, November 18 if required to receive all public comments.)

Place: Auditorium, U.S. Department of Health and Human Services (Cohen Bldg.), 4th and C Sts. SW, Washington, DC.

SUMMARY:. This notice announces a public meeting of the National Acid Precipitation Assessment Program (NAPAP) to solicit public comment on its Assessment Plan. This notice also describes the contents of the Assessment Plan, how to obtain a copy of the document upon its release, and how to register to attend the public meeting and to present oral comments.

FOR FURTHER INFORMATION CONTACT: Robert Downing, Office of the Director, National Acid Precipitation Assessment Program, 722 Jackson Place NW, Washington, DC 20503. Tel. (202)395-5771.

Background

The National Acid Precipitation Assessment Program is an interagency research program on acidic deposition. In 1989 and 1990, NAPAP will produce assessment reports on the causes and effects of acidic deposition in the United States, combined with analyses of the costs and effectiveness of various control measures.

A public review draft of NAPAP's Assessment Plan, to be released on October 12, 1988, will outline specific questions being addressed by NAPAP for its 1989 State of Science and State of Technology reports and its 1990 Integrated Assessment. The Plan will also describe the data and analysis methods being used to answer the assessment questions, and the level of scientific confidence expected for the various answers.

Both the 1989 State of Science and State of Technology reports and the 1990 Integrated Assessment will provide

substantial documentation, guidance, and recommendations on the major issues related to acidic deposition in the United States, based on the full complement of available technical information.

Copies of the public review draft of NAPAP's 1990 Assessment Plan are available upon written request from the NAPAP Office of the Director, or can be picked up in person beginning at 9:00 AM on Wednesday, October 12, 1988 in the first floor Conference Room at NAPAP (CEQ building), 722 Jackson Place NW, Washington, DC 20503.

A public review meeting to receive comments on the Assessment Plan will be held November 17–18, 1988 in Washington, DC. NAPAP expects to allot between five to ten minutes for each speaker, depending on the number of requests received. Persons wishing to present oral comments at the meeting should either: (a) Submit the appropriate request form contained in the draft Assessment Plan, or (b) contact NAPAP in writing of their intent to present oral comments (including name, address and telephone number, and organization represented, if any.) Persons who wish to attend the meeting, but do not intend to present oral comments, are also strongly encouraged to register in advance.

All requests for presenting oral comments should be received by NAPAP no later than November 4, 1988. All persons registering for the meeting by this date will be sent a final agenda containing the names and order of speakers. This information will also be announced in a **Federal Register** notice in early November.

Written comments on the Assessment Plan will also be accepted through November 30, 1988. Comments received during the public review period will be reflected in a revised Plan to be published in January 1989.

James R. Mahoney,

Director.

[FR Doc. 88–22843 Filed 10–4–88; 8:45 am]

BILLING CODE 3126-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Animal Learning and Behavior; Meeting the National Science Foundation Announces the Following Meeting:

Name: Advisory Panel for Animal Learning and Behavior.

Date and Time: October 25–27, 1988, 8:30 a.m.–5:00 p.m.

Place: National Science Foundation, 1800 G Street, NW., Room 1242, Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Fred Stollnitz, Program Director, Animal Behavior Program, Room 320, National Science Foundation, Washington, DC 20550, Telephone (202) 357–7949.

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning support for research in Animal Learning and Behavior.

Agenda: Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

September 30, 1988.

[FR Doc. 88–22899 Filed 10–4–88; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Atmospheric Sciences; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Committee for Atmospheric Sciences (ACAS).

Date: October 24 & 25, 1988.

Time: 9:00 a.m.–5:00 p.m. each day.

Place: Room 643, National Science Foundation, 1800 G Street NW., Washington, D.C.

Type of Meeting: Open—October 24 & 25, 1988—9:00 a.m.–5:00 p.m.

Contact: Dr. Eugene W. Bierly, Division Director, Division of Atmospheric Sciences, Room 644, National Science Foundation, Washington, DC 20550, Telephone: (202) 357–9874.

Summary Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations on long-range planning and oversight concerning support for research and research areas.

Agenda: Discussion on restructure of the Lower Atmospheric Research Section, responses to previous oversight reports, educational issues in Atmospheric Sciences, long-range planning for atmospheric sciences and general discussion.

M. Rebecca Winkler,

Committee Management Officer.

September 30, 1988.

[FR Doc. 88–22904 Filed 10–4–88; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Biochemistry; Meeting

The National Science Foundation announces the following meeting.

Name: Advisory Panel for Biochemistry.

Date: Monday, Tuesday, and Wednesday October 31, 1988 through November 2, 1988 from 9:00 am to 5:00 pm.

Place: National Science Foundation, Rm 1242 Washington, DC.

Type of Meeting: Closed.

Contact Person: Estella Engel, Acting Program Director, Dr. Leonard Mortenson, Program Director, Biochemistry Program, Room 325, Telephone (202) 357–7945.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for Biochemistry research proposals.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b (c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

September 30, 1988.

[FR Doc. 88–22897 Filed 10–4–88; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Developmental Biology; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Developmental Biology.

Date and Time: October 26, 27, 28, 1988, starting at 9:00 am to 5:00 pm.

Place: National Science Foundation 1800 G St. NW., Conference Room 642.

Type of Meeting: Closed.

Contact Person: Dr. Frank Greene, Program Director, or Dr. Judith Plesset, Assistant Program Director for

Developmental Biology, Room 321, Telephone Number: 202/357–7989.

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning support of research in developmental biology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature including technical information: Financial data, such as salaries, and the personal information concerning in individuals associated with the proposals. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

September 30, 1988.

[FR Doc. 88–22898 Filed 10–4–88; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Neural Mechanisms of Behavior; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Neural Mechanisms of Behavior.

Date and Time:

October 26 & 27, 1988; 9:00 a.m.—5:00 p.m.

October 28, 1988; 9:00 a.m.—12:00 p.m.

Place:

National Science Foundation, 1800 G Street NW., Washington, DC, Room 523.

Type of Meeting:

Part open.

Closed 10/26—9:00 a.m. to 5:00 p.m.

Closed 10/27—9:00 a.m. to 5:00 p.m.

Open 10/28—9:00 a.m. to 11:00 a.m.

Closed 10/28—11:00 a.m. to 12:00 Noon

Contact Person: Dr. Nathaniel G. Pitts, Program Director, Neural Mechanisms of Behavior, Room 320, National Science Foundation, Washington, DC 20550. Telephone (202) 357–7040.

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning support for research in neural mechanisms of behavior.

Agenda:

Open—General discussion of the current status and future plans of Neural Mechanisms of Behavior.

Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of the Government Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

September 30, 1988.

[FR Doc. 88–22900 Filed 10–4–88; 8:45 am]

BILLING CODE 7555-01-M

Committee on Equal Opportunities in Science and Engineering; Meeting

Name: Committee on Equal Opportunities in Science and Engineering.

Place: National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Dates: October 26, 27, 28, 1988.

Times/Rooms:

October 26: Subcommittee on the Disabled, 9:00 a.m.–12:00 p.m., Room 543

October 26: Subcommittee on Minorities, 1:30 p.m.–4.30 p.m., Room 543

October 27: Full Committee Meeting, 9:00 a.m.–4:30 p.m., Room 543

October 28: Subcommittee on Women, 9:00 a.m.–12:00 p.m., Room 1243.

Type of Meeting: Open.

Contact: Mary M. Kohlerman, Executive Secretary of the CEOSE, National Science Foundation, Room 635. Telephone Number: 202–357–7066.

Purpose of Meeting: To provide advice to the Foundation on policies and activities to encourage full participation of groups currently underepresented in scientific, engineering, professional, and technical fields.

Summary Minutes: May be obtained from the Executive Secretary at the above address.

Agenda: To review progress by the subcomittees, become familiar with successful intervention programs, and to meet with the Director and other NSF staff.

M. Rebecca Winkler,

Committee Management Officer.

September 30, 1988.

[FR Doc. 88–22901 Filed 10–4–88; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Human Cognition and Perception; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Human Cognition and Perception.

Date and Time: October 27–28, 1988, 9:00 a.m.–5:00 p.m.

Place: National Science Foundation, 1800 G Street NW., Room 643, Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Joseph L. Young, Program Director, Human Cognition and Perception, Room 320, National Science Foundation, Washington, DC 20550, Telephone (202) 357–9898.

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning support for research in human congnition and perception.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

September 30, 1988.

[FR Doc. 88–22896 Filed 10–4–88; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Ocean Sciences (ACOS); Meeting

In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Ocean Sciences (ACOS).

Date and Time:

October 24, 1988—9:00 a.m. to 5: 30 p.m.

October 25, 1988—8:30 a.m. to 5: 00 p.m.

Place: First Floor Auditorium, 1775 Massachusetts Ave. NW., Washington, DC 20036.

Type of Meeting: Partially Closed.

Contact Person: Dr. M. Grant Gross, Director, Division of Ocean Sciences, Room 609, National Science Foundation Washington, DC—Telephone: 202/357–9639.

Summary Minutes: May be obtained from the contact person.

Purpose of Committee: To provide advice and recommendations concerning ocean research and its support by the NSF Division of Ocean Sciences.

Agenda:

Open

- Subcommittee Reports
- Planning for future oversight reviews
- Long Range Planning for Ocean Science
- Impact of NSF budgets on LRP

Closed 10/25—8:30 a.m.–10:00 a.m. To review and evaluate research proposals as part of the selection process for awards.

Open 10:00 a.m.—5:00 p.m. Resume Discussions.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b (c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

September 30, 1988.

[FR Doc. 88–22895 Filed 10–4–88; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Physics; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Committee for Physics.

Date and Time:

October 24, 1988—8:30 a.m. to 6:00 p.m.
October 25, 1988—8:30 a.m. to 5:00 p.m.

Place: Room 540B, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Type of Meeting: Open.

Contact Person: Dr. Marcel Bardon, Director, Division of Physics, Room 341, National Science Foundation, Washington, DC 20550, Telephone: 202/357–7985.

Purpose of Meeting: To provide advice and recommendations concerning support for research in physics.

Agenda:

October 24, 1988, 8:30 a.m.—5:00 p.m. Discussion of FY88 and FY89 Budgets, Long Range Plans and the balance in Physics programs viz. Elementary Particle Physics, Nuclear Physics, Intermediate Energy Nuclear Physics, Atomic, Molecular and Plasma Physics, Theoretical Physics and Gravitational Physics.

October 25, 1988, 8:30 a.m.—5:00 p.m. To continue discussions of previous day, and to discuss coordination with Astronomy Advisory Committee.

M. Rebecca Winkler,

Committee Management Officer.

September 30, 1988.

[FR Doc. 88–22903 Filed 10–4–88; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Sensory Systems; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel Sensory Systems.

Date and Time: October 24, 25, & 26 1988. 9:00 a.m. to 5:00 p.m. each day.

Place: National Science Foundation, 1800 G Street NW., Washington, DC. Meeting is to be held in conference room 1243.

Type of Meeting: Closed.

Contract Person: Dr. Christopher Platt, Program Director, Sensory Systems. Room 320 National Sciences Foundation, Washington, DC 20550. Telephone (202) 357–7428.

Summary Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendation concerning support for research in the sensory systems.

Agenda: Closed—Review and evaluate research proposals as part of the selection process for awards.

Reasons for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

September 30, 1988.

[FR Doc. 88–22902 Filed 10–4–88; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–413 and 50–414]

Duke Power Co. et al.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 53 to Facility Operating License No. NPF–35, and Amendment No. 46 to Facility Operating License No. NPF–52 issued to Duke Power Company, et al., (the licensee) which revised the Technical Specifications (TS) for operation of the Catawba Nuclear Station, Units 1 and 2, (the facility) located in York County, South Carolina. The amendments were effective as of the date of issuance.

The amendments modifed the TS for the nuclear service water system and its associated bases.

The application for the amendments complies with the standards and requirements to 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 amendments.

Notice of Consideration of Issuance of Amendments and Opportunity for Hearing in connection with this action was published in the **Federal Register** on June 13, 1988 (53 FR 22061). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of these amendments will not have a significant effect on the quality of the human environment. (53 FR 35394)

For further details with respect to the action see (1) the application for amendments dated October 16, 1987, as supplemented February 18, May 12, and July 12, 1988, (2) Amendment No. 53 to License No. NPF–35 and Amendment No. 46 to License No. NPF–52 and (3) the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., and at the York County Library, 138 East Black Street, Rock Hill, South Carolina 29730. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, *Attention:* Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland, this 29th day of September 1988.

For the Nuclear Regulatory Commision.

Kahtan N. Jabbour,

Project Manager, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–22922 Filed 10–4–88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-309]

Maine Yankee Atomic Power Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 107 to Facility Operating License No. DPR-36 issued to Maine Yankee Atomic Power Company (the licensee), which revised the Technical Specifications for operation of the Maine Yankee Atomic Power Station located in Lincoln County, Maine. The amendment is effective November 1, 1988.

The amendment revises the Technical Specifications to reflect the operating limits for Cycle 11 reload core.

The application for amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter 1, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on July 20, 1988 (53 FR 27417). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact (53 FR 29400) related to the action and has concluded that an environmental impact statement is not warranted and that the issuance of this amendment will not have a significant adverse effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated June 30, 1988, as supplemented on August 2, 1988, (2) Amendment No. 107 to License No. DPR-36 and (3) the Commission's related Safety Evaluation and Environmental Assessment.

All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Local Public Document Room, Wiscasset Library, High Street, P.O. Box 367, Wiscasset, Maine 04578. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Dated at Rockville, Maryland, this 27th of September 1988.

For the Nuclear Regulatory Commission.

Patrick M. Sears,

Project Manager, Project Directorate I-3, Division of Reactor Projects I/II.

[FR Doc. 88-22923 Filed 10-4-88; 8:45 am]

BILLING CODE 7590-01-M

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from September 10, 1988 through September 23, 1988. The last biweekly notice was published on September 21, 1988 (53 FR 36665).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources 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 P-216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 4, 1988, 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, the Gelman Building, 2120 L 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 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the 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, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Commonwealth Edison Company, Docket No. 50–237, Dresden Nuclear Power Station, Unit No. 2, Grundy County, Illinois

Date of application for amendment request: August 25, 1988

Description of amendment request: Commonwealth Edison Company (CECo) has proposed changes to the Dresden Unit 2 Technical Specifications to facilitate future reload licensing reviews per 10 CFR 50.59. These proposed changes are as follows: (1) Deletion of the license condition requiring a safety evaluation for coastdown operation with off-normal feedwater temperature from Section 3.E of the license; (2) Revision of the Minimum Critical Power Ratio (MCPR) operating limit to a conservative value likely to bound cycle specific results for the near term; (3) Revision of the Single Loop Operation (SLO) MCPR adder to 0.01 (from 0.03) and a revision in the Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) reduction factor for SLO to 0.91 (from 0.70); (4) Incorporation of Transient Linear Heat Generation Rate (TLHGR) limits; (5) Revisions of reduced flow MCPR limits; (6) and Revision of the relief valve Technical Specification to require action only after two relief valves are found to be inoperable, provided MAPLHGR reduction factors are implemented.

In addition, proposed administrative Technical Specification changes have been provided which include: changing references to Exxon Nuclear Company (ENC) to advanced Nuclear Fuels Corporation (ANF), except in titles of earlier documents and definitions of nuclear limits, and defining Transient Linear Heat Generation Rate (TLHGR), Steady State LHGR (SLHGR), LHGR, Fuel Design Limiting Ratio for Centerline melt (FDLRC), and Fuel Design Limiting Ratio for Exxon Fuel (FDLRX).

The amendment application of August 25, 1988 is supported by the following analyses which were submitted: ANF Document, XN–NF–84–49, "Analysis of Dresden Units 2 and 3 Operation with One Relief Valve Out-of-Service", dated September 1984; ANF–87–111, "LOCA–ECCS Analysis for Dresden Units During Single Loop Operation with ANF Fuel", dated September 1987; ANF–88–79(P), "Dresden Report—Mechanical, Thermal, and Neutronic Design for ANF 9x9 Fuel Assemblies", dated May 1988; ANF–88–69, "Extended Operating Domain/Equipment Out-of-Service Analysis for Dresden Units 2 and 3", dated July 1988; and GE Letter, REP: 88–161, R. E. Parr to R. A. Roehl, "Correction to Dresden 2 Cycle 12 Alternate Water Chemistry LTA's MAPLHGR Curve", July 26, 1988.

These analyses are similar or identical to the analyses that were previously submitted by CECo for the Dresden 3 Cycle 11 reload and approved by the staff on June 20, 1988.

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

considerations 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 addressed the above three standards in the amendment application as follows:

(a) Involve a significant increase in the probability or consequences of an accident previously evaluated because:

Relative to Item 1:

ANF has performed analyses with NRC approved methodologies to ensure that transients occurring under coastdown conditions with off-normal feedwater temperature are bounded by transients at rated conditions.

Relative to Item 2:

The incorporation of the proposed MCPR operating limits noted above is provided to establish limits on reactor operation which ensure that the core is operated within the assumptions and initial conditions of the transient analyses. Operation within these limits will ensure that the consequences of a transient or accident remain within the results of the analyses. The probability of an accident is not affected by this change because no physical systems or equipment which could initiate an accident are affected and the MCPR safety limit continues to be protected.

Relative to Item 3:

The incorporation of the proposed MCPR and MAPLHGR limits during single loop operation establishes limits on reactor operation to ensure thermal-mechanical integrity of the fuel and cladding. Neither the consequences nor the probability of an accident is affected by this change because the design basis transients and accidents were considered when establishing these operating limits.

Relative to Item 4:

The incorporation of the proposed TLHGR limits establishes limits on reactor operation to ensure thermal-mechanical integrity of the fuel under transient overpower conditions, consistent with the fuel vendor's design criteria and the surveillance method already performed in the onsite core monitoring computer software. Consequences of previously evaluated events are therefore not affected. The probability of an accident is not affected by this change because no physical systems or equipment which could initiate an accident are affected and the cladding integrity will be maintained during overpower events.

Relative to Item 5:

The incorporation of the proposed reduced flow MCPR limits establishes limits on reactor operation to ensure that thermal limits will not be violated during transients initiated during off-rated core flows. Therefore, consequences of postulated events are unaffected. The probability of an accident is not affected by this change because no physical systems or equipment which could initiate an accident are affected and the MCPR safety limit will be protected during overpower events initiated at off-rated core flows.

Relative to Item 6:

ANF has performed analyses with NRC approved methodologies to ensure that reactor thermal limits are not violated during limiting transients with one relief valve out-of-service. Event consequences are therefore not affected by this change. The probability of an accident is not affected by this change because no physical systems or equipment which could initiate an accident are significantly affected.

Relative to Items 7 and 8:

These changes are administrative in nature and have no impact on any systems or limits on reactor operation.

(b) Create the possibility of a new or different kind of accident from any accident previously evaluated because:

Relative to Item 1:

ANF has determined that transients occurring at off-rated feedwater heating during coastdown are bounded by those initiated at rated, full power conditions. Furthermore, there is no impact or physical modifications to systems or components whose failure could initiate a new or different kind of accident.

Relative to Items 2, 3, 4, and 5:

The proposed MCPR, MAPLHGR, and LHGR limits represent limits on core power distribution which do not directly affect the operation or function of any system or component. As a result, there is no impact on or addition of any systems or equipment whose failure could initiate a new or different kind of accident.

Relative to Item 6:

Operation is allowed with one relief valve out-of-service (RVOOS) provided appropriate MAPLHGR reductions are implemented. This change in no way impacts the function of the remaining operable valves or other equipment and since the appropriate requirements to test HPCI are included, this change does not create a new or different kind of accident.

Relative to Items 7 and 8:

These changes are administrative in nature and have no impact on or modification to any system or equipment whose failure could initiate an accident.

(c) Involve a significant reduction in the margin of safety because:

Relative to Item 1:

The analysis supporting this change shows that transients during coastdown with off-normal feedwater temperature are bounded by transients at rated conditions, therefore no reduction in the margin of safety occurs.

Relative to Items 2, 3, 4, and 5:

These changes have been analyzed to demonstrate that the consequences of transients or accidents are not increased, using the specified restrictions, beyond those previously evaluated and accepted at Dresden. The analyses show that the MCPR safety limit, fuel thermal-mechanical limits, and reactor pressure limits are not violated during postulated transients.

Relative to Item 6:

Previous analysis supporting this change has shown that the point of minimum MCPR occurs before any relief valves open, indicating the assumption of one relief valve out-of-service will not reduce the margin to safety for anticipated abnormal operating transients. For LOCA, analysis has shown that with the specific MAPLHGR restrictions, all criteria of 10 CFR 50.46 are satisfied for the limiting small break. Large breaks are unaffected.

Relative to Items 7 and 8:

These changes are administrative in nature, either deleting information that is no longer applicable or providing clarification to current specifications.

The staff has reviewed the licensee's no significant hazards analyses given above. Based on this review, the staff proposes to determine that the proposed amendments meet the three 10 CFR 50.92(c) standards and do not involve a significant hazards consideration.

Local Public Document Room location: Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

Attorney for licensee: Michael L. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Daniel R. Muller

Consumers Power Company, Docket No. 50–155, Big Rock Point Plant, Charlevoix County, Michigan

Date of amendment request: September 8, 1988.

Description of amendment request: This amendment would delete Figure 6.2–1, "Offsite Organization," and 6.2–2, "Plant Organization," from the Big Rock Point Plant Technical Specifications and would indicate where those figures will

hereafter be maintained. It would also augment the text of Section 6, "Administrative Controls," to incorporate responsibilities of the key positions affecting safety, change the title "Plant Superintendent" to "Plant Manager," and make such other minor changes as necessary to ensure that the requirements for offsite and onsite organizations are adequately described.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazards consideration exists. 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 Consumers Power Company (CPC) reviewed the proposed change and determined, and the Commission's staff agrees, that:

(1) The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because deletion of the organization charts from the Technical Specifications does not affect plant operation. The revised Technical Specifications require that "Lines of authority, responsibility and communication . . . established and defined for the highest management levels through intermediate levels to and including operating organization positions . . . shall be documented, updated and reported to the NRC . . ."

(2) The proposed amendment does not create the possibility of a new or different kind of accident than previously evaluated because the proposed change is administrative in nature and no physical alterations of plant configuration or changes to setpoints or operating parameters are proposed.

(3) The proposed amendment does not involve a significant reduction in a margin of safety because CPC, through its quality assurance programs, its commitment to maintain only qualified personnel in positions of responsibility, and other required controls, assures that safety functions will be performed at a high level of competence. Therefore, removal of the organization charts from the Technical Specifications will not affect the margin of safety.

Accordingly, the Commission proposes to determine that this change does not involve a significant hazards consideration.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: Martin J. Virgilio.

Duquesne Light Company, Docket No. 50–412, Beaver Valley Power Station, Unit No. 2, Shippingport, Pennsylvania

Date of amendment request: August 11, 1988

Description of amendment request: The proposed amendment would revise the supplemental leak collection and release system (SLCRS) filter trains surveillance requirements. Technical Specification 4.7.8.1.b currently requires an in-place leak test be performed on the HEPA filter and charcoal adsorbers, and an iodine removal efficiency test be performed on the adsorber stage at least once per 18 months. Both the leak tests and the iodine removal efficiency test are also required following painting, fire or chemical release in any area communicating with the SLCRS. The proposed change would modify the filter testing requirements such that following painting, fire or chemical release in these areas, only the iodine removal efficiency test would be required. The licensee stated that because of the unique design of the Beaver Valley Unit 2 SLCRS, elimination of the HEPA filter test and charcoal adsorber test can be justified.

This proposed amendment would also revise the SLCRS flow rate from 59,000 CFM ±10% to 57,000 CFM ±10%. This change is a result of removing the main steam and feedwater valve area from SLCRS coverage, and also reflects the actual system flow rates obtained after final system balancing. There is no piping in the main steam and feedwater valve area which could contain post-LOCA fluids. Therefore the capability of the SLCRS to collect radioactive effluents from ESF systems operating outside the containment following any postulated LOCAs will not be affected.

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 proposed changes are not made as a result of, nor would they lead to any SLCRS design changes. When approved by the staff, only unnecessary surveillance requirements would be eliminated. The SLCRS will continue to perform as stated in the licensee's Final Safety Analysis Report. Therefore, the answer to both questions (1) & (2) is negative. The amended requirements will continue to ensure the operability of the SLCRS; there would be no relaxation of previously used safety margins. Therefore, the answer to question (3) is also negative.

On such basis, the staff proposes to determine that the requested amendment involves no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Duquesne Light Company, Docket No. 50–412, Beaver Valley Power Station, Unit No. 2, Shippingport, Pennsylvania

Date of amendment request: August 30, 1988

Description of amendment request: The proposed amendment covers a number of pages in the Technical Specifications addressing allowable enrichments and configurations for fuel stored in the spent fuel storage pool. The proposed changes are:

1. Section 3.9.14 and an accompanying Table 3.9–1 would be added to specify allowable enrichment and configurations for stored fuel.

2. Basis Section 3/4.9.14 would be added to provide the bases for the above specifications.

3. Section 5.3.1 would be amended to specify a higher enrichment of 4.85 weight percent U–235 (currently 3.3 weight percent), and

4. Section 5.6.1 would be revised to reference appropriate sections in the FSAR where the spent fuel pool criticality analysis can be found.

The proposed new specifications, with associated guidance incorporated into

existing administrative controls would permit storage of fuel with up to 4.85 weight percent U–235. The pool would be separated into two regions. Spent fuel pool region 1 would provide for storage of fuel with enrichments up to 4.85 weight percent U–235 in an administratively controlled 3-of-4 cell array. Region 2 would provide for storage of fuel assemblies with the burnup-dependent enrichment limitations provided in Table 3.9.1. Also, the boron concentration in the spent fuel pool would be specified to be maintained at greater than or equal to 1050 ppm when moving fuel in the spent fuel pool. Sub-criticality would be maintained by limiting fuel assembly interaction and maintaining the minimum boron concentration.

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.

There is no change in fuel pool hardware, but the associated Updated Final Safety Analysis Report will be changed to include analyses to demonstrate that the fuel pool and stored fuel will comply with unchanged performance objectives and limitations (e.g., criticality and heat dissipation). The criticality analysis acceptance criteria (K_{eff} less than 0.95) is consistent with that stated in the FSAR. The segregation of the spent fuel pool into regions 1 and 2 and appropriate administrative constraints ensure that analysis assumptions are valid and that performance criteria would be met when fuel is not being moved. In addition to the administrative constraints available to maintain appropriate fuel storage configurations, the minimum boron concentration will ensure that criticality will not be achieved even if fuel assemblies were not stored in the specified checkerboard arrays. Fuel assembly decay heat production is a function of core power level, and since the core power level would remain unchanged, the decay heat load on the spent fuel pool cooling system would not be affected by the proposed enrichment limits.

The radiological consequences of the fuel handling accident are dependent, among other factors, upon power level of the reactor. There is no power level change associated with the proposed amendment and since all other factors would not be changed by this amendment, the consequences of the fuel handling accident would not be changed.

No hardware modification is involved and the changes to existing administrative controls involve only prescription of the loading patterns to accommodate a greater variety of fuel assembly enrichments without change in performance. There is thus no increase in the probability of the fuel handling accident previously analyzed in the FSAR, and there is no possibility of a new type of accident different from any previously evaluated. Furthermore, there is no change in any acceptance criterion as stated above; therefore, there is no reduction of a safety margin.

Accordingly, the staff has made a proposed determination that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Florida Power and Light Company, et al., Docket No. 50–389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of amendment request: September 1, 1988

Description of amendment request: The proposed amendment would make changes to the Technical Specifications associated with the boric acid makeup (BAMU) system. Specifically, the required boron concentration requirements would be reduced, the borated water volume would be increased, and the requirement to heat trace the BAMU system would be deleted.

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 considerations 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:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The operation of the facility in accordance with the proposed changes does not involve a significant increase in the probability or consequences of any accident previously evaluated. Deleting the requirement for a heat tracing circuit by reducing the boron concentration in the [boric acid makeup tanks] [(BAMTs)] is accounted for by increasing the volume of boric acid solution that must be contained in the tanks and by also crediting borated water from the [refueling water tank] [(RWT)]. Since the components (or their function) necessary to perform a safe shut down have not been changed or modified, this change does not significantly increase the probability or consequences of any accident previously evaluated. In addition, administrative controls on the boric acid makeup tank temperature and boron concentration ensure that the lack of heat tracing does not result in precipitation of the boron.

The reduction in boric acid concentration in the boric acid makeup tanks has been evaluated to determine the effect of this reduction on containment sump pH and boric acid concentration. The existing post LOCA [c]ontainment [s]ump [i]nventory calculation was recalculated to reflect the new operating parameters as a result of the reduction in boric acid concentration in the [b]oric [a]cid [m]akeup tanks. The results of the calculation establish that the post LOCA long term containment sump and spray chemistry shall have new bounding values for boric acid concentration and pH. The Equipment Qualification Documentation Packages were reviewed to determine if the new boric acid concentration and pH ranges are bounded by the currently specified ranges for [e]nvironmental [q]ualification during a LOCA. The determination is that the equipment in the containment can be qualified for the bounding values of the boric acid concentrations and pH values.

An evaluation was performed to determine the effect of the new pH range on mechanical systems and components due to corrosion. By maintaining the pH of the long term Containment Sump and Spray System to between 7.0 and 8.0, the evolution of iodine and the effect of chloride and caustic stress are minimized.

Credit is not taken for boron addition to the reactor coolant system from the boric acid makeup tanks for the purpose of reactivity control in the accidents analyzed in Chapter 15 of the plant's Final Safety Analysis Report.

Response to such events as steam line break, overcooling, boron dilution, etc., will not be affected by a reduction in the BAMT concentration. In particular, the action statements associated with Technical Specification 3.1.1.2 require that boration be commenced at greater than 40 gallons per minute using a solution of at least 1720 ppm boron in the event that shutdown margin is lost. As noted before the BAMT boron concentration after it is reduced will be in excess of 1720 ppm.

In connection with the second standard, the licensee stated:

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The operation of the facility in accordance with the proposed changes does not create the possibility of a new or different kind of accident from any accident previously evaluated. The reason for requiring a heat tracing circuit was to ensure that the dissolved boric acid was in solution and hence, available for injection into the Reactor Coolant System [RCS] to adjust core reactivity throughout core life. By lowering the boron concentration to a maximum of 3.5 weight percent, chemical analyses have shown there is no possibility of the boron precipitating out of solution as long as the temperature of the boric acid remains above 50° F; thus there is no longer a need for heat tracing. Since the boron will be in solution when the BAMT flowpaths are credited for reactivity control during the safe shutdown scenario, heat tracing is no longer required to maintain the [b]oric [a]cid [m]akeup system operable. In conclusion, this change does not create the possibility of a new or different kind of accident from those previously evaluated.

With regard to the third standard, the licensee provided the following rationale:

3. Involve a significant reduction in a margin of safety.

The operation of the facility in accordance with the proposed Technical Specification changes does not involve a significant reduction in the margin of safety. The intent of these Technical Specifications is to ensure that there are two redundant flowpaths from the borated water sources (BAMTs and RWT) to the reactor coolant system to allow control of core reactivity throughout core life. This requires that sufficient quantities of boron be stored in the BAMTs and that this borated water can be delivered to the RCS in the event of a single active failure of a system component or a seismic event. Reducing the maximum boric acid concentration to less than 3.5 weight percent has been compensated for by increasing the required minimum volumes of borated water. In addition, reducing the maximum boron concentration allows a deletion of the requirement to heat trace the [b]oric [a]cid [m]akeup system since chemical analyses have shown that a 3.5 weight solution of boric acid will remain in solution at temperatures above 50° F. Administrative controls on the boric acid makeup tank temperature and boron concentration ensure that a lack of heat tracing does not result in precipitation of the boron. In conclusion, the reduction of boric acid concentration and the deletion of heat tracing in the [b]oric [a]cid [m]akeup system does not cause a significant reduction in the margin of safety for this plant.

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. The licensee proposes increases to the borated water volume contained in the BAMTs to offset the boron concentration reduction. Since the boron concentration is significantly reduced, there appears to be no need for heat tracing.

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

Gulf States Utilities Company, Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: August 5, 1988

Description of amendment request: The amendment request would modify (1) License Condition 2.C(13), and (2) Technical Specification Table 3.3.6–2, Item 1.b, High Power Setpoint to allow continued operation of the facility with up to 100° F reduction from the rated feedwater temperature of 420° F during the normal fuel cycle. Planned operation with partial feedwater heating for the purpose of extending the fuel cycle would continue to be prohibited. License Condition 2.C(13) would be modified to read, "The facility shall not be operated with partial feedwater heating beyond the end of the normal fuel cycle without prior approval of the staff. During the normal fuel cycle, the facility shall not be operated with a feedwater heating capacity which would result in a rated thermal power feedwater temperature less than 320° F without prior approval of the staff." Technical Specification Table 3.3.6–2, Item 1.b, High Power Setpoint, would be modified as follows: (1) the trip setpoint would be changed to less than or equal to 67.9% of rated thermal power from the current value of 63.5±3%, and (2) the allowable value would be changed to less than or equal to 68.2% of rated thermal power from the current value of 62.5±7.5%.

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 provided an analysis that addressed the above three standards in the amendment application.

1. No significant increase in the probability or the consequences of an accident previously evaluated results from this request because:

. . . all [Updated Safety Analysis Report] USAR Chapter 15 core-wide transients were examined for [feedwater heater(s) out of service] FWHOS operation. This mode of operation results in decreased feedwater temperature and increased subcooling in the core downcomer region and at the core inlet. As shown below, the effects of this do not increase the probability of any previously evaluated accidents or transients.

Three limiting transients were reevaluated in detail. They are:

(1) Generator Load Rejection with Bypass Failure (LRBPF)

(2) Feedwater Flow Controller Failure, Maximum Demand (FWCF)

(3) Loss of 100° F Feedwater Heating (LFWH)

The results of the evaluations for transients (1) & (2) demonstrate that these delta [critical power ratios] CPRs are below the limiting delta CPR of 0.11 documented in Section 10 & 11 of the reload license submittal for RBS Cycle 2 . . . Therefore, the consequences of these events are bounded by the current Technical Specification limits with respect to LRBPF and FWCF events.

The [River Bend Station] RBS plant specific analysis for the 100° F loss of feedwater heating transient (transient (3) above) for FWHOS operation is adequately bounded by the 420° F normal feedwater temperature delta CPR results of 0.11 . . .

The [rod withdrawal error] RWE transient analyses were also reevaluated . . . the results of this evaluation indicate that the resulting delta CPR is unchanged from 0.11 . . .

Since the resulting delta CPRs for the events analyzed above remain bounded by the limiting delta CPR of 0.11, . . . the operating limit MCPR (OLMCPR) does not need to be changed as a result of a RWE during FWHOS operation. Additionally, the off-rated power-dependent $MCPR_p$ limits are not affected by FWHOS operation and remain bounded by the current RWE off-rated power dependent $MCPR_p$ limits . . . the off-rated flow-dependent $MCPR_f$ limits for

FWHOS operation are bounded by the current $MCPR_f$ limits.

The consequences of anticipated transient without scram (ATWS) and reactor vessel overpressurization transients are less severe under the initial conditions of partial feedwater heating than that of normal feedwater heating. With reduced feedwater temperature at rated thermal power, the initial steaming rate is less, which would yield less severe results during an ATWS event. Lower initial operating pressure and lower steam flow rate during FWHOS operation yield lower peak vessel pressure for the most limiting main steam line isolation valve closure event.

An evaluation of the impact of FWHOS operation on the RBS LOCA analysis was also performed. The results of this evaluation show that the resulting peak cladding temperature would be lower than the 2144° F value reported in USAR Chapter 6 and below the 2200° F limit identified in 10 CFR 50.46.

Acoustic and flow-induced loads on reactor internals created during a LOCA with FWHOS operation were evaluated . . . While these loads would increase slightly, the results of this evaluation concluded that there is adequate conservatism in the evaluation and significant design margin remains available to account for these loads during FWHOS operation.

The impact of FWHOS operation on the containment LOCA response was also evaluated. Both the main steamline break and recirculation line break cases were reanalyzed over the FWHOS operation power/flow region. The peak drywell and wetwell pressure and temperature, pool swell, condensation oscillation and chugging loads were evaluated. The peak drywell-to-wetwell differential pressure during the FWHOS operation occurred under recirculation line break at the maximum vessel subcooling condition on the power/flow map. This peak differential pressure increased by 1.02 psi. However, the resulting differential pressure is still below the design differential pressure of 25 psid presented in USAR Table 6.2-1. Also, the pool swell, condensation oscillation, and chugging loads evaluated at the worst power/flow condition during the FWHOS operation vary slightly over the peak values presented in USAR Section 6. The analysis concluded that this variation is insignificant and there is adequate design margin to account for these loads during FWHOS operation.

A study was performed to assess the impact of FWHOS operation on the annulus pressurization (AP) loads for River Bend Station. The feedwater line break case results in the greatest forces upon the reactor pressure vessel and the greatest pressure differentials across the biological shield wall. The break flow for this case with FWHOS operation was determined to be less than that presented in the USAR during the inventory depletion period when the peak AP loads occur. Therefore, the normal operation AP loads calculated in the RBS USAR bound those expected to result under FWHOS.

An evaluation of the effect of FWHOS operation on the feedwater nozzle at RBS was also performed. Assuming 80% capacity factor with continuous FWHOS operation, the fatigue usage factor for the feedwater nozzle would increase by 0.0214 over 40 years of continuous FWHOS operation. However, the fatigue usage factor would still be less than 0.8, which is below the limit of 1.0.

A standard stress analysis was performed on the feedwater system piping up to the first feedwater guide lug outside the containment for a bounding feedwater temperature of 250° F. Results of this study show that with FWHOS operations, the feedwater piping fatigue usage factor is less than that at rated conditions due to a lower temperature gradient through the piping wall.

An evaluation was performed to examine the impact of FWHOS operation on the feedwater sparger for RBS. A case was analyzed to determine the number of days of FWHOS operation allowable per year (for 40 years) without exceeding the feedwater sparger fatigue usage factor limit of 1.0. The results show that the 40-year average number of days allowable during an operating year for FWHOS operation is 256 days for a rated feedwater temperature of 370° F and 61 days for a rated feedwater temperature of 320° F. Administrative controls to ensure that the number of days and the magnitude of temperature reduction during FWHOS operation is tracked will ensure that FWHOS operation cannot increase the probability or consequences of any accident previously evaluated.

. . . with regard to reactor core thermal-hydraulic stability, FWHOS operation is bounded by the fuel integrity analyses described in . . . "Compliance of the General Electric Boiling Water Reactor Fuel Designs to Stability Licensing Criteria," NEDE-22277-P-1, October 1984. Therefore, the generic operator recommendations on thermal-hydraulic stability are still applicable and adequately address FWHOS operation.

Impact of FWHOS operation on the [turbine stop valve] TSV position and [turbine control valve] TCV fast closure reactor scram bypass setpoints and the [end of cycle recirculation pump trip] EOC RPT bypass setpoint and the [rod control and information system] RCIS high power and low power setpoints was also evaluated. The required upper bound for bypass of the TSV position and TCV fast closure reactor scrams and EOC RPT is 40% of rated thermal power. Below 40% rated thermal power, high neutron flux, vessel pressure, and other normal scram functions are sufficient to provide margin to the safety limits (even with TSV or TCV closures) as identified in USAR Section 15.2.3.2.3.2. Therefore, below 40% rated thermal power, the TSV and TCV scrams and EOC RPT functions are bypassed.

Turbine first-stage pressure (TFSP) is the parameter used to activate these reactor scram and EOC RPT bypasses below 40% rated thermal power. Under operation with reduced feedwater temperature, the relationship between vessel steam flow (and therefore TFSP) and core thermal power changes. Less steam flow is generated at the same thermal power and the TFSP is reduced. Therefore, the effect of reduced feedwater temperature is to raise the thermal power level for which the EOC RPT and scram bypass functions are set.

Conservatism in the current RBS Technical Specification scram bypass TFSP nominal setpoint was assessed by comparing it to the RBS startup test data for "TFSP vs. Reactor Power." The current Technical Specification setpoint is conservative in the scram bypass power level by approximately 6% for feedwater temperature operation at 420° F and by approximately 4% for FWHOS operation at 320° F when compared to the setpoint actually required. Therefore, the conservatism in the current Technical Specification setpoint adequately accounts for FWHOS operation.

The proposed change in RBS Technical Specification Table 3.3.6-2, Item 1.b, High Power Setpoint, restricts plant operation to conditions assumed in the RWE analysis and is consistent with the upper range of the allowable value currently specified. The proposed change is also consistent with the Standard Technical Specifications and the Technical Specifications of other licensed BWR/6 plants.

Based upon these considerations, it is concluded that operation with FWHOS and the proposed change to the high power setpoint Technical Specification do not increase the probability or consequences of any accidents previously evaluated.

2. This request would not create the possibility of a new or different kind of accident from any accident previously evaluated because:

FWHOS operation results in decreased feedwater temperature and increased subcooling in the core downcomer region and at the core inlet. As shown in Item 1 above, the impact of FWHOS operation has been found to be adequately bounded by the current analysis provided in the River Bend Station USAR with the exception of the feedwater sparger fatigue usage factor. The number of days of FWHOS operation must be limited to ensure that the feedwater sparger fatigue usage factor does not exceed 1.0. Administrative controls to ensure that the number of days and magnitude of temperature reduction during FWHOS operation is tracked will ensure that FWHOS operation cannot create the possibility of a new or different kind of accident from any previously evaluated. Additionally, FWHOS operation does not involve any hardware changes and is well within the capability of existing equipment. Hence, no new failure modes are introduced.

The proposed change in RBS Technical Specification Table 3.3.6-2, Item 1.b, High Power Setpoint, restricts operation to conditions assumed in the RWE analysis and is consistent with the upper range currently specified. The proposed change is also consistent with the Standard Technical Specifications and the Technical Specifications of other licensed BWR/6 plants. Therefore, this mode of operation does not create the possibility of a new or different kind of accident from any previously evaluated.

3. This request would not involve a significant reduction in the margin of safety because:

As stated in the response to Item 1 above, the results of the 320° F feedwater temperature FWHOS operation case are bounded by the results of the analyses

previously approved on the RBS docket with respect to transient results of OLMCPR, $MCPR_p$ and $MCPR_f$, ATWS, vessel overpressurization, peak clad temperature during a LOCA, annulus pressurization loads during a LOCA, reactor core thermal-hydraulic stability, and feedwater piping fatigue usage factor.

The acoustic and flow-induced loads on reactor internals created during a LOCA with FWHOS operation would increase slightly; however, the results of the evaluation concluded that there is adequate conservatism in the evaluation and significant design margin remains available to account for these loads.

With respect to impact of FWHOS on containment LOCA response, the peak drywell-to-wetwell differential pressure for the recirculation line break case increased by 1.02 psi. This differential pressure is still considerably less and the design differential pressure of 25 psid presented in USAR Table 6.2–1. Also, the pool swell, condensation oscillation, and chugging loads evaluated at the worst power/flow condition during FWHOS operation increase slightly over the peak values presented in USAR Section 6. The analysis concluded this increase is insignificant and that adequate design margin exists to account for these loads.

The fatigue usage factor for the feedwater nozzle during FWHOS operation increased by 0.0214 over 40 years of continuous FWHOS operation assuming an 80% capacity factor. However, the fatigue usage factor would still be less than 0.8, which is below the limit of 1.0.

The number of days of FWHOS operation must be limited to ensure that the feedwater sparger fatigue usage factor does not exceed 1.0. Administrative controls to ensure the number of days and magnitude of temperature reduction during FWHOS operation is tracked will ensure that FWHOS operation cannot decrease the margin of safety as defined in the bases to any Technical Specification.

Conservatism in the current TFSP Technical Specification setpoint for the 40% rated thermal power bypass of reactor scram on turbine stop valve position and turbine control valve fast closure and bypass of EOC RPT adequately accounts for FWHOS operation. Therefore, since the setpoint is unchanged, there is no reduction in the margin of safety for this setpoint.

The proposed change in Technical Specification Table 3.3.6–2, Item 1.b, High Power Setpoint, is consistent with current design bases. Additionally, the proposed change is consistent with the conditions assumed in the RWE analysis and is consistent with the upper range currently specified. The proposed change is also consistent with the Standard Technical Specifications and the Technical Specifications of other licensed BWR/6 plants.

It is thus concluded that FWHOS operation and the proposed change to high power setpoint Technical Specification do not reduce the margin of safety.

In conclusion, the proposed operating change will not increase the possibility or the consequences of a previously evaluated event and will not create a new or different kind of accident from any previously evaluated. Also, the results of this request are within all acceptable criteria with respect to system components and design requirements. The ability to perform as described in the USAR is maintained and therefore, the proposed change does not involve a significant reduction in the margin of safety. Therefore, GSU proposes that no significant hazards are involved.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussions, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Attorney for licensee: Troy B. Conner, Jr., Esq., Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

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 26, 1988

Description of amendment request: The proposed amendment would change the Technical Specification by correcting the labels for percent level corresponding to Boric Acid Makeup Tank volume.

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 proposed change is to correct the percent level which is read from the control room instruments and which corresponds to the volume in the Boric Acid Makeup Tank. The licensee determined that a quantity of water in the bottom of the tanks was not available for the pumps because of the tank configuration. Additional water was added to the tank to make up the difference that was not available and this water addition resulted in a change in the percents readouts in the control room. An analysis of the water required for analyzed accidents indicates there is more water than required and the Technical Specification chart for acceptable operation remains over conservative. The water addition and change to correct the corresponding percents does not involve a significant increase in the probabilities or consequences of any previously analyzed accident nor do they create the possibility of a new or different kind of accident. For the actual water available for reactivity control, the addition of water and change of percents does not involve a significant reduction in a margin of safety. Based on the above, the staff proposes to determine that the 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: Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N St., NW., Washington, DC 20037

NRC Project Director: Jose A. Calvo

Niagara Mohawk Power Corporation, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of amendment request: March 28, 1988

Description of amendment request: The proposed changes to Table 6.2–1 would make the Table consistent with the requirements of 10 CFR 50.54(m)(2)(i) for the minimum licensed operator staffing, and would provide additional clarification of the staffing required during hot shutdown versus that required during cold shutdown and refueling. The actual shift staffing would not change.

The proposed revision to Note 7 in Table 6.2–1 would make this Table consistent with the requirements of Technical Specification 6.2.2.e which requires the Assistant Station Shift Supervisor to assume the position of Shift Technical Advisor if the emergency plan is activated during normal operations or hot shutdown.

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 proposed changes will not (1) involve a significant increase in the probability or consequences of an accident, (2) create the possibility of a new or different kind of an accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety for the following reasons; one change would merely indicate that at least two licensed operators must be on shift during hot shutdown and one during cold shutdown or refueling, as has been the practice in accordance with the regulations. This change is administrative since there is no change in actual shift staffing. The other change is also administrative because it would make the wording of Note (7) of Table 6.2–1 consistent with existing Specification 6.2.2.e.

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: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

NRC Project Director: Robert A. Capra, Director

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: September 2, 1988

Description of amendment request: The proposed amendment would change Technical Specification 3/4.2.3.1, "RCS Flow Rate and Nuclear Enthalpy Rise Hot Channel Factors—Four Loops Operating," and TS 3/4.2.3.2, "RCS Flow Rate and Nuclear Enthalpy Rise Hot Channel Factor—Three Loops Operating." The change would incorporate the following requirement in TS 4.2.3.1.6 and 4.2.3.2.6:

"If the feedwater venturis are not inspected and cleaned at least once per 18 months, an additional 0.1% will be added to the total RCS flow measurement uncertainty."

Basis for proposed no significant hazards consideration determination: On January 20, 1988, the NRC issued Amendment No. 12 to the Facility Operating License for Millstone Unit No. 3. Enclosure 2 to the January 20, 1988 letter provided an evaluation of the licensee's methodology for determining reactor coolant system (RCS) flow. One component of the overall RCS flow uncertainty is the uncertainty related to the condition of the feedwater flow sensing instrumentation. Since the feedwater flow venturi sensors are prone to fouling, overall RCS flow uncertainty may be increased by as much as .1% if such fouling is not corrected. In the event that the feedwater flow venturi sensors cannot be inspected during refueling outages, it is conservative to assume that fouling has occurred and that the increase of .1% for RCS flow uncertainty is applicable. Regarding the effect of venturi fouling on RCS flow uncertainty, Enclosure 2 to the NRC staff's January 20, 1988 letter concludes:

TS sections 4.2.3.1.6, 4.2.3.2.6 and the bases for TS section 3/4.2.4 (page B 3/4 2–6) will need to be modified to state that the penalty for undetected fouling of the feedwater venturis of 0.1% will be added to the flow measurement uncertainty values if the venturis are not cleaned. This is to be done before the precision heat balance is made to calibrate the RCS flow rate indicators (approximately once per 18 months). The licensee has stated that the feedwater venturis have been cleaned for the Cycle 2 operation. The licensee has stated (Ref. 10) that the above TS's will be modified to reflect the requirement of 0.1% penalty if the venturis are not cleaned and submitted for NRC approval. The staff require this modification prior to Cycle 3 operation.

At the present time, TS 4.2.3.1.6 requires that, in the event that the venturis are not inspected, the .1% uncertainty factor for RCS flow is imposed. No "cleaning" requirement is contained in TS 4.2.3.1.6; however, the proposed change to TS 4.2.3.1.6 contains the cleaning requirement. No similar requirement is presently in TS 4.2.3.2; however, the proposed change to TS 4.2.3.2.6 is identical to that proposed for TS 4.2.3.1.6.

On March 6, 1988, the NRC published guidance in the **Federal Register** (51 FR 7751) concerning examples of amendments that are not likely to involve a significant hazards consideration. One example of amendments not likely to involve significant hazards considerations is example (ii) which involves, "A change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications, e.g., a more stringent surveillance requirement." The proposed changes to TS 4.2.3.1 and TS 4.2.3.2 are consistent with Example (ii) in that they add an additional restriction, the imposition of a .1% flow uncertainty in the event that the venturis are not inspected and cleaned once per 18 months.

Accordingly, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, One Constitution Plaza, Hartford, Connecticut 06103–3499.

NRC Project Director: John F. Stolz

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: February 16, 1987, as revised August 17, 1988.

Description of amendment request: The proposed license amendment involves various plant Technical Specification (TS) changes to reflect changes to standards, guidelines, NRC administrative requirements, and to provide consistency with past data. Changes initially proposed by letter dated February 16, 1987, to reflect changes in management titles and organization specified in Section 6 of the TSs were withdrawn by letter dated August 17, 1988. The proposed TS changes are as follows:

(1) Replace ". . . and 1 sample from a control location 8–20 miles distance and in the least prevalent wind direction", with ". . . and 1 sample from a control location specified in the ODCM" in Item (1), Airborne Radioiodine and Particulates, of Table 4.16.1 (Page 1 of 5) in the TSs.

(2) Delete page 251a from the TSs, incorrectly retained, and which should have been deleted by License Amendment No. 46 (July 1, 1986).

(3) Delete Section 6.8 from the TSs which was superseded by the publication of 10 CFR 50.49, "Environmental qualification of electric equipment important to safety for nuclear power plants."

(4) Standardize reports and correspondence to conform to 10 CFR 50.4 as follows:

(a) Replace "Director of the appropriate Regional Office of Inspection and Enforcement" with "U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555."

(b) Delete "to the Office of Management Information and Program Control, U.S. Nuclear Regulatory Commission, Washington, DC 20555."

(c) Delete "The reports listed below shall be submitted to the administrator of the appropriate Regional Office or designate."

(d) Delete "Written reports for the following items shall be submitted to the appropriate Regional Administrator."

(e) Delete "to the appropriate NRC Regional Administrator."

(5) Replace "Paragraph 4.4 of ANSI N18.7–1972" with "ANSI N18.7–1976 as modified by the Operational Quality Assurance Plan" to reflect current ANSI standards referenced in the updated Quality Assurance Plan for Monticello operation.

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; 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 evaluated the proposed changes against the above standards as required by 10 CFR 50.91(a) and has concluded that the proposed changes involve no significant hazards consideration. The Commission has reviewed the licensee's evaluation and agrees with it for the following reasons:

Change (1) clarifies the location of the control for monitoring airborne radioiodine and particulates. The change in no way alters the control sample location as set forth in the approved Offsite Dose Calculation Manual (ODCM) or alters the intent of the TS requirements relative to the environmental monitoring program; no physical or procedural changes are involved; and it does not reduce the level of protection provided to the environment. The change only affects the way in which the location of an environmental monitoring program control sample is specified; i.e., the change permits some flexibility in obtaining a control sample, taking into consideration changes in wind patterns which vary from year to year. The literal interpretation of the existing requirement could unnecessarily require a change in sample location each year corresponding to variable wind patterns. As such, this change is considered not to involve a significant increase in the probability or consequences of an accident previously evaluated, or to create the possibility of a new or different kind of accident from any accident previously evaluated, or to involve a significant reduction in a margin of safety.

Changes (2) and (3) are considered to be purely administrative in nature as documented by way of Example (i) published in the **Federal Register** (51 FR 7751); i.e., the changes achieve consistency throughout the TSs, correct an error, or change nomenclature.

Change (4) is considered to be applicable to Example (vii) published in the **Federal Register** (51 FR 7751) in that it is a change to conform a license to changes in the regulations (namely 10 CFR 50.4), where the license change results in very minor changes to facility operations clearly in keeping with the regulations.

Change (5) updates the TS auditing requirements reflecting a change in the ANSI N18.7 standard from 1972 to 1976. ANSI N18.7–1976 is more stringent than the currently specified ANSI N18.7–1972 standard, and this change would incorporate the more stringent standard in the TSs. This change fits Example (ii), published in the **Federal Register** (51 FR 7751), since it is a change that constitutes an additional limitation, restriction or control not presently included in the TSs.

Based on the above, the Commission proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Martin J. Virgilio.

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: August 14, 1987, as revised January 4, 1988, February 10, 1988, and August 31 1988.

Description of amendment request: The changes proposed to the plant Technical Specifications (TSs) would: (1) remove the figures in Section 6 depicting corporate and plant organizational charts and specify in lieu thereof general requirements that capture the essential aspects of the organizational structure that are defined by existing onsite and offsite organization charts, in accordance with the guidance provided in NRC Generic Letter No. 88–06 (March 22, 1988); and (2) delete the requirement for plant management and support staff not assigned to a rotating operations shift to hold a current Senior Reactor Operator (SRO) license.

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; 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 evaluated the proposed changes against the above standards as required by 10 CFR 50.91(a). The Commission's staff has reviewed the licensee's evaluation and agrees with it. The licensee concluded that:

1. The changes proposed to remove corporate and plant organization charts from the TSs do not involve a significant increase in the probability or consequences of an accident previously evaluated or create the possibility of a new or different kind of accident from any accident previously evaluated, or involve a significant reduction in a margin of safety. As stated in NRC Generic Letter No. 88–06, the requirements necessary for safe operation of the plant have been retained in the TSs; the changes do not eliminate or alter the functions previously reviewed; and the changes do not affect plant operation and design or create a new accident mode. The changes proposed were modeled after Enclosure 2 to NRC Generic Letter No. 88–06 in conformance with Commission requirements.

2. The changes proposed to eliminate certain requirements for plant management and support staff to hold current SRO licenses do not involve a significant increase in the probability or consequences of an accident previously evaluated because there are no changes being made to the license requirements for individuals controlling the reactor and other plant systems; there will be no impact on the quality of plant operations, and therefore, the changes will not result in a degradation in plant

operations which would increase the probability of an accident. No changes are proposed in the license requirements for personnel actually operating the reactor and other plant systems or shift management which would create the possibility of a new or different kind of accident from any accident previously evaluated, or involve a significant reduction in a margin of safety.

Accordingly, the Commission proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Martin J. Virgilio.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: September 2, 1988

Description of amendment request: This proposed amendment would revise the Technical Specifications (TS) to support Cycle 12 operation. The proposed amendment would modify the TS as follows:

(1) TS's 1.1 and 2.10.4(3) would be changed to reduce the calculated value for the limit of the Total Unrodded Planar Radial Peaking Factor ($F_{xy}T$) to 1.80 which will provide additional operating margin. The correction of a Cycle 11 setpoint evaluation, in the use of the more limiting Loss of Coolant Accident Required Overpower Margin (ROPM) versus the transient analysis ROPM, has reduced the "tent" for the core power limit versus the Axial Shape Index (ASI) for the Limiting Condition for Operation (LCO) for Excore Monitoring of the Linear Heat Rat (LHR), Figure 2–6. By reducing $F_{xy}T$, additional operating margin is gained in this LHR–LCO operating tent. Figure 2–9 would be changed such that the Total Integrated Radial Peaking Factor and the Total Planar Radial Peaking Factor limits are consistent with the change in Figure 2–6.

(2) TS 2.10.4(1) would be changed to provide clarification as to how the linear heat rate should be monitored and what parameters apply to bound the limits. In particular, the point at which the limiting condition for continued operation without reducing power, should the plant computer incore detector alarms become inoperable, is clarified as seven days from the date of the last valid core power distribution. Also, the requirements for maintaining the Axial Shape Index, Y_i, within the limits of Figure 2–6 when linear heat rate is continuously being monitored by excore detectors, are clarified.

(3) Figure 1–3 and TS 2.10.4(5) and Footnote ** on page 2–57c would be changed to reduce the limit for Cold Leg Temperature to 543° F., indicated, and 545° F., actual, from 545° F. and 547° F., respectively. This is being done to reflect actual operating conditions and to gain margin. It has also resulted in changes to the Alpha, Beta, and Gamma terms of the Thermal Margin/Low Pressure equation for Figure 1–3.

(4) Administrative changes that would correct a typographical error in TS 1.3(1) and change references to the final safety analysis report (FSAR) to the updated safety analysis report (USAR).

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; (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.

(1) Reduction of the Total Unrodded Planar Radial Peaking Factor, $F_{xy}T$, from 1.85 to 1.80. With regard to the three standards, the licensee states that operation of the facility in accordance with this amendment would not:

(a) Involve a significant increase in the probability or consequences of an accident previously evaluated. This change merely allows utilization of the additional margin available with the reduction of maximum $F_{xy}T$ value with no changes in administrative specifications. On the basis of technical safety evaluation, operating with gain in margin for Cycle 12 LHR–LCO would be no more limiting than operating with the Cycle 11 LHR–LCO. Therefore, this change does not increase the probability or consequences of a previously evaluated accident.

(b) Create the possibility of a new or different kind of accident from any accident previously evaluated. It has been determined that a new or different type of accident is not created because no new or different modes of operation are proposed for the plant. The continued use of the same Technical Specification administration controls prevents the possibility of a new or different kind of accident.

(c) Involve a significant reduction in a margin of safety. Administrative specifications involving the LHR–LCO ensure that operating with the extra margin gained from the reduction of $F_{xy}T$ conforms to current plant conditions and, therefore, preserves the margin of safety. Reducing the LHR–LCO tent does not affect the available margin and, therefore, will not reduce the margin of safety.

(2) Decrease the cold leg temperature from 545° F. to 543° F. With regard to the three standards, the licensee states that operation of the facility in accordance with the amendment would not:

(a) Involve a significant increase in the probability or consequences of an accident previously evaluated. This change allows the reduction of T_c to 543° F. The temperature change is bounded by the previous technical safety analysis which addressed the 545° F inlet temperature. Therefore, this change does not increase the probability or consequences of a previously evaluated accident.

(b) Create the possibility of a new or different kind of accident from any accident previously evaluated. It has been determined that a new or different kind of accident is not created because no new or different modes of operation are proposed for the plant. The continued use of the same Technical Specification administrative controls prevents the possibility of a new or different kind of accident.

(c) Involve a significant reduction in a margin of safety. Administrative specifications involving T_c ensure that operating at a T_c of 543° F conforms to current plant conditions and, therefore, preserves the margin of safety. The temperature change is bounded by previous technical safety analysis which addressed the 545° F inlet temperature and, therefore, will not reduce the margin of safety.

(3) Changes to the instructions for the entering of the Limiting Condition for Operation (LCO) for Excore Monitoring of Linear Heat Rate (LHR). With regard to the three standards, the licensee states that operation of the facility in accordance with the amendment would not:

(a) Involve a significant increase in the probability or consequences of an accident previously evaluated. This change clarifies the point at which the LHR–LCO (Figure 2–6) must be entered and provides better guidance for plant operation. The basis for the technical safety evaluation would be no more limiting than operating with the Cycle 11 basis. Therefore, this change does not increase the probability or consequences of a previously evaluated accident.

(b) Create the possibility of a new or different kind of accident from any accident previously evaluated. It has been determined that a new or different type of accident is not created because no new or different modes of operation are proposed for the plant. The continued used of the Technical Specification administrative controls prevents the

possibility of a new or different kind of accident.

(c) Involve a significant reduction in a margin of safety. Administrative specifications involving the LHR–LCO ensure that the operators enter the LCO with sufficient time to reduce power, if necessary, prior to utilizing the excore instruments to monitor core power. The changes have been implemented through strict administrative procedures and, therefore, will not reduce the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the analysis.

The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing examples (51 FR 7751) of amendments that are considered not likely to involve significant hazards consideration. The proposed administrative changes (item 4) in this amendment are similar to the example of a purely administrative change to the Technical Specifications. Accordingly, the staff proposes to determine that the proposed changes to the Technical Specification do not involve a significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1333 New Hampshire Avenue, NW., Washington, DC 20036

NRC Project Director: Jose A. Calvo

Philadelphia Electric Company, Docket No. 50–352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of amendment request: July 19, 1988

Description of amendment request: The proposed amendment responds to guidance provided in the staff's Generic Letter 87–09 dated June 4, 1987. Specifically, the proposed amendment would modify the general limiting conditions for operation (LCO) to allow entry into an operational condition under certain circumstances when compliance with the LCO's related Action Statements would allow continued operation for an unlimited period of time. The general surveillance requirements would also be modified to clarify the time at which Action Statement time limits begin relative to failure to perform a surveillance requirement and to allow for a delay of the Action Statement requirements for up to 24 hours to complete the surveillance if the allowable time is less than 24 hours. It would also clarify that restrictions on entry into Operational Conditions based on failure to comply with surveillance requirements shall not prevent passage into or through Operational Conditions as required by Action Statements. The related bases have also been changed to reflect the proposed changes to the Technical Specifications (TS).

In addition, the amendment deletes numerous TS statements which presently take exception to the provisions of Technical Specification 3.0.4.

Basis for proposed no significant hazards consideration determination: On June 4, 1987, the staff issued Generic Letter 87–09, "Sections 3.0 and 4.0 of the Standard Technical Specifications (STS) on the applicability of limiting conditions for operation and surveillance requirements." That letter contained guidance for improvement of Sections 3.0 and 4.0 of the STS consistent with the recommendations of NUREG–1024, "Technical Specifications—Enhancing the Safety Impact," and the Commission's Policy Statement on Technical Specification improvements. The licensee's submittal conforms to the staff's guidance.

The licensee has provided an analysis as to whether the proposed amendment involves a significant hazards consideration. The licensee's analysis is summarized as follows:

The standards used to arrive at a determination that a request for amendment requires no significant hazards consideration are included in the Commission's Regulations, 10 CFR 50.92, which state that the 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 proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The changes being proposed are administrative in nature and are being made to correct inconsistencies in the present wording of the general Sections 3.0 and 4.0 of the Technical Specifications. As such, the proposed changes do not affect any evaluated accident.

The proposed changes do not create the possibility of a new or different kind of accident. As stated above, the proposed changes are administrative changes which do not create the possibility of any new accident.

The proposed changes do not involve a significant reduction in the margin of safety. The changes to Section 3.0.4 allow startups under conditions whereby conformance to the Action Requirements establishes an acceptable level of safety for unlimited continued operation of the facility, while delaying a return to power operation when the facility is required to be shut down as a consequence of an Action Requirement. The change to Section 4.0.3 allows appropriate time for performing a missed surveillance before shutdown requirements apply to permit the performance of the missed surveillanes based on consideration of plant conditions, adequate planning, availability of personnel, and the time to perform the surveillance. The NRC staff stated in the Generic Letter that it is overly conservative to assume that systems or components are inoperable when a surveillance has not been performed.

Therefore, allowing sufficient time to perform the surveillance does not significantly reduce the margins of safety. The final change to Section 4.0.4 is a clarification to permit passage through or to operational modes as required to comply with Action Requirements even though a surveillance requirement has not been performed. To not permit this would increase the potential for plant upsets, and would challenge safety systems. The revision would also permit mode changes when a surveillance requirement has not been met, and can only be completed after entering into a mode or specific condition. This condition does not significantly reduce the margin of safety, but in fact potentially increases the margin of safety, by permitting entry into lower modes of operation more quickly. Thus, there is not a significant reduction in the margin of safety.

The staff has reviewed the licensee's submittal and significant hazards analysis and has determined that the proposed Technical Specifications conform to the staff guidance contained in Generic Letter 87–09. Further, the staff concurs with the licensee's determination as to whether the proposed amendment involves a significant hazards consideration.

Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York

Date of amendment request: August 24, 1988

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) to reflect modifications made to the Standby Liquid Control System (SLCS) during the Reload 8/Cycle 9 refueling outage. In accordance with the requirements of 10 CFR 50.62, changes are being made to the SLCS to ensure a minimum flow capacity and boron content equivalent to 86 gallons per minute of 13 weight percent sodium pentaborate solution. In addition to meeting 10 CFR 50.62 requirements, the final in-vessel boron concentration following injection of standby liquid control solution is being increased to permit an increase in fuel reload enrichment and energy content in future core design.

Basis for proposed no significant hazards consideration determination: In accordance with the Commission's Regulation in 10 CFR 50.92, the Commission has made a determination that the proposed amendment involves no significant hazards considerations. To make this determination the staff must establish that operation 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 proposed modification to the SLCS involve an increase in B–10 enrichment in the solution in the SLC Tank and an increase in required pumping capacity. Although the modifications involve decreasing the concentration of sodium pentaborate in the SLC Tank, the increased enrichment of B–10 and increased solution pumping rate result in an overall increase in the injection rate of B–10 isotope into the reactor vessel. As a result of the increased amount of B–10 isotope in the SLC tank, the final in-vessel boron concentration following injection of SLC solution is being increased from 600 ppm of natural boron to 660 ppm of equivalent natural boron. The increased boron concentration in the reactor vessel will allow future core reloads to utilize higher energy content fuel without decreasing the present shutdown margin. Furthermore, operation of the SLCS with the proposed changes will merely provide a backup to other safety-related systems in accordance with 10 CFR 50.62 requirements and will not affect any previously analyzed accidents. Therefore, operation of FitzPatrick in accordance with the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The SLCS serves as a backup to already existing safety-related systems. The proposed modifications will ensure that the SLCS is maintained such that it is capable of fulfilling the operability requirements of 10 CFR 50.62. As stated above, the proposed changes increase the shutdown margin in the unlikely event that SLCS should be needed to shut down the reactor. No new or different kinds of accidents result from improving the effectiveness of the SLCS. Therefore, operation of FitzPatrick in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed modifications increase the negative reactivity inserted by the SLCS, and, therefore, enhance the safety margin for the plant. The proposed changes are intended to meet with the requirements of 10 CFR 50.62, and provide additional assurance that the SLCS is capable of safely shutting down the plant in the unlikely event that its use is required. Therefore, operation of FitzPatrick in accordance with the proposed amendment does not involve a significant reduction in a margin of safety.

Since the application for amendment involves proposed changes that are encompassed by the criteria for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra, Director

Tennessee Valley Authority, Docket No. 50–260, Browns Ferry Nuclear Plant, Unit 2, Limestone County, Alabama

Date of amendment requests: August 3, 1988 (TS 250)

Description of amendment requests: The Tennessee Valley Authority (TVA) has proposed changes to the Browns Ferry Nuclear Plant, Unit 2 Technical Specifications (TS). The proposed changes are to incorporate surveillance requirements and trip level settings for new temperature switches being installed near a pipe trench containing Reactor Water Cleanup (RWCU) System piping. The added instrumentation will indicate leaks or pipe breaks and automatically isolate the RWCU system piping.

Basis for proposed no significant hazards consideration determination: The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

NRC 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 involves no significant hazards considerations 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.

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because the amendment only adds operability surveillance requirements and trip level settings for new temperature detectors. The Final Safety Analysis Report specifies that the trip level setting be high enough to avoid spurious operation but low enough to prevent excessive loss of reactor coolant. Establishing the trip level setting range of 130° F to 150° F satifies that requirement. Establishing the same operability requirements on the new temperature switches as are on the presently installed instrumentation prevents a significant increase in the probability or consequences of an accident previously evaluated. The system isolates for several accident conditions and since it serves no safety function, increasing the number of devices which could cause system isolation will not affect safe operation of the plant.

2. The proposed amendment does not create the possibility of a new or different kind of accident from an accident previously evaluated. The new temperature switches are performing a similar function as other instrumentation presently installed, and setting their operability and surveillance requirements the same as presently installed temperature switches prevents the creation of a new or different kind of accident. The increased monitoring and automatic isolation for the RWCU System will help prevent damage by high temperature to equipment required for safe shutdown. The addition of operability and setpoint requirements for the

new temperature switches ensures that the system's primary containment isolation safety function will be performed adequately. The change does not affect safety functions of any equipment in ways not previously evaluated.

3. The proposed amendment does not involve a significant reduction in a margin of safety because the temperature switches being added are being specified to meet the same requirements as other RWCU System temperature switches which perform the same function and are already included in the technical specifications. This ensures that the new temperature switches will not degrade existing features included in the technical specifications. Also, the new temperature switches are being added to ensure that safety-related equipment that is addressed in the technical specifications and that is required to mitigate a RWCU System pipe break will not be degraded by the environmental conditions which could result from a RWCU pipe break in the pipe trench.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Suzanne Black

Tennessee Valley Authority, Docket No. 50–327, Sequoyah Nuclear Plant, Unit 1, Hamilton County, Tennessee

Date of amendment request: September 21, 1988 (TS 88–28)

Description of amendment request: The Tennessee Valley Authority (TVA) proposes to modify the Sequoyah Nuclear Plant Unit 1 (SQN) Technical Specifications (TS). The change is to revise the limiting condition for operation (LCO) 3.2.2 and surveillance requirement (SR) 4.2.2.2 to reflect a reduction in the heat flux hot channel factor ($F_Q(z)$) limit from 2.237 to 2.15.

Basis for proposed no significant hazards consideration determination: TVA provided the following information in its submittal on the requested change to the heat flux hot channel factor:

By letter dated August 15, 1988, TVA submitted proposed license amendment 88–20. This proposed change revised the upper head injection (UHI) isolation setpoint and tolerances of SR 4.5.1.2.c.1. Enclosure 2 of the August 15 letter describes that, as part of the setpoint change, the delivered UHI water volume band was being expanded from the range of 1,130.5 to 900 cubic feet to the range of 1,130.5 to 850 cubic feet. The change in the delivered UHI water volume band was supported by Westinghouse Electric Corporation (*W*) evaluations, which indicated that the potential decrease in delivered water volume to the core would result in increased peak clad temperatures (PCTs); but in all cases, PCT remained below the 2,220 degree Fahrenheit (F) limit of 10 CFR 50.46.

In telephone conversations on September 1 and 2, 1988, NRC informed TVA that the increased PCTs described in the August 15, 1988 submittal could not be wholly justified by the sensitivity studies provided. NRC stated that restart of Unit 1 could be supported by the sensitivity studies (provided a temporary exemption to certain administrative requirements of 10 CFR 50.46(a)(1) was obtained) and that operational restriction be imposed to provide at least 100 degrees F of margin between the calculated PCT and the 10 CFR 50.46 limit.

TVA's request for a temporary exemption to certain administrative requirements of 10 CFR 50.46(a)(1) [has been] transmitted by separate correspondence. [dated September 19, 1988].

Evaluations by (*W*) have determined that at least 100 degrees F PCT margin can be obtained by administratively limiting steam generator tube plugging to 5 percent and by reducing $F_Q(z)$ from 2.237 to 2.15. This proposed technical specification change is being submitted to reflect the reduction in the $F_Q(z)$ limit.

The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee provided the following analysis:

TVA has evaluated the proposed technical specification change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of SQN in accordance with the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. $F_Q(z)$ is defined as the maximum local heat flux on the surface of a fuel rod divided by the core average heat flux. $F_Q(z)$ is used to limit the magnitude of hot spots and is used as a bounding input for accident analysis. $F_Q(z)$ is not postulated as being the initiating event for any accident scenario. Therefore, the proposed change does not affect the probability of any accident previously evaluated. The proposed reduction in $F_Q(z)$ from 2.237 to 2.15 is conservative in nature, in that it results in reduced PCTs during a postulated accident. The $F_Q(z)$ reduction serves as an operational restriction to ensure that PCTs remain below the 10 CFR 50.46 limit of 2,200 degrees F. Because of the reduction in calculated PCT, the proposed change will not increase the consequences of a previously evaluated accident.

(2) Create the possibility of a new or different kind of accident from any previously analyzed. As stated above, $F_Q(z)$ is not assumed to be the initiating event for any accident scenario. The proposed change to $F_Q(z)$ provides additional PCT margin to ensure that the 2,200 degrees F limit is not exceeded. The presence of additional margin will not create the possibility of a new or different kind of accident.

(3) Involve a significant reduction in a margin of safety. The proposed reduction in $F_Q(z)$ is conservative in nature as it lowers the calculated PCT for the limiting LOCA analysis case. As calculated by (*W*), the proposed reduction in $F_Q(z)$ from 2.237 to 2.15 lowers the calculated PCT by 87 degrees F for the limiting imperfect mixing case and by 96 degrees F for the limiting perfect mixing case. These reductions, combined with PCT margin obtained by administratively limiting steam generator tube plugging to 5 percent, result in calculated PCTs of 2,089 degrees F for the limiting imperfect mixing case and 2,087 degrees F for the limiting percent mixing case. Because the calculated PCT remains below the 2,220 degrees F limit of 10 CFR 50.46, there is no reduction in the margin of safety to cladding failure, and additional margin is being added.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Suzanne Black

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment requests: June 21, 1988 (TS 88–23)

Description of amendment requests: The proposed amendment would change the expiration dates for the Operating License DPR–77 (Unit 1) from May 27, 2010 to September 17, 2020 and for the Operating License DPR–79 (Unit 2) from May 27, 2010 to September 15, 2021.

The current operating license expiration dates are 40 years from the date of issuance of the construction permits (May 27, 1970, for both units). Since the Unit 1 full-power operating license was issued 10 years and 4 months after construction permit issuance (11 years and 4 months for Unit 2), the effective period of the Unit 1 license is approximately 29 years and 8 months (28 years and 8 months for Unit 2). The licensee's application requests a 40-year operating license term from the operating license for both the units because the units were designed and constructed on the basis of 40-years of plant operation.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analysis, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis and states that the operation of Sequoyah (SQN) in accordance with the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. SQN Unit 1 and Unit 2 were designed and constructed on the basis of 40-years of plant operation. SQN's reactor vessel was fabricated and designed for a 40-year life. A comprehensive vessel materials surveillance program is maintained in accordance with 10 CFR 50, Appendix H. An analysis was performed to demonstrate compliance with the NRC pressurized thermal shock (PTS) screening criteria in accordance with 10 CFR 50.61(b)(2). The assessment of the projected PTS reference temperature demonstrated that the SQN Units 1 and 2 pressure vessels would meet the toughness requirements of 10 CFR 50.61 for 32 effective full-power years of operation which is equivalent to a 40-year design life with an 80-percent capacity factor. Aging analyses have been performed for all safety-related electrical equipment in accordance within the scope of 10 CFR 50.49 (harsh environment). The qualified life of the equipment or component is incorporated within SQN's maintenance and replacement practices to ensure that this safety-related electrical equipment remains qualified and available to perform its safety function regardless of the overall age of the plant. Programs are in place to detect abnormal deterioration and aging of critical plant components. These programs include:

A. ASME Boiler and Presure Vessel Code, Section XI, and 10 CFR 50 Section 50.55(g).

1. In-Service Inspection (ISI) Program—This program ensures that plant pressure retaining vessels, piping, and support systems are inspected in accordance with the ASME Section XI code.

2. In-Service Test (IST) Program—This program ensures that safety-related pumps and valves are tested in accordance with the ASME Section XI code.

B. Technical Specifications.

In addition to the ISI and IST programs, the following SQN technical specifications also provide a means of monitoring the cumulative effects of power operation during the lifetime of the plant.

1. Specification 3.4.5—Steam Generators—An augmented steam generator in-service inspection program demonstrates operability of SQN's steam generators over the life of the plant.

2. Specification 3.4.9.1—Reactor Coolant System Pressure/Temperature Limits—The pressure and temperature of the reactor coolant system are limited to protect against non-ductile failure of the reactor coolant system. These limits are updated periodically over the life of the plant to ensure that the fracture toughness requirements for the ferritic material within the reactor coolant pressure boundary are maintained.

3. Specification 3.4.10—Reactor Coolant System Structural Integrity—The ISI and IST programs, in conjunction with the additional inspections required for the Reactor Coolant Pump flywheel and reactor vessel nozzels, ensures the structural integrity and operational readiness of these components will be maintained throughout the life of the plant.

4. Specification 5.7.1—Component Cyclic or Transient Limit—Monitoring, recording, and evaluation of certain cyclic and transient limits provides a high level of confidence that certain components within the reactor coolant and secondary systems will not experience fatigue failure over their 40-year design life.

(2) Create the possibility of a new or different kind of accident from any previously analyzed. The proposed amendment is administrative in nature and does not affect the safety analysis, plant equipment, or the physical facility. Because the accident analysis of SQN's FSAR remains bounding, no new or different kind of accident scenarios are created by this change.

(3) Involve a significant reduction in a margin of safety. The proposed amendment involves only a change to the expiration dates of the operating licenses. Because SQN is based on a 40-year service life, this change will not affect the safety margins.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. The staff believes that existing programs in place to detect any abnormal deterioration and aging of critical plant components also prevent any significant increase in the probability or consequences of an accident previously evaluated, or create the possibility of any new accidents, or any significant reduction in the margin of safety. Therefore, based on this review, the staff has made a proposed determination that the application for amendments involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Suzanne Black

Yankee Atomic Electric Company Docket No. 50-029 Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of amendment request: August 11, 1988

Description of amendment request: The proposed amendment would delete references to specific values of boron concentration and to the requirement for an inverse count rate multiplication measurement under stated conditions.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations 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's analyses contained in the August 11, 1988 letter states the following:

This change is requested in order to replace reference to a specific value with a more generalized form which will meet the LCO requirement, and to delete a surveillance requirement in Mode 6 which is unnecessary. As such, this proposed change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. This change will not increase significantly the probability or consequences of an accident, as the shutdown margin of the core will continue to be adequately monitored and sufficient control to preclude inadvertent criticality already exists.

2. Create the possibility of new or different kind of accident from any previously analyzed. This modification only provides an administrative wording change and deletes an unnecessary surveillance requirement. Therefore, it does not create the possibility of a new or different kind of an accident because it does not modify plant operation.

3. Involve a significant reduction in a margin of safety. This modification only provides an administrative wording change and deletes an unnecessary surveillance requirement which does not affect the safety margins which currently exist during Mode 6 operation. Thus, this change does not involve a reduction in a margin of safety.

Based on the considerations contained herein, it is concluded that there is reasonable assurance that operation of the Yankee plant, consistent with the proposed Technical Specifications, will not endanger the health and safety of the public. This proposed change has been reviewed by the Nuclear Safety Audit and Review Committee.

The staff has reviewed the licensee's analysis and agrees with it. Therefore, we conclude that the amendment satisfies the three criteria listed in 10 CFR 50.92. Based on that conclusion the staff proposes to make a no significant hazards consideration determination.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massacusetts 01301.

Attorney for licensee: Thomas Dignan, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Project Director: Richard H. Wessman

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Wolf Creek Nuclear Operating Corporation, Kansas Gas and Electric Company, Kansas City Power & Light Company, Kansas Electric Power Cooperative, Inc., Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: July 26, 1988

Brief description of amendment request: The proposed amendment would revise Technical Specification 5.3.1, Fuel Assemblies, to allow the replacement of a limited number of fuel rods with filler rods or vacancies if such replacement is acceptable based on the results of a cycle-specific reload analysis.

Date of publication of individual notice in **Federal Register** September 9, 1988 (53 FR 35136).

Expiration date of individual notice: October 11, 1988

Local Public Document Room Location: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Consumers Power Company, Docket No. 50–155, Big Rock Point Plant, Charlevoix County, Michigan

Date of application for amendment: December 2, 1986, and February 1, 1988.

Brief description of amendment: This amendment modifies paragraph 2.C.(5) of the license to require compliance with the amended Physical Security Plan. This Plan was amended to conform the requirements of 10 CFR 73.55. Consistent with the provisions of 10 CFR 73.55, search requirements must be implemented within 60 days and miscellaneous amendments within 180 days from the effective date of this amendment.

Date of issuance: September 14, 1988

Effective date: September 14, 1988

Amendment No.: 92

Facility Operating License No. DPR–6. The amendment revised the license.

Date of initial notice in **Federal Register:** May 4, 1988 (53 FR 15909). The Commission's related evaluation of the amendment is contained in a letter to Consumers Power Company dated September 14, 1988 and a Safeguards Evaluation Report dated September 14, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Duke Power Company, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: June 24, 1988

Brief description of amendments: The amendments modified the Technical Specifications by deleting surveillance requirements regarding manual transfer from normal to emergency power supplies for the pressurizer heaters, the power-operated relief valves (PORVs), and the PORV block valves.

Date of issuance: September 13, 1988

Effective date: September 13, 1988

Amendment Nos.: 92 and 73

Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 10, 1988 (53 FR 30130). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 13, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Florida Power and Light Company, et al., Docket No. 50–389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of application for amendment: January 25, 1985 (partial)

Brief description of amendment: The amendment deleted various license conditions as well as Attachment 1, Appendix E, and Appendix F to the License.

Date of Issuance: September 13, 1988

Effective Date: September 13, 1988

Amendment No.: 34

Facility Operating License No. NPF–16: Amendment revised the License.

Date of initial notice in **Federal Register:** May 21, 1985 (50 FR 20976). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 13, 1988.

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: November 16, 1987

Brief description of amendment: The amendment revised Sections 4.7.1.5 and 4.7.1.6 of the Technical Specifications for the main steam isolation valves and the main feedwater isolation valves, respectively.

Date of Issuance: September 22, 1988

Effective Date: September 22, 1988

Amendment No.: 35

Facility Operating License No. NPF–16: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 30, 1987 (52 FR 49227). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 22, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virgina Avenue, Ft. Pierce, Florida.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: June 20, 1988

Brief description of amendments: The amendments modify the Technical Specifications to delete all references to the main control room chlorine detectors and to the automatic isolation of the main control room environmental control system on high chlorine level.

Date of issuance: September 12, 1988

Effective date: September 12, 1988

Amendment Nos.: 156 and 96

Facility Operating License Nos. DPR–57 and NPF–5. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 10, 1988 (53 FR 30135). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 12, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

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 application for amendment: June 20, 1988

Brief description of amendment: The amendment modified the Technical Specifications to allow the use of General Electric 8x8EB fuel and lead fuel assemblies produced by Advanced Nuclear Fuels.

Date of issuance: September 12, 1988

Effective date: September 12, 1988

Amendment No.: 157

Facility Operating License No. DPR–57. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 10, 1988 (53 FR 30132). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 12, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

GPU Nuclear Corporation, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: October 23, 1986 as supplemented April 5 1988.

Brief description of amendment: The amendment revised Technical Specifications (TS) to reflect changes in the requirements on the maximum radioiodine concentration allowed in the reactor coolant in TS Sections 3.6 and 4.6.

Date of Issuance: September 12, 1988

Effective date: September 12, 1988

Amendment No.: 126

Provisional Operating License No. DPR–16. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 18, 1988 (53 FR 17789). The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated September 12, 1988.

No significant hazards consideration comments received: Yes. By letters dated November 7, 1986 and December 31, 1986, the Bureau of Engineering, Division of Environmental Quality, Department of Environmental Protection, State of New Jersey raised concerns. By letter dated July 20, 1987, the staff responded to the concerns. No other comments were received.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

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: July 15, 1988

Brief description of amendment: The amendment would change the Technical Specifications by changing the position of one of the nine members on the Plant Safety Review Committee (PSRC) from Technical Support Superintendent to Manager, Performance and System Engineering. This change is necessitated by a change of the unit organization to consolidate certain engineering personnel and functions.

Date of issuance: September 21, 1988

Effective date: September 21, 1988

Amendment No. 47

Facility Operating License No. NPF–29. This amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** August 10, 1988 (53 FR 30139).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 21, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154

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: July 12, 1988

Brief description of amendment: The amendment deletes Room OC506 from Table 3.3.7.9.1 as a result of a design change to enlarge the control building locker room.

Date of issuance: September 23, 1988

Effective date: September 23, 1988

Amendment No. 48

Facility Operating License No. NPF–29. This amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** August 10, 1988 (53 FR 30138). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 23, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: February 24, 1988

Brief description of amendment: The amendment changes Technical Specification (TS) 3.3.3.9, "Radioactive Liquid Effluent Monitoring Instrumentation" and TS 3.3.3.10, "Radioactive Gaseous Monitoring Instrumentation." The changes provide for the following: (1) allowance for planned inoperability of monitoring instrumentation for up to 12 hours for the purpose of maintenance and performance of required tests, checks, calibration or sampling, (2) a requirement to initiate auxiliary sampling within 12 hours after inoperability of certain gaseous effluent monitors, and (3) allowance for inoperability of certain liquid effluent monitoring instrumentation, during Mode 6 (refueling), when the effluent pathway is not being use.

Date of issuance: September 9, 1988

Effective date: September 9, 1988

Amendment No.: 22

Facility Operating License No. NPF–49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 27, 1988 (53 FR 28292). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 9, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Public Service Company of Colorado, Docket no. 50–267, Fort St. Vrain Nuclear Generating Station, Platteville, Colorado

Date of amendment request: February 5, 1988, as supplemented June 23, 1988.

Brief description of amendment: This amendment changed certain portions of the Administrative Controls section of the Technical Specifications. The portions concern the licensee's organization and the Plant Operations Review Committee.

Date of issuance: September 15, 1988

Effective date: September 15, 1988

Amendment No.: 63

Facility Operating License No. DPR–34. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 10, 1988 (53 FR 30142). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 15, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Greeley Public Library, City Complex Building, Greeley, Colorado

Public Service Company of Colorado, Docket No. 50–267, Fort St. Vrain Nuclear Generating Station, Platteville, Colorado

Date of amendment request: April 20, 1988, and supplemented July 1 and August 5, 1988.

Brief description of amendment: This amendment made certain changes to the Technical Specifications for the plant's DC power systems. It also allowed for future changes to the station batteries.

Date of issuance: September 15, 1988

Effective date: September 15, 1988

Amendment No.: 64

Facility Operating License No. DPR–34. Amendment revised the Technical Specifications/license.

Date of initial notice in Federal **Register:** June 15, 1988 (53 FR 22405). The licensee's July 1, 1988 submittal provided reformatted pages for section 4.6 of the Technical Specifications. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 15, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Greeley Public Library, City Complex Building, Greeley, Colorado

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: June 13, 1988 (TS 88–01)

Brief description of amendments: This amendment revises Table 3.6–2, "Containment Isolation Valves," of the Sequoyah Units 1 and 2 Technical Specification (TS). The revisions are to add five motor-operated valves (MOVs) to the table. These MOVs are replacing check valves as containment isolation valves. The amendment also adds a note to Table 3.3–5, "Engineered Safety Features Response Times," to reflect that the response times of these MOVs, when they are actuated by a Phase B containment isolation signal, are slightly longer than other containment isolation valves.

Date of issuance: September 9, 1988

Effective date: September 9, 1988

Amendment Nos.: 82, 73

Facility Operating Licenses Nos. DPR–77 and DPR–79. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 13, 1988 (53 FR 26533). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 9, 1988.

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: June 10, 1987 (TS 87–35)

Brief description of amendments: These amendments revise Table 3.4–1, Reactor Coolant System Pressure Isolation Valves, of the Sequoyah, Units 1 and 2 Technical Specifications (TS). The changes are to add the two upper head injection charging header valves to Table 3.4–1. These valves are different from most of the valves in Table 3.4–1 in that they do not have to be leak tested following manual or automatic actuation or flow through the valve. In its

application, the Tennessee Valley Authority (TVA) also withdrew its TS change 68 which it had submitted in its letter dated May 10, 1986.

Date of issuance: September 21, 1988
Effective date: September 21, 1988
Amendment Nos.: 83, 74
Facility Operating Licenses Nos. DPR–77 and DPR–79. Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** November 4, 1987 (52 FR 42370. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 21, 1988.
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: February 27, 1987 (TS 82)
Brief description of amendments: These amendments revise Specification 3/4.4.1.2, Reactor Coolant System, Hot Standby, in the Sequoyah Units 1 and 2 Technical Specifications (TS). The changes are to increase the number of reactor coolant system loops required to be in operation during Mode 3, Hot Standby, to two loops. The TS limiting condition for operation, action statement and surveillance requirement are being revised. The Bases for the Specification 3/4.4.1.2 are also being changed.
Date of issuance: September 22, 1988
Effective date: September 22, 1988
Amendment Nos.: 84, 75
Facility Operating Licenses Nos. DPR–77 and DPR–79. Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** August 12, 1987 (52 FR 29928). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 22, 1988.
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: May 22, 1987 (TS 87–18)
Brief description of amendments: These amendments revise the reactor trip limits for reactor coolant pump undervoltage in Table 2.2–1, Reactor Trip System Instrumentation Trip Setpoints, of the Sequoyah Units 1 and 2, Technical Specifications (TS). The minimum reactor trip setpoint is being increased for each bus from 4830 volts to 5022 volts. The minimum allowable values is being decreased for each bus from 4761 volts to 4739 volts.
Date of issuance: September 22, 1988
Effective date: September 22, 1988
Amendment Nos.: 85, 76
Facility Operating Licenses Nos. DPR–77 and DPR–79. Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** August 12, 1987 (52 FR 29933). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 22, 1988.
No significant hazards consideration comments received: No
Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: December 8, 1987
Brief description of amendment: The amendment revised TS 4.6.1.2.c.3 to be consistent with the requirements of Appendix J to 10 CFR Part 50 and ANSI N45.4–1972 Appendix C.
Date of issuance: September 19, 1988
Effective date: September 19, 1988
Amendment No. 120
Facility Operating License No. NPF–3. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** April 6, 1988 (53 FR 11378). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 19, 1988.
No significant hazards consideration comments received: No
Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: May 23, 1988, as supplemented on August 15, 1988.
Brief description of amendment: The amendment revises the Technical Specifications to permit the use of the fuel type designated as GE 8X8EB.
Date of issuance: September 9, 1988
Effective date: 30 days from date of issuance
Amendment No.: 108
Facility Operating License No. DPR–28: Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** June 15, 1988 (53 FR 22408). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 9, 1988.
No significant hazards consideration comments received: No.
Local Public Document Room Location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Wisconsin Public Service Corporation, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: October 26, 1987, supplemented June 16, 1988
Brief description of amendment: The amendment revised the Technical Specifications (TS) to clarify existing specifications and increase the consistency within the TS.
Date of issuance: September 20, 1988
Effective date: September 20, 1988
Amendment No.: 80
Facility Operating License No. NPF–30. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** July 13, 1988 (53 FR 26536). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 20, 1988.
No significant hazards consideration comments received: No.
Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Dated at Rockville, Maryland, this 27th day of September, 1988.

For the Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects–I/II, Office of Nuclear Reactor Regulation

[FR Doc. 88–22808 Filed 10–4–88; 8:45 am]
BILLING CODE 7590–01–D

OFFICE OF MANAGEMENT AND BUDGET

[Circular A–76]

Cost Comparison Studies Schedules

AGENCY: Office of Management and Budget.

ACTION: Publication of schedules for OMB Circular No. A–76 cost comparison studies.

SUMMARY: This Notice contains the schedules of cost comparisons that will be completed in 1989 for the Department of Transportation, Department of Treasury, Veterans Administration, General Services Administration, and the Department of Commerce. Executive Order 12615, Performance of Commercial Activities, dated November 19, 1987, requires OMB to publish the schedules as they become available. This is the initial submission; additions to these schedules, where the goals required by the Executive Order have not been met, and schedules from other agencies will be forthcoming.

The agency goals and number of positions scheduled for study are listed below:

Agency	Goal	Scheduled
Commerce	1,088 FTES	0,589 FTES.
GSA	0,605 FTES	0,838 FTES.
DOT	1,867 FTES	1,545 FTES.
Treasury	4,601 FTES	0,357 FTES.
VA	1,596 FTES	2,498 FTES.

General questions relating to the cost comparisons should be referred to the following individuals:

Commerce, John O'Brien, (202) 377–4115
GSA, John Sindelar, (202) 535–7735
DOT, Michael Siviy, (202) 366–5132
Treasury, Allen Zucker, (202) 566–6636
VA, Brodie Covington, (202) 233–4424

Specific questions relating to the VA studies shall be referred to the Directors of the Hospitals indicated.

Office of Federal Procurement Policy, Linda Mesaros, (202) 395–3300.

James C. Miller III,

Director.

Department of Commerce

(List of Cost Comparisons That Will Be completed in 1989)

Units	Commercial activity	Location	FTES
BEA	Computer Operations	Wash DC	8
EDA	Loan Application	Wash DC/Field	59
EDA	Review and Process Computer Operations	Wash DC	9
EDA	Computer Support	Wash DC	10
NOAA	O'Hare Airport Obs	Chicago, IL	6
NOAA	National Climatic Data Center	Asheville, NC	60
NOAA	Facilities and Maintenance	Seattle, WA	13
NOAA	Marine Chart Branch	Rockville, MD	36
NOAA	Chart Reproduction	Rockville, MD	68
NOAA	NWS Engineering Activ	Wash DC/Field	64
NOAA	NMC Computer Controller	Suitland, MD	22
NOAA	NMC Computer Operat Section	Suitland, MD	28
NOAA	NWS Integrated Syst Laboratory	Silver Spring, MD	37
NOAA	NWS Training Center	Kansas City, MO	42
NOAA	NE Facilities Maintenance	Woods Hole, MA/Field	21
NOAA	NMFS Fin. Serv.	Wash DC/Field	51
NOAA	Hydrographic Field Parties	Wash DC/Field	27
OS	Operations and Maintenance	Wash DC	28
Total			589

Affected Units:
BEA—Bureau of Economic Analysis.
EDA—Economic Development Administration.
NOAA—National Oceanic and Atmospheric Administration.
OS—Office of the Secretary.

General Services Administration

[List of Cost Comparisons That Will Be Completed in 1989]

Units	Commercial activity	Location	FTE
FSS	Artwork, Graphics	Wash, DC	23
IRMS	Federal Information Centers	Wash, DC	102
PBS	Maintenance	Pittsburgh	31
PBS	Maintenance	Belle Meade	15
PBS	Maintenance	Atlanta	31
PBS	Maintenance	Atlanta/Duluth	11
PBS	Maintenance	Charleston	7
PBS	Maintenance	Saginaw	4
PBS	Maintenance	Spokane	5
PBS	Maintenance	Wash, DC	93
PBS	Maintenance	Harrisburg	5
FSS	Ticket Audit	Wash, DC	26
FSS	Receipt, Records	Wash, DC	9
IRMS	ISOD Operations	Wash, DC	202
IRMS	Computing Resources	Wash, DC	7
PBS	Maintenance	Brooklyn	18
PBS	Maintenance	Camden/Trenton	6
PBS	Maintenance	New York City	8
PBS	Maintenance	Austin	14
PBS	Maintenance	Houston	4
PBS	Maintenance	San Antonio	8
PBS	Maintenance	Little Rock	7
PBS	Maintenance	New Orleans	9
PBS	Maintenance	Fort Worth	31
PBS	Maintenance	El Paso	6

GENERAL SERVICES ADMINISTRATION—Continued

[List of Cost Comparisons That Will Be Completed in 1989]

Units	Commercial activity	Location	FTE
FSS	Nat'l Fleet Mgmt Div	Denver	11
PBS	Maintenance	Tucson	9
PBS	Maintenance	Laguna Niguel	15
PBS	Maintenance	Alameda	5
PBS	Maintenance	San Ysidro	5
PBS	Maintenance	Los Angeles	6
PBS	Maintenance	Wash, DC	16
PBS	Maintenance	Wash, DC	34
PBS	Maintenance	Wash, DC	5
IRMS	Telephone Service	Wash, DC	20
IRMS	COMSEC	Wash, DC	30
Total			838

Affected Units: FSS—Federal Supply Service; IRMS—Information Resources Management Service; PBS—Public Buildings Service.

DEPARTMENT OF TRANSPORTATION

[List of Cost Comparisons That Will Be Completed In 1989]

Units	Commercial Activity	Location	CIV FTE	MIL FTE
FAA	Payroll operations	Regions	128	0
FAA	Aircraft Maint	Field	307	0
FAA	Med Serv	HQ, Regions	10	0
MRD	Ship Preserv/Maint	3 Locations	244	0
SLS	Facility Maint	Messena, NY	54	0
USCG	Industrial	Woods Hole, MA	19	4
USCG	Facility Maint	Baltimore, MD	23	0
USCG	Security	Petaluma, CA	0	10
USCG	Security	Alameda, CA	0	9
USCG	Facility Maint	Alameda, CA	1	9
USCG	Facility Maint	Seattle, WA	9	8
USCG	Facility Maint	Mobile, AL	12	27
USCG	Industrial	New Orleans,	16	36
USCG	Industrial	Boston, MA	49	20
USCG	Facility Maint	Petaluma, CA	17	10
USCG	Ind/Fac Maint	Alameda, CA	9	78
USCG	Facility Maint	Clearwater, FL	1	15
USCG	Facility Maint	Chastin, SC	11	0
USCG	Facility Maint	New London, CT	43	55
USCG	Facility Maint	Borinquen, PR	15	4
USCG	Industrial	San Pedro, CA	11	20
USCG	Industrial	New York, NY	61	26
USCG	Facility Maint	Cape May, NJ	0	3
USCG	Industrial	Portsmouth, VA	68	26
USCG	Warehousing	Brooklyn, NY	35	25
USCG	Warehousing	Detroit, MI	2	2
USCG	Ship/Rec	Cape May, NJ	1	2
Total				1,545

Affected Units: Federal Aviation Administration; MRD—Maritime Administration; SLS—Saint Lawrence Seaway Development Corporation; USCG—United States Coast Guard.

DEPARTMENT OF THE TREASURY

[List of Cost Comparisons That Will Be Completed in 1989]

Units	Commercial activity	Location	FTE
BEP	Custodial Svcs	Washington	30
MINT	Custodial Svcs	San Francisco	15
MINT	Health Svcs	Philadelphia	7
MINT	Guard Svcs	San Francisco	229
IRS	ADP Svcs	Washington	15
IRS	Mail, Files	Washington	9
IRS	ADP Svcs	Cincinnati	5
IRS	Mail Room	Washington	21
IRS	Docket Room	Washington	26
Total			357

Affected Units: BEP—Bureau of Engraving and Printing; MINT—United States Mint; IRS—Internal Revenue Service.

VETERANS ADMINISTRATION

[Initial List of Cost Comparison That Will Be Completed in 1989]

Units	Commercial activity	Location	FTE
VAMC	Canteen Food Service	Brockton, MA	11
VAMC	Canteen Food Service	Buffalo, NY	21
VAMC	Canteen Food Service	Charleson, SC	10
VAMC	Canteen Food Service	Cincinnati, OH	12
VAMC	Canteen Food Service	Coatesville, PA	10
VAMC	Canteen Food Service	Columbia, MO	17
VAMC	Canteen Food Service	Columbia, SC	11
VAMC	Canteen Food Service	Miami, FL	25
VAMC	Canteen Food Service	Allen Park, MI	17
VAMC	Canteen Food Service	Des Monies, IA	12
VAMC	Canteen Food Service	Togus, ME	10
VAMC	Canteen Food Service	Ann Abror, MI	10
VAMC	Canteen Food Service	Atlanta, GA	19
VAMC	Canteen Food Service	Augusta, GA	13
VAMC	Canteen Food Service	Beford, MA	12
VAMC	Canteen Food Service	Birmingham, AL	13
VAMC	Canteen Food Service	Biloxi, MS	18
VAMC	Canteen Food Service	Dayton, OH	15
VAMC	Canteen Food Service	Boston, MA	18
VAMC	Canteen Food Service	East Orange, NJ	19
VAMC	Canteen Food Service	Fresno, CA	11
VAMC	Canteen Food Service	Hines, IL	30
VAMC	Canteen Food Service	Houston, TX	24
VAMC	Canteen Food Service	Indianapolis, IN	16
VAMC	Canteen Food Service	Iowa City, IA	15
VAMC	Canteen Food Service	Jackson, MS	16
VAMC	Canteen Food Service	Kansas City, MO	13
VAMC	Canteen Food Service	Lexington, KY	16
VAMC	Canteen Food Service	Lyons, NJ	14
VAMC	Canteen Food Service	Loma Linda, CA	21
VAMC	Canteen Food Service	Memphis, TN	23
VAMC	Canteen Food Service	Johnston, City, TN	14
VAMC	Canteen Food Service	Nashville, TN	13
VAMC	Canteen Food Service	New Orelans, LA	14
VAMC	Canteen Food Service	Northport, NY	13
VAMC	Canteen Food Service	Oklahoma City, OK	13
VAMC	Canteen Food Service	Omaha, NE	12
VAMC	Canteen Food Service	Asheville, NC	14
VAMC	Canteen Food Service	Phoenix, AZ	14
VAMC	Canteen Food Service	Providence, RI	11
VAMC	Canteen Food Service	St. Louis, MO	21
VAMC	Canteen Food Service	Salem, VA	11
VAMC	Canteen Food Service	Tampa, FL	18
VAMC	Canteen Food Service	Temple, TX	15
VAMC	Canteen Food Service	Topeka, KS	12
VAMC	Canteen Food Service	Tucson, AZ	11
VAMC	Canteen Food Service	Washington, DC	19
VAMC	Canteen Food Service	Wilkes-Barre, PA	10
VAMC	Canteen Food Service	Milwaukee, WI	27
VAMC	Canteen Food Service	Gainesville, FL	20
VAMC	Canteen Food Service	Pitts. (UD), PA	25
VAMC	Canteen Food Service	Pitts. (HD), PA	10
VAMC	Canteen Food Service	Fayetteville, NC	5
VAMC	Canteen Food Service	Leavenworth, KS	9
VAMC	Canteen Food Service	West L. A., CA	48
VAMC	Canteen Food Service	Cleveland, OH	8
VAMC	Warehouse Service	Brockton, MA	14
VAMC	Warehouse Service	Cleveland, OH	19
VAMC	Warehouse Service	Columbia, SC	11
VAMC	Warehouse Service	Dayton, OH	13
VAMC	Warehouse Service	Allen Park, MI	12
VAMC	Warehouse Service	Battle Creek, MI	10
VAMC	Warehouse Service	Biloxi, MS	10
VAMC	Warehouse Service	San Juan, PR	43
VAMC	Warehouse Service	Lexington, KY	11
VAMC	Warehouse Service	Memphis, TN	12
VAMC	Warehouse Service	Mountain Home, TN	10
VAMC	Warehouse Service	Murfreesboro, TN	13
VAMC	Warehouse Service	Northport, NY	15
VAMC	Warehouse Service	St. Louis, MO	12
VAMC	Warehouse Service	San Diego, CA	10
VAMC	Warehouse Service	San Antonio, CA	12
VAMC	Warehouse Service	Tampa, FL	12
VAMC	Warehouse Service	Tuskegee, AL	10
VAMC	Warehouse Service	West Haven, CT	11
VAMC	Warehouse Service	Sepulveda, CA	11
VAMC	Warehouse Service	North Chicago, IL	13
VAMC	Warehouse Service	Temple, TX	8

VETERANS ADMINISTRATION—Continued

[Initial List of Cost Comparison That Will Be Completed in 1989]

Units	Commercial activity	Location	FTE
VAMC	Warehouse Service	Newe York, NY	17
VAMC	Warehouse Service	Boston, MA	9
VAMC	Warehouse Service	Miami, FL	21
VAMC	Switchboard Warehouse Service	Long Beach, CA	13
VAMC	Switchboard Service	Memphis, TN	12
VAMC	Switchboard Service	Minneapolis, MN	11
VAMC	Switchboard Service	San Francisco, CA	10
VAMC	Switchboard Service	Washington, DC	10
VAMC	Switchboard Service	Milwaukee, WI	11
VAMC	Transcription Service	Denver, CO	10
VAMC	Transcription Service	Cleveland, OH	18
VAMC	Transcription Service	Hines, IL	12
VAMC	Transcription Service	Minneapolis, MN	21
VAMC	Transcription Service	New Orleans, LA	10
VAMC	Transcription Service	Palo Alto, CA	10
VAMC	Transcription Service	San Antonio, TX	11
VAMC	Transcription Service	Tuskegee, AL	10
VAMC	Transcription Service	Milwaukee, WI	17
VAMC	Laundry Service	Brockton, MA	37
VAMC	Laundry Service	Buffalo, NY	27
VAMC	Laundry Service	Chillicothe, OH	18
VAMC	Laundry Service	Miami, FL	15
VAMC	Laundry Service	Lake City, FL	27
VAMC	Laundry Service	Lebanon, PA	18
VAMC	Laundry Service	Lyons, NU	37
VAMC	Laundry Service	Madison, WI	11
VAMC	Laundry Service	Martinsburg, WV	26
VAMC	Laundry Service	Murfreesboro, TN	24
VAMC	Laundry Service	Northampton, MA	14
VAMC	Laundry Service	Omaha, NE	16
VAMC	Laundry Service	San Diego, CA	14
VAMC	Laundry Service	San Antonio, TX	18
VAMC	Laundry Service	Tuscaloosa, AL	20
VAMC	Laundry Service	Tuskegee, Al	38
VAMC	Laundry Service	Waco, TX	34
VAMC	Laundry Service	Bath, NY	11
VAMC	Laundry Service	Bay Pines, FL	38
VAMC	Laundry Service	Battle Creek, MI	51
VAMC	Laundry Service	Sioux Falls, SD	10
VAMC	Laundry Service	Alexandria, LA	24
VAMC	Laundry Service	Kerrville, TX	9
VAMC	Laundry Service	North Chicago, IL	37
VAMC	Laundry Service	Denver, CO	16
VAMC	Laundry Service	San Juna, PR	17
VAMC	Laundry Service	Fargo, ND	6
VAMC	Laundry Service	Albuquerque, NM	13
VAMC	Grounds Maintenance	Brooklyn, NY	14
VAMC	Grounds Maintenance	Cleveland, OH	11
VAMC	Grounds Maintenance	Dayton, OH	15
VAMC	Grounds Maintenance	Lebanon, PA	10
VAMC	Grounds Maintenance	Waco, TX	12
VAMC	Grounds Maintenance	Milwaukee, WI	12
VAMC	Grounds Maintenance	Canadaigua, NY	11
VAMC	Chauffeur Service	Brockton, MA	10
VAMC	Chauffeur Service	Cleveland, OH	13
VAMC	Chauffeur Service	Dayton, OH	16
VAMC	Chauffeur Service	Bath, NY	10
VAMC	Chauffeur Service	St. Louis, MO	14
VAMC	Chauffeur Service	North Chicago, IL	19
VAMC	Fire Protection	Ft. Lyon, CO	13
VAMC	Fire Protection	Buttler, PA	15
VAMC	Fire Protection	Hampton, VA	11
VAMC	Fire Protection	Tomah, WI	14
VAMC	Fire Protection	Livermore, CA	12
VAMC	Fire Protection	Tacoma, WA	11
VAMC	Fire Protection	Alexandria, LA	11
VAMC	Fire Protection	Castle Point, NY	16
VAMC	Fire Protection	Montrose, NY	15
VAMC	Fire Protection	Tuskegee, AL	16
VAMC	Fire Protection	Northport, NY	15
VAMC	Fire Protection	Martinsburg, WV	15
VAMC	Fire Protection	Murfreesboro, TN	17
VAMC	Fire Protection	Battle Creek, MI	18
VAMC	Fire Protection	Hines, IL	15
VAMC	Fire Protection	Little Rock, AR	11
VAMC	Fire Protection	Canandaiqua, NY	11
VAMC	Fire Protection	Northampton, MA	12
VAMC	Fire Protection	Lyons, NJ	18

VETERANS ADMINISTRATION—Continued

[Initial List of Cost Comparison That Will Be Completed in 1989]

Units	Commercial activity	Location	FTE
VAMC	Fire Protection	Cleveland, OH	10
VAMC	Fire Protection	White City, OR	11
Total			2,498

Affected Units: VAMC—Veterans Administration Medical Centers.

[FR Doc. 88-22948 Filed 10-4-88; 8:45 am]
BILLING CODE 3110-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

United States-Canada Free-Trade Agreement; Applications and Nominations of Individuals To Serve on Binational Dispute Settlement Panels for Review of Antidumping and Countervailing Duty Determinations

AGENCY: Office of the United States Trade Representative.

ACTION: Invitation for applications from, and nominations of, candidates to serve on binational panels convened to review antidumping and countervailing duty matters under Chapter 19 of the United States-Canada Free-Trade Agreement.

SUMMARY: Chapter 19 of the United States-Canada Free-Trade Agreement (FTA) provides for the establishment of a roster of individuals unaffiliated with either the U.S. or Canadian Governments who are willing to serve on binational panels convened to review: (1) Final determinations in U.S. or Canadian antidumping or countervailing duty cases involving imports from the other country; and (2) amendments to either country's countervailing duty or antidumping laws. This notice invites applications from, and nominations of, U.S. citizens wishing to be considered for inclusion on the roster of candidates eligible to be selected to serve on such panels and summarizes eligibility criteria for roster members and panelists. Nominations must be received by October 15, 1988. Applications must be received by October 31, 1988.

FOR FURTHER INFORMATION CONTACT: Pamela Cassidy, Legal Assistant, Office of the General Counsel, at (202) 395-3432.

Background

President Reagan and Prime Minister Mulroney signed the FTA on January 2, 1988. The United States-Canada Free-Trade Agreement Implementation Act (the Act), which approved the FTA and provided U.S. implementing authority, was signed into law on September 28, 1988. Provided that both the United States and Canada take necessary implementing steps, the FTA will enter into force on January 1, 1989.

Chapter 19 of the FTA creates a procedure for the review by binational panels of final determinations in U.S. and Canadian antidumping and countervailing duty (AD/CVD) proceedings involving imports from the other country. Each panel will be composed of five non-governmental experts. The Chapter also provides for panels to review amendments to U.S. and Canadian AD/CVD law. Under Chapter 19, the United States and Canada must develop a roster of U.S. and Canadian citizens qualified to be selected as panelists in individual cases. Chapter 19 sets out certain eligibility criteria for roster members, designed to assure the competence and objectivity of panelists. Section 405 of the Act provides further requirements and procedures for the selection of U.S. individuals to be roster members or panelists, and the Statement of Administrative Action approved by the Act provides additional guidance on U.S. implementation. Individuals interested in being included on the roster and serving as panelists should carefully consult the provisions of Chapter 19 of the FTA, Title IV of the Act, and relevant portions of the Statement of Administrative Action, and should not rely exclusively upon the general summary included in this notice.

Functions of Panels

As noted above, Chapter 19 provides for the use of binational panels both to review AD/CVD determinations involving imports from the other country and to consider amendments to U.S. or Canadian AD/CVD law.

(1) Review of AD/CVD Determinations

Under Chapter 19, Canada and the United States retain the right to impose countervailing or antidumping duties in accordance with their national laws, including against products of the other country. Final administrative determinations under those laws will be subject to review by binational panels, rather than by national courts, if requested by an appropriate U.S. or Canadian party to the proceeding, to the extent that such determinations involve products of the other country. Binational panels will review such determinations to decide whether the administering authority complied with the relevant national law, using the standard of review that would otherwise have been applied by a national court in such circumstances. A panel may uphold the administrative decision or remand the case to the administering authority for action not inconsistent with the panel's decision. Panel decisions are not subject to judicial review, but may be reviewed in limited circumstances by a binational "Extraordinary Challenge Committee." The United States and Canada are obligated under Chapter 19 to give effect to final panel decisions.

(2) Review of Amendments to AD/CVD Law

Chapter 19 also provides that, at the request of either the United States or Canada, a binational panel will review and issue a declaratory opinion concerning whether an amendment to the other country's AD/CVD laws made after entry into force of the FTA is inconsistent with the provisions of the General Agreement on Tariffs and Trade (GATT), the GATT Antidumping or Subsidies Codes, or the object and purposes of the FTA.

Composition of Panels

Chapter 19 provides for the development of a roster of fifty potential panelists, with each government selecting twenty-five individuals. A separate five-person panel will be formed for each review of an AD/CVD administrative determination or legislative amendment. To form a panel, the U.S. and Canadian Governments will each appoint two panelists, normally by drawing upon individuals from the roster. The two governments will then attempt to agree upon a fifth panelist. In the absence of such agreement, the fifth panelist will be selected from the roster either by agreement among the four panelists

previously chosen or, failing that, by lot. The majority of individuals on each panel must be attorneys.

Criteria for Eligibility

Chapter 19 sets out a number of criteria for determining the eligibility of individuals to be included on the roster. First, roster members must be U.S. or Canadian citizens. In addition, roster members must be of good character, high standing and repute, and are to be chosen strictly on the basis of objectivity, reliability, sound judgment and general familiarity with international trade law. Penelists may not be affiliated with either government.

Selection Criteria and Procedures

Section 405 of the Act and the Statement of Administrative Action establish U.S. implementing procedures and requirements for the selection of U.S. members of the roster. Section 405 provides that U.S. roster members are to be selected in accordance with the eligibility criteria set out in Chapter 19 of the FTA and without regard to political affiliation. Individuals who would have a conflict of interest or the appearance of a conflict of interest in the exercise of the duties of a panelist will not be selected as roster members.

Under section 405, an interagency group, chaired by the United States Trade Representative (the USTR) will be charged with responsibility for developing a list of candidates qualified to be chosen by the United States as roster members. After consulting with the Senate Committee on Finance and the House Committee on Ways and Means in accordance with the requirements and schedule set out in section 405, the USTR will select the final list of U.S. candidates to serve on the roster.

Remuneration

The U.S. and Canadian Governments will share equally in providing remuneration for panel members. The amount of such remuneration has not yet been established. It is expected, however, that remuneration will be based on time spent in actual service on a panel. Thus it is important to note that individuals included on the roster will not necessarily be selected to serve on a panel. Althoghh panelists will receive remuneration from the U.S. Government, in keeping with the duty of panelists to render objective opinions section 405(b) of the Act provides that panelists will not be considered to be employees of the U.S. Government.

Procedures for Applications

Applications must be typewritten and submitted along with 19 copies by October 31, 1988 to: Interagency Group, Room 223, Office of the General Cousel, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20506. Applications should be headed "Application for Inclusion on FTA Chapter 19 Roster of Panelists" and must include the following information:

1. Name.
2. Business address and telephone number.
3. Citizenship.
4. Current employment, incuding job title, short job description, and name and address of employer.
5. Summary of employment history from January 1, 1978 to present.
6. Relevant education and professional training.
7. Relevant professional affiliations and certifications, including current bar admissions, if any.
8. List of relevant publications, if any.
9. Short statements of qualifications and availability for service on Chapter 19 panels, including information relevant to applicant's: (a) familiarity with international trade law; and, (b) willingness and ability to make time commitments necessary for service on penels.
10. Summary of applicant's current and past employment by or work performed for the U.S. or Canadian Governments, if any.
11. List of proceedings brought under U.S. or Canadian antidumping or countervailing duty laws regarding imports of Canadian or U.S. products in which applicant advised or represented (for example, as consultant or attorney) any U.S. or Canadian party to such proceeding and, for each such proceeding listed, the name and country or incorporation of such party.
12. Names, addresses, and telephone numbers of three individuals willing to provide information respecting applicant's qualifications for service on panels, including applicant's familiarity with international trade laws, character, reputation, reliability, and judgement.

Note: Information provided by applicants in response to the above questions will be used by the interagency group for the purpose of initial screening of candidates. Further information regarding financial interests and affiliations my be requested from prospective candidates at a later stage of the selection process for purposes of assessing conflicts of interest, and the appearance of such conflicts, in respect to service on panels. Individuals selected as roster members may be required to make additional, specific disclosures in regard to conflicts and appearances of conflicts in connection with their appointment to particular panels.

Procedures for Nominations

Nominations must be typewritten and submitted along with four copies by October 15, 1988 to: Interagency Group, Room 223, Office of the General Counsel, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20506. Nominations should be headed "Nomination for Inclusion on FTA Chapter 19 Roster of Panelists" and must include the following information:

1. Name, business address, and telephone number of nominator.
2. Name, business address, and telephone number of nominee.
3. Statement that nominee is willing to serve on panels.
4. Short statement regarding nominee's qualifications to serve on panels.

Nominees will be contacted to confirm their interest in serving on panels and, if interested, invited to submit an appliction as described in the previous section of this notice. Completed applications must be received by October 31, 1988.

Note: Nominees and applicants will be accorded equal consideration. No advantage in the selection process will accrue to an individual by reason of having received a nomination.

False Statements

By virtue of section 405(a)(2)(C) of the Act, false statements made to the interagency group or the USTR by applicants regarding their personal or professional qualifications, or financial or other relevant interests, that bear on applicants' suitability for placement on rosters and appointment to panels, are punishable under the provisions of 18 U.S.C. 1001.

Paperwork Reduction Act

The information collection procedures set out in this notice have been approved by the Office of Management and Budget under the provisions of Chapter 35 of Title 44 of the United States Code and have been assigned OMB Control Number 0350–0003.

Judith H. Bello,

General Counsel.

[FR Doc. 88–22967 Filed 10–4–88; 8:45 am]

BILLING CODE 3190–01–M

SMALL BUSINESS ADMINISTRATION

[Application No. 02/02-5522]

Concord Finance Corp.; Filing of an Application for a License To operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to the regulations governing small businesses investment companies (SBICs) (13 CFR 107.102 (1988)) by Concord Finance Corporation, 221–227 Canal Street, Suites 612–614, New York, New York 10013, for a license to operate as a small business investment company under section 301(d) of the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 *et. seq.)*

The proposed officers, directors and shareholders of the Applicant are as follows:

Name	Title	Percentage of ownership
Kai Hung Lo, 221-227 Canal Street, New York, New York 10013.	Chairman/ Director.	30
Siumei C. Liu, 221-227 Canal Street, New York, New York 10013.	Treasurer, Secretary and Director.	34
Henry Chuan S. Foong, 221-227 Canal Street, New York, New York 10013.	President/ Director.	34
Meimei Lau, 221-227 Canal Street, New York, New York 10013.	Shareholder ...	1
Bo-Kwai Lew Fung, 221-227 Canal Street, New York, New York 10013.	Vice President/ General Partner.	1

As a section 301(d) Licensee, it will provide assistance solely to small business concerns which all contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probabilty of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and the Regulations.

Notice is futher given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Adminstrator for Investment, Small Business Adminstration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of the Notice will be published in a newspaper of general circulations in New York, New York.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: September 28, 1988.

Robert G. Lineberry,

Deputy Associate Adminstrator for Investment.

[FR Doc. 88–22930 Filed 10–4–88; 8:45 am]

BILLING CODE 8025-04-M

[Declaration of Disaster Loan Area #6627 Amdt. #1]

Declaration of Disaster Loan Area; Illinois

The above-numbered declaration is hereby amended to include the Townships of Lemont, Lyons, Palos and Proviso in Cook County, and the Townships of DuPage, Frankfort, Homer and Wheatland in Will County, in the State of Illinois, as a result of damages from a fire which occurred at the Illinois Bell Telephone switching facility at Hinsdale on May 8, 1988. All other information remains the same; i.e., the termination date for filing applications for economic injury assistance is the close of business on May 15, 1989.

(Catalog of Federal Domestic Assistance Program No. 5900)

Date Septermber 26, 1989.

James Abdnor,

Administrator.

[FR Doc. 88–22928 Filed 10–4–88; 8:45 am]

BILLING CODE 8025-01-M

Presidential Advisory Committee on Small and Minority Business Ownership; Public Hearing

The Presidential Advisory Committee on Small and Minority Business Ownership will hold a public hearing from 1:00 p.m. until 6:00 p.m. on Friday, October 14, 1988, in conjunction with the Eighty Eighth Annual Conference of the National Business League. The hearing will be held at the Omni Hotel, 100 South Street, Richmond, Virginia 23216.

At the hearing, the Committee will welcome specific testimony from private sector executives, local officials, trade associations, small and minority business entrepreneurs, pertaining to the following Federal procurement mandates: Pub. L. 95–507, particularly section 8(d), Pub. L. 99–661, section 1207 (Department of Defense 5% Set-Aside), Pub. L. 100–180, section 806 and the insertion of incentive clauses to further the utilization of small and small disadvantaged businesses. Your past experiences with these programs and any other comments you may wish to render concerning small and minority business issues are welcomed.

Persons wishing to present testimony should plan an oral presentation of no longer than ten minutes and allow five minutes for questions from the Presidential Advisory Committee Members.

Should you not be able to personally attend, you may present written testimony which will be entered into the official record and considered when the Committee makes recommendations to the President of the United States and the Congress.

If you plan to offer testimony, please contact Milton Wilson, Presidential Advisory Committee Coordinator, (202) 653–6526, to secure time on the agenda. Written testimony will be received up to October 28, 1988, using the following address: Presidential Advisory Committee on Small and Minority Business Ownership, U.S. Small Business Administration, 1441 L Street, NW., Room 602, Washington, DC 20416, Attn: Milton Wilson, PAC Coordinator.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 88–22929 Filed 10–4–88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/1221]

Overseas Security Advisory Council; Closed Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on Wednesday, November 2, 1988 at 8:30 a.m. at the Department of State, Washington, DC. Pursuant to section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b (c) (4), it has been determined the meeting will be closed to the public. Matters relative to privileged commercial information will be discussed. The agenda calls for the discussion of private sector physical security policies, bomb threat statistics, and security programs at sensitive U.S. Government and private sector locations overseas.

For more information contact Ms. Marsha J. Thurman, Overseas Security Advisory Council, Department of State,

Washington, DC 20520, phone: 202/663–1654.

Date: September 20, 1988.

Clark Dittmer,

Director of the Diplomatic Security Service.

[FR Doc. 88–22936 Filed 10–4–88; 8:45 am]

BILLING CODE 4710–24–M

[Public Notice CM–8/1222]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea; Working Group on Radiocommunications; Meetings

The Working Group on Radiocommunications of the Subcommittee on Safety of Life at Sea will conduct open meetings at 0930 on the following dates: January 19, 1989; February 16, 1989; April 20, 1989; May 18, 1989; and June 15, 1989. These meetings will be held in room 9230 of the Department of Transportation, 400 Seventh Street SW., Washington, DC 20950–0001.

The purpose of these meetings is to discuss the Global Maritime Distress and Safety System (GMDSS), and to prepare for the 35th and 36th Sessions of the International Maritime Organization Subcommittee on Radiocommunications. Agenda items also include GMDSS implementation in the U.S., cost of maritime safety services, and improved dissemination of maritime safety information.

Members of the public may attend these meetings up to the seating capacity of the room.

For further information contact Mr. Ronald J. Grandmaison, U.S. Coast Guard Headquarters (G–TTS–3), 2100 Second Street SW., Washington, DC 20593–0001. Telephone: (202) 267–1389.

Date: September 26, 1988.

Thomas J. Wajda,

Chairman, Shipping Coordinating Committee.

[FR Doc. 88–22937 Filed 10–4–88; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

[Docket 45663]

Prehearing Conference, Robert O. Nay, et al.

Served: September 30, 1988.

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on October 11, 1988, at 10:00 am (local time) in Room 5332, Nassif Building, 400 7th Street SW., Washington, DC 20590, before the undersigned administrative law judge, to consider the pending motions and further proceedings.

Dated at Washington, DC, September 30, 1988.

Ronnie A. Yoder,

Administrative Law Judge.

[FR Doc. 88–22933 Filed 10–4–88; 8:45 am]

BILLING CODE 4910–62–M

[Docket 45850]

Office of Hearings, Assignment of Proceeding; Wrangell Air; Reporting Violations Enforcement Proceeding

Served: September 29, 1988.

This proceeding has been assigned to Chief Administrative Law Judge William A. Kane, Jr. All future pleadings and other communications regarding the proceedings shall be served on him at the Office of Hearings, M–50, Room 9228, Department of Transportation, 400 Seventh Street SW., Washington DC 20590. Telephone: (202) 366–2142.

William A. Kane, Jr.,

Chief Administrative Law Judge.

[FR Doc. 88–22934 Filed 10–4–88; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: September 28, 1988.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Alcohol, Tobacco and Firearms

OMB Number: 1512–0030.

Form Number: ATF Form 4483–A (5300.11).

Type of Review: Extension.

Title: Annual Firearms Manufacturing and Exportation Report.

Description: ATF collects this data for the purposes of law enforcement, witness qualifications, congressional investigations in aid of legislation, disclosure to the public in accordance with a court order, furnishing information to other Federal agencies, compliance inspections of manufacturers, and insuring that the requirements of the National Firearms Act (26 U.S.C. 5801–5872) are met.

Respondents: Business and other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 1,016.

Estimated Burden Hours Per Response: 45 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 762 hours.

Clearance Officer: Robert Masarsky, (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 88–22888 Filed 10–4–88; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: September 28, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0112.

Form Number: None.

Type of Review: Extension.

Title: Customs Regulations Concerning Documentary Evidence of Country of Origin Under the Carribean Basin Initiative and the Generalized System of Preferences (19 CFR Part 10)

Description: The information collection is needed for Customs to be able to determine compliance with country of origin criteria for merchandise entitled to duty-free entry under the Carribean Basin Initiative and

the Generalized System of Preferences. Information will be used to grant or deny duty-free treatment. Respondents will be importers and exporters.

Respondents: Businesses or other for-profit, Small Businesses or organizations.

Estimated Number of Respondents/Recordkeepers: 18,984.

Estimated Burden Hours Per Respondent/Recordkeeper: 6 minutes.

Frequency of Response: On ocassion.

Estimated Total Reporting Burden: 3,479 hours.

Clearance Officer: B.J. Simpson, (202) 566–7529, U.S. Customs Service, Room 6426, 1301 Constitution Avenue, NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 88–22889 Filed 10–4–88; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: September 28, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0720.

Form Number: IRS Forms 8038, 8038–G, 8038–GC and 8038–T.

Type of Review: Revision.

Title: 1. Information Return for Tax-Exempt Private Activity Bond Issues (8038); 2. Information Return for Tax-Exempt Governmental Bond Issues (8038–G); 3. Consolidated Information Return for Small Tax-Exempt Governmental Bond Issues (8038–GC); and 4. Arbitrage Rebate (8038–T).

Description: Forms 8038, 8038–GC and 8038–G collect the information that IRS is required to collect by Code section 149(e). IRS uses the information to complete the required study of tax-exempt bonds (requested by Congress). IRS also uses the information to assure that tax-exempt bonds are issued consistent with the rules of IRC sections 141–149. Form 8038–T is used to implement the arbitrage rebate requirement.

Respondents: State and local governments, Businesses or other for-profit, and Non-profit institutions.

Estimated Number of Respondents: 79,500.

Estimated Burden Hours Per Response:

Recordkeeping—20 hours and 34 minutes
Learning about the law or the form—4 hours and 32 minutes
Preparing the form—6 hours
Copying, assembling, and sending the form to IRS—16 minutes

Frequency of Response:

Forms 8038 and 8038–G—Quarterly
Forms 8038–GC—Annually
Forms 8038–T—At least once every 5 years

Estimated Total Reporting Burden: 1,417,060 hours.

Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 88–22890 Filed 10–4–88; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: September 28, 1988.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OBM for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clerarance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0099.

Form Number: IRS Form 1065 and Schedule D and K–1 (Form 1065).

Type of Review: Resubmission.

Title: U.S. Partnership Return of Income, Capital Gains and Losses, Partner's Share of Income, Credits, Deductions, etc.

Description: IRC section 6031 requires partnerships to file returns that show gross income items, allowable deductions, partners' names, addresses, and distribution shares, and other information. This information is used to verify correct reporting of partnership items and for general statistics.

Respondents: Individuals or households, Farms, Businesses of other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 1,900,026.

Estimated Burden Hours Per Response:

	1065	Schedule D	Schedule K–1
Recordkeeping	61 hrs/42 mins	5 hrs/1 mins	26 hrs/47 mins
Learning about the law or the form	29 hrs/12 mins	2 hrs	10 hrs/41 mins
Preparing the form	53 hrs/50 mins	4 hrs/58 mins	25 hrs/33 mins
Copying, assembling, and sending the form to IRS	6 hrs/26 mins	48 mins	4 hrs/1 min

Frequency of Response: Annually.
Estimated Total Reporting Burden: 1,002,434,852 hours.
Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 88–22891 Filed 10–4–88; 8:45 am]

BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

Agency Information Collection Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The responsible department or staff office; (2) the title of the collection(s); (3) the agency form number(s), if applicable; (4) a description of the need and its use; (5) how often the form(s) must be filled out, if applicable; (6) who will be required or asked to report; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to fill out the form; and (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patti Viers, VA Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW; Washington, DC 20420, (202) 233–3172.

Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW; Washington, DC 20503, (202) 395–7316.

DATE: Comments on the information collection should be directed to the OMB Desk Officer on or before November 4, 1988.

Dated: September 27, 1988.

By direction of the Administration.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Extension

1. Office of Budget and Finance.
2. Financial Status Report.
3. VA Form 4–5655.
4. This form provides information to determine the financial status of a person requesting a repayment plan, waiver of a debt, or making a compromise offer.
5. On occasion.
6. Individuals or households.
7. 250,000 responses.
8. 250,000 hours.
9. Not applicable.

[FR Doc. 88–22884 Filed 10–4–88; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 193
Wednesday, October 5, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Tuesday, October 11, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: September 30, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-22968 Filed 9-30-88; 4:42 pm]

BILLING CODE 6210-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m. Wednesday, October 12, 1988.

PLACE: The Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Recommendation to FAA re Special Inspection of Delta Air Lines, Inc.

2. Board Policy on Handling of Cockpit Voice Recorder and Flight Data Recorder (CVR & FDR).

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382-6525.

Bea Hardesty,

Federal Register Liaison Officer.

October 3, 1988.

[FR Doc. 88-23091 Filed 10-3-88; 4:14 pm]

BILLING CODE 7533-01-M

federal register

Wednesday
October 5, 1988

Part II

Department of Transportation

Research and Special Programs Administration

Yellow Freight System, Inc. Application for Inconsistency Ruling Concerning City of San Jose, California Restrictions on Storage of Hazardous Materials; Public Notice and Invitation to Comment

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. IRA-45]

Yellow Freight System, Inc. Application for Inconsistency Ruling Concerning City of San Jose, California Restrictions on Storage of Hazardous Materials

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Public notice and invitation to comment.

SUMMARY: Yellow Freight System, Inc. of Overland Park, Kansas, has applied for an administrative ruling determining whether an Ordinance and related restrictions imposed by the City of San Jose, California, on the storage of hazardous materials are inconsistent with the Hazardous Materials Transportation Act (HMTA) and the Hazardous Materials Regulations (HMR) issued thereunder and, therefore, preempted under section 112(a) of the HMTA.

DATES: Comments received on or before November 25, 1988, and rebuttal comments received on or before January 15, 1989, will be considered before an administrative ruling is issued by the Director of the Office of Hazardous Materials Transportation. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

ADDRESSES: The application and any comment received may be reviewed in the Dockets Unit, Research and Special Programs Administration, Room 8421, Nassif Building, 400 7th Street SW., Washington, DC 20590. Comments and rebuttal comments on the application may be submitted to the Dockets Unit at the above address, and should include the Docket Number, IRA-45. Three copies are requested. A copy of each comment and rebuttal comment must also be sent to Lawrence W. Bierlein, Esq., Attorney for Yellow Freight System, Inc., 1400 L Street NW., Washington, DC 20005-3502, and to Joan Gallo, Esq., City Attorney, City of San Jose, 151 W. Mission St., San Jose, CA 95110, and that fact certified to at the time comment is submitted to the Dockets Unit. (The following format is suggested:

I hereby certify that copies of this comment have been sent to Mr. Bierlein and Ms. Gallo at the addresses specified in the **Federal Register**.)

FOR FURTHER INFORMATION CONTACT: Edward H. Bonekemper, III, Senior Attorney, Office of the Chief Counsel, Research and Special Programs Administration, 400 7th Street SW., Washington, DC 20590, telephone 202-366-4362.

SUPPLEMENTARY INFORMATION

1. Background

The HMTA (49 App. U.S.C. 1801 et seq.) at section 112(a) (49 App. U.S.C. 1811(a)) expressly preempts "any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement" of the HMTA or the HMR issued thereunder.

Procedural regulations implementing section 112(a) of the HMTA and providing for the issuance of inconsistency rulings are codified at 49 CFR 107.201 through 107.211. An inconsistency ruling is an advisory administrative opinion as to the relationship between a state or political subdivision requirement and the requirements of the HMTA and the HMR. Section 107.209(c) sets forth the following factors which are considered in determining whether a state or local requirement is inconsistent:

(1) Whether compliance with both the state or local requirement and the HMTA or HMR is possible (the "dual compliance" test); and

(2) The extent to which the state or local requirement is an obstacle to the accomplishment and execution of the HMTA and the HMR (the "obstacle" test).

Inconsistency rulings do not address issues of preemption under the Commerce Clause of the Constitution or under statutes other than the HMTA.

In issuing its advisory inconsistency rulings concerning preemption under the HMTA, OHMT is guided by the principles enunciated in Executive Order 12612 entitled "Federalism" (52 FR 41685, Oct. 30, 1987). Section 4(a) of that Executive Order authorizes preemption of state laws only when the statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of state authority directly conflicts with the exercise of Federal authority. The HMTA, of course, contains an express preemption provision, which OHMT has implemented through regulations and interpreted in a long series of inconsistency rulings beginning in 1978.

2. The Application for Inconsistency Ruling

On September 12, 1988, Lawrence W. Bierlein, Attorney for Yellow Freight System, Inc. (Yellow Freight) of Overland Park, Kansas, filed an application under 49 CFR 107.203 for an inconsistency ruling concerning restrictions imposed by the City of San Jose, California (the City), on the storage of hazardous materials.

Yellow Freight alleges that is has expanded its trucking terminal in a commercial/industrial-zoned area of the City, it is ready to use the expanded terminal for handling all types of packaged freight (including hazardous materials), but the City is denying use of the facility for transportation purposes.

Yellow Freight has submitted three City notices relating to the City's permitting system for hazardous materials storage facilities. A permit and a full Hazardous Materials Management Plan allegedly are required for businesses storing hazardous materials consisting of 500 pounds of solids, 55 gallons of liquids or 200 cubic feet of compressed gases.

One City notice summarizes the City's Hazardous Materials Storage Ordinance, San Jose Municipal Code, Chapter 17.68, which became effective July 1, 1983. It applies to explosives, flammable and combustible liquids, flammable solids, oxidizers, flammable and nonflammable gases, poisons, corrosives and other regulated materials.

That notice summarizes the required contents of the Hazardous Materials Management Plan (required to obtain a Hazardous Materials Storage Permit) as follows:

(1) General businsess information;

(2) General area map with specified details;

(3) Facility map with details concerning room uses, emergency equipment, and hazardous materials locations, quantities and tank capacities;

(4) Hazardous material inventory statement (names, hazard class and total quantity);

(5) Storage and container information;

(6) Separation of certain incompatible chemicals;

(7) Monitoring plan (leak detection procedures, including monthly monitoring of underground storage tanks); and

(8) Inspection and spill longs.

Yellow Freight's final enclosure is the City's Ordinance itself, Chapter 17.68 of the San Jose Municipal Code. That Chapter, entitled Hazardous Materials Storage Permit, contains 13 parts: General Provisions, Materials Regulated, Containment Standards, Hazardous Materials Management Plan, Hazardous Materials Inventory,

Responsibility, Inspections and Records, Application for Permit, Denial, Remedial Action, Hearing Procedure, Enforcement, and Miscellaneous.

Key definitions in § 17.68.040 of the Ordinance include:

C. "Hazard class" means explosives A, explosives B, explosives C, blasting agents, flammable liquids, combustible liquids, flammable solids, oxidizers, organic peroxides, corrosive materials, flammable gases, nonflammable gases, poisons A, poisons B, irritating materials, etiologic agents, radioactive materials, other regulated materials (ORM) A, B, C, D and E. For purposes of this chapter, the U.S. Department of Transportation (DOT) definitions in 49 CFR Part 173 as amended shall be utilized; however, whenever the definitions in 49 CFR 173 refer to transportation or hazards associated with transportation, they shall be deemed to refer to storage or other regulated activity under this chapter.

D. "Hazardous material" means any material which is subject to regulation pursuant to Part 2 of this chapter. A mixture shall be deemed to be a hazardous material if it either is a waste and contains any material regulated pursuant to Part 2 of this chapter, or is a nonwaste and contains one percent by volume or more of any material regulated pursuant to Part 2 of this chapter.

The referenced Part 2, in § 17.68.100, describes the materials regulated under the Ordinance, as follows:

A. Any material listed as a hazardous and/or extremely hazardous material or hazardous and/or extremely hazardous waste in Sections 66680 and 66685 of Title 22 of the California Administrative Code, as amended, whether such material is stored or handled in waste or nonwaste form; or

B. Any material which is listed on the list of Environmental Protection Agency (EPA) pollutants, 40 Code of Federal Regulations, § 401.15, as amended; or

C. Any material which is classified by the National Fire Protection Association (NFPA) as either a flammable liquid, a class II combustible liquid or a class IIIA combustible liquid; or

D. Any material which is listed by the director of the department of industrial relations in title 8, California Administrative Code, section 339, as amended, excluding all footnotes thereto and subject to the exclusions specified in this subsection. Such exclusions shall apply only to materials which are not otherwise regulated pursuant to this § 17.68.100. These exclusions shall be as follows:

* * * * *

E. Any material which has been determined to be hazardous based upon any appraisal or assessment by or on behalf of the party storing this material in compliance with the requirements of the EPA or the California Department of Health Services, or which should have been, but was not, determined to be hazardous due to the deliberate failure of the party storing the material to comply with the requirements of the EPA and/or the department of health services; or

F. Any material which has been determined by the party storing it, through testing or other objective means, to be likely to create a significant potential or actual hazard to public health, safety and welfare. This subsection shall not establish a requirement to test for the purpose of this chapter.

With respect to movement of hazardous materials, § 17.68.210 provides:

B. When hazardous materials are moved into our out of a storage facility, they shall remain in the travel path only for the time reasonably necessary to transport the hazardous material and such movement shall be in a manner which will not result in an unauthorized discharge.

Yellow Freight explains that the HMTA (49 App. USC 1802(b)) defines transportation under the HMTA as "any movement of property by any mode, *any loading, unloading, or storage incidental thereto*" (emphasis added). It cites 49 CFR 171.15 and 171.16 as including temporary storage-related hazardous materials incidents which must be reported to OHMT.

The HMR, says Yellow Freight, defines hazardous materials in § 171.8, as well as in §§ 175.50, 173.88, 173.100, 173.115, 173.150, 173.151a, 173.240, 173.300, 173.325, 173.386, 173.403 and 173.500.

Yellow Freight also cites the following HMR provisions as possibly inconsistent with the City's requirements:

(1) Part 177 sections referencing storage and handling, including Subpart B provisions on loading and unloading of motor vehicles;

(2) Section 177.834, which addresses the proximity of people or public facilities to the handling of certain poisons;

(3) Part 107 exemptions (e.g., DOT–E 8308) which impose storage and handling requirements;

(4) Section 177.848(f), which requires that hazardous materials not be loaded, transported or stored together except as provided in a detailed chart in that section;

(5) Part 177's provisions on disposition and handling of damaged freight, which include handling of materials in motor carriers' terminals;

(6) Section 177.853(b), which provides that undeliverable shipments, after 48 hours, must be returned to the shipper or stored in a suitable storage place; and

(7) Section 177.854(e), which requires proper storage of damaged containers.

Yellow Freight cites numerous prior inconsistency rulings and a court case for the proposition that the City's hazardous materials definitions and paperwork requirements invade an area of exclusive Federal regulation. It also alleges conflicts between the City's requirements and § 177.800(a) (training) and 177.853 (expedited handling and delivery).

Finally, Yellow Freight contends that the City's requirements are inconsistent because they involve unfettered discretion with respect to permitting, mandatory carrier development of emergency response plans, and written incident reporting—all of which it asserts have been found inconsistent in earlier inconsistency rulings and court decisions.

Yellow Freight concludes that the San Jose ordinance as it is applied to motor carrier terminal operations should be found inconsistent with the HMTA and the HMR and, therefore, preempted. It states that fundamental portions of the San Jose requirements fail both the dual compliance and obstacle tests of § 107.209(c) of the HMR and that, therefore, the City's permit program as applied in transportation must be found invalid in its entirety.

3. Public Comment

Comments should be restricted to the issue of whether the above-described requirements of the City of San Jose are inconsistent with the HMTA or the HMR. They should specifically address the "dual compliance" and "obstacle" tests described above under "Background."

Commenters should address the related issues of (1) whether the San Jose requirements are land use requirements which apply to transportation and non-transportation facilities alike and thus should not be preempted; (2) whether, on the other hand, they apply sufficiently to transportation to be considered under, and possibly to fail, either the "dual compliance" or "obstacle" tests under the HMTA and the HMR; and (3) whether only certain specific portions of the City's requirements sufficiently relate to transportation to be considered under, and possibly to fail, the "dual compliance" and "obstacle" tests.

Persons intending to comment on the

application should examine the complete application in the RSPA Dockets Unit, including the text of the requirements, and the procedures governing the Department's consideration of applications for inconsistency rulings (49 CFR 107.201–107.211).

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

Issued in Washington, DC, on September 28, 1988.

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federal register

Wednesday
October 5, 1988

Part III

Pension Benefit Guaranty Corporation

29 CFR Part 2610
Payment of Premiums; Proposed Rule

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2610

Payment of Premiums

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: This is a proposed revision to 29 CFR Part 2610, Payment of Premiums, which the Pension Benefit Guaranty Corporation published as an interim rule on June 30, 1988. The PBGC issued the interim rule expeditiously in order to provide necessary guidance for 1988 premium payments. Because of this, the PBGC did not solicit public comment on the regulation and did not address some relevant, but secondary, issues in the regulation. This notice of proposed rulemaking addresses these issues and affords the public the opportunity to comment on the entire premium regulation.

DATES: Comments must be received on or before December 5, 1988.

ADDRESSES: Comments may be mailed to the Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006. Comments may be hand-delivered to Suite 7200 at the above address between 9:00 a.m. and 5:00 p.m. Written comments will be available for inspection at the PBGC's Communications and Public Affairs Department, Suite 7100, at the above address between 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Senior Counsel, Office of the General Counsel (Code 22500), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006; telephone 202–778–8823 (202–778–8059 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203 (the "Budget Act"), includes the Pension Protection Act, which amends section 4006 of the Employee Retirement Income Security Act of 1974 to establish a two-part premium structure for single-employer plans, *i.e.*, a flat rate per capita assessment and a variable rate assessment based on a plan's unfunded vested benefits, effective for plan years beginning on or after January 1, 1988. In order to reflect and to implement these changes, the Pension Benefit Guaranty Corporation (the "PBGC") on June 30, 1988, issued an interim rule revising its regulation on Payment of Premiums at 29 CFR Part 2610 (53 FR 24906). Because of the urgent need to provide plans with the rules for computing and paying premiums for 1988 plan years, the PBGC determined that it would be impracticable and contrary to the public interest to provide for notice of and public comment on that regulation prior to issuance.

The PBGC is now issuing a notice of proposed rulemaking that largely restates the interim regulation, in order to solicit public comment. This notice of proposed rulemaking also includes a number of amendments to the interim rule, many of which were developed in response to questions and suggestions from members of the public in connection with their 1988 premium filings. Some of these amendments constitute substantive changes and would apply only to 1989 and later premium payment years. These substantive changes are each identified below. All other proposed changes in the regulation are either clarifying or editorial.

The statutory provisions governing the variable rate premium are discussed in some detail in the preamble to the interim regulation and are only briefly summarized here. Under section 9331 of the Budget Act (amending ERISA section 4006), the single-employer plan premium for plan years beginning on or after January 1, 1988, is composed of a flat rate per capita assessment (as under prior law) and a new variable rate assessment that is based on the value of a plan's unfunded vested benefits and is also determined on a per participant basis (section 4006 (a)(3)(A) and (a)(3)(E)). The flat rate assessment is $16 per participant.

ERISA section 4006(a)(3)(E) provides the basic formula for computing the variable rate assessment for each participant: $6 for each $1,000 (or fraction thereof) of a plan's "unfunded vested benefits" (determined as of the last day of the preceding plan year) with that product divided by the number of participants in the plan as of the last day of the preceding plan year. The variable rate assessment is subject to a statutory ceiling (ERISA section 4006(a)(3)(E)(iv)(I)) of $34 per participant, resulting in a maximum per participant premium of $50. This $34 statutory ceiling is subject to reduction, as discussed in more detail below.

The formula for computing the variable rate assessment for each participant is based, in large part, on the determination of the plan's "unfunded vested benefits." This term is defined in the statute (ERISA section 4006(a)(3)(E)(iii)) as the amount that would be the plan's "unfunded current liability" (within the meaning of ERISA section 302(d)(8(A)) as of the close of the preceding plan year, subject to two qualifications: 1) only vested benefits are taken into account in the calculation (ERISA section 4006(a)(3)(E)(iii)(I)); and 2) the interest rate used in valuing vested benefits must equal 80% of the annual yield on 30-year Treasury securities for the month preceding the month in which the plan year begins (ERISA section 4006(a)(3)(E)(iii)(II)).

The PBGC's interim rule provides two methods for determining the amount of a plan's unfunded vested benefits. Under the "general rule" (§ 2610.23(a)), an enrolled actuary must determine the amount of the plan's unfunded vested benefits as of the last day of the plan year preceding the premium payment year based on the plan's provisions and population as of that date, and must certify that the determination was made in a manner consistent with generally accepted actuarial principles and practices. Under the "alternative calculation method" (§ 2610.23(c)), which is subject to certain restrictions for large plans (those with 500 or more participants), the plan administrator must calculate the amount of the plan's unfunded vested benefits based on certain data from the plan's Form 5500, Schedule B, for the plan year preceding the premium payment year, using formulae specified in the regulation. Finally, the interim rule provides a number of exemptions and special rules (§ 2610.24) regarding the variable rate portion of the premium, which apply to certain plans with fewer than 100 participants, to plans having no participants with vested benefits, and to fully insured plans.

The principal changes in this proposed rule deal with the determination of a plan's unfunded vested benefits and with the exemptions and special rules related thereto, and we address those issues first.

General Rule for Determining Unfunded Vested Benefits

Under the interim regulation, the general rule (§ 2610.23(a)) required that the determination of unfunded vested benefits as of the last day of the plan year preceding the premium payment year be based on a plan valuation that was performed as of the first day of the premium payment year or that was the most recent valuation performed for a plan year within the three plan years preceding the premium payment year. (The PBGC also indicated in the preamble that it was considering whether to require a more up-to-date valuation as the basis for determining unfunded vested benefits in large plans.)

This requirement led to some confusion, with actuaries asserting that it was not always clear when a valuation was "performed," and thus not clear which valuation the determination was to be based on.

In order to eliminate this confusion, the PBGC proposes to amend § 2610.23(a), effective for plan years beginning on or after January 1, 1989, to delete the explicit requirement that the determination of unfunded vested benefits be based on one of several specified plan valuations. Instead, the proposed rule would require only that the enrolled actuary make the determination using the same actuarial assumptions and methods used by the plan for purposes of determining the minimum funding contribution under section 302 of ERISA and section 412 of the Code for the plan year preceding the premium payment year, except to the extent that other actuarial assumptions are specifically prescribed by § 2610.23 or are necessary to reflect the occurrence of a significant event. Thus, it is left to the enrolled actuary to decide, in a manner consistent with generally accepted actuarial principles and practices, whether to perform a separate additional valuation for premium purposes or to rely on an existing valuation.

Under this rule, the enrolled actuary may use a valuation performed as of the first day of the premium payment year as the basis for determining the values of vested benefits and plan assets as of the last day of the preceding plan year, provided that the actuarial assumptions and methods used in that valuation meet the requirements stated above. In addition, if, in the judgment of the enrolled actuary, there is a material difference between the values determined in that valuation and the values that would have been determined as of the last day of the preceding plan year, the enrolled actuary must adjust the results to reflect appropriately the values as of the last day of the preceding plan year.

As noted above, the enrolled actuary may be required to adjust actuarial assumptions in order to reflect the occurrence of a significant event. The PBGC notes that it is proposing certain changes to the list of significant events (§ 2610.23(d)). These changes are discussed below under "Significant Events."

The PBGC reminds plan professionals that when they determine, subsequent to filing the Form 1 for a plan year, that the premium calculation was incorrect for any reason, they are required to submit an amended premium filing (with an additional payment, if applicable). Thus, in the context of the general rule, if a plan retroactively changes its actuarial assumptions or methods used to determine its minimum funding obligations for the plan year preceding the premium payment year, the plan would be required to recompute its premium and to file an amended Form 1. Similarly, an amended filing would be required upon the adoption of a plan amendment that changes plan provisions retroactively, or upon the discovery that erroneous data was used in the determination of unfunded vested benefits or the number of plan participants.

The PBGC has received a number of inquiries on the general rule, most dealing with the actuarial assumptions and methods to be used under it and whether the PBGC will permit or require various adjustments to the valuation of unfunded vested benefits under the rule.

A number of actuaries have asked whether they may use the PBGC's asset valuation methods (market value) or mortality assumptions in determining unfunded vested benefits. They suggest that these methods and assumptions would be reasonable in light of the fact that they must value vested benefits using the statutory rate, which approximates the PBGC's interest assumption for terminating insufficient plans.

Without deciding whether it would be appropriate or reasonable for plans in general to use the PBGC's valuation methods and assumptions for premium payment purposes only, the PBGC has concluded that the statute does not permit this. It is the PBGC's view that section 4006(a)(3)(E)(iii), in defining "unfunded vested benefits" as "the amount which would be the unfunded current liability (within the meaning of section 302(d)(8)(A)) if only vested benefits were taken into account," mandates the use of the actuarial assumptions and methods used under section 302(d)(8)(A), subject only to the statutory exception requiring the use of a different interest rate to value vested benefits. Therefore, the general rule for determining unfunded vested benefits (discussed above) requires use of the same actuarial assumptions and methods as were used for funding purposes; actuaries may not change plan assumptions or methods solely for premium computation purposes.

Similarly, the PBGC does not believe it can prescribe special rules, as it has been asked to do, for valuing a plan's dedicated bond portfolio. Because a dedicated bond portfolio is intended to provide total funding of a portion of a plan's liabilities, plans typically have valued the benefits to be satisfied by those assets at the interest rate being earned on those assets. Plans may not do this for premium purposes, since they must value all benefits at the statutory rate in determining their unfunded vested benefits. Moreover, they are restricted in how they value the dedicated bonds, pursuant to ERISA section 302(c)(2) and Code section 412(c)(2). The effect of these rules is that the value of the dedicated bonds might be less than the value of the corresponding benefits.

The PBGC points out that the Internal Revenue Service may, pursuant to Code section 412(c)(2)(B), issue regulations requiring plans to use the plan rate used to value liabilities, rather than the portfolio rate, to value dedicated bond portfolios. Any such rule would apply for premium calculation purposes. However, because of the statutory interest rate for valuing benefits for premium purposes, it is likely that there would still be a discrepancy between the value of the dedicated bonds and the benefits they fund. This is a discrepancy that exists for all plans, regardless of the nature of a plan's assets.

Another set of inquiries from practitioners asks whether the PBGC will prescribe any special rules for valuing subsidized early retirement benefits and subsidized lump sum benefits. As with the preceding issue, the PBGC does not believe it has authority to prescribe any such across-the-board modifications to the funding valuation rules. However, there is an important difference between the questions discussed above and the issue of subsidized benefits: the value of early retirement or lump sum subsidies should be reflected through the plan's assumptions, *e.g.*, an early retirement age assumption, and, therefore, no special valuation rules are needed. The PBGC reminds actuaries to review plan experience to determine whether plan experience and expectations with respect to payment of these benefits reflect a "significant event" requiring appropriate adjustments in the actuarial assumptions.

Finally, the PBGC has received inquiries as to whether to include contingent benefits, such as "30-and-out" and disability benefits, in determining a plan's vested benefits. Unless a participant has met the requirements for and become entitled to receive a contingent-type benefit, the benefit is not a vested benefit for premium purposes. (The PBGC emphasizes that this statement relates only to whether certain benefits are vested for premium payment purposes. The PBGC takes no position as to

whether such benefits are "vested benefits" under ERISA Title II and the Code or whether they would be included within current liability.) Thus, 30-and-out benefits and disability benefits for which a participant is not immediately eligible as of the last day of the plan year preceding the premium payment year are not included in vested benefits as of that date.

Section 2610.23(b)(1) requires the enrolled actuary under the general rule to adjust the value of vested benefits to reflect the statutory interest rate set forth in Appendix B. A number of actuaries have asked whether such an adjustment is required when the plan rate is lower than the statutory rate. The PBGC purposes to amend § 2610.23(b)(1), effective for plan years beginning on or after January 1, 1989, to eliminate the requirement for this adjustment if an enrolled actuary certifies that the plan's interest rate (or rates) used for valuing vested benefits was (or were all) lower than the statutory rate. In this manner, plans will be able to avoid the expense of revaluing vested benefits at an interest rate higher than the plan rate.

A number of enrolled actuaries have asked whether they may use the interest rate adjustment formula prescribed under the alternative calculation method to make the required interest rate adjustment under the general rule. That simplified formula incorporates certain assumptions that may not be appropriate for a particular plan population and is not intended to be a "safe harbor" for the interest rate adjustment under the general rule. It is the enrolled actuary's responsibility under the general rule to make the interest rate adjustment in accordance with generally accepted actuarial principles and practices.

Section 2610.23(b)(2) sets forth rules governing the treatment of contributions in determining the actuarial value of plan assets under the general rule. The substance of this provision is unchanged from the interim regulation. However, the PBGC is proposing a clarification that provides for the discounting at the plan's interest rate, to the last day of the preceding year, of any contributions made during the premium payment year. This adjustment is consistent with generally accepted actuarial principles and practices. The PBGC also points out that the contribution adjustment relates both to employer and employee contributions.

Alternative Calculation Method

The alternative calculation method (§ 2610.23(c)) uses certain data from the plan's Form 5500, Schedule B, for the plan year preceding the premium payment year as the starting point for calculating unfunded vested benefits. The filing deadline for the Schedule B for the preceding plan year is generally the same as (although it may be later than) the filing deadline for the variable rate portion of the premium for the current plan year. Thus, in most cases, a plan maintained on a calendar year basis will file its Form 1 for 1989 premium purposes and its 1988 Schedule B on or shortly before September 15, 1989.

The PBGC has received a number of inquiries as to whether a plan may use the alternative calculation method if it has not yet filed the Schedule B at the time it calculates or pays the variable rate portion of the premium. A plan may do so, using the data it expects to include on the Schedule B that is later filed. Should the Schedule B that is later filed contain different data, an amended premium filing would be required. (Similarly, an amended premium filing is required whenever it is determined that the Schedule B data are inaccurate or that the premium calculation was incorrect for any other reason; see discussion of amended premium filings above under "General Rule.")

On a related point, a plan may use the alternative method as long as it files a Schedule B with all the requisite data for the plan year preceding the premium payment year. This is true notwithstanding the fact that the underlying plan valuation on which the Schedule B is based was for an earlier plan year. However, the data required under the alternative calculation method must be reported on the Schedule B as of the first day of the plan year preceding the premium payment year, in accordance with the Schedule B instructions.

Many plans with fewer than 100 participants are unable to use the alternative calculation method for the 1988 premium payment year, because these plans, consistent with the instructions for the 1987 Schedule B, do not include in the Schedule B the data that is needed under the alternative calculation method. These plans will be able to use the alternative calculation method beginning in 1989, because the instructions for the 1988 Schedule B are being revised to require all plans, regardless of size, to report the necessary data. (In light of this, the PBGC is proposing to modify the exemptions/special rules in § 2610.24 applicable to small plans; see discussion below.)

The Schedule B data on which the alternative calculation method is based are determined as of the first day of the plan year preceding the premium payment year. In the interest of simplicity, the regulatory formulae under the alternative calculation method do not take into account either benefit payouts during the plan year preceding the premium payment year or the decrease in benefit liabilities attributable to such payouts. The PBGC believes that these amounts will, overall, be approximately equal and will cancel each other out.

However, the alternative calculation method does permit an adjustment to include contributions for the plan year preceding the premium payment year, and it has been suggested that it is inappropriate to do so without also requiring an adjustment to reflect the increase in vested benefits attributable to benefit accruals during that plan year. The PBGC agrees. This adjustment was left out of the interim regulation because, for many plans, it would be a difficult calculation and would make the alternative calculation method too complex.

The PBGC is now proposing a simplified measure as a surrogate for the calculation of accruals during the plan year preceding the premium payment year. Under proposed § 2610.(c)(1), plans using the alternative calculation method would be required to increase the Line 6d(ii) value of vested benefits (for active and deferred vested participants) by 7%. The PBGC believes that this 7% adjustment will, for plans of average maturities, approximate the increase in vested benefits attributable to accruals during the plan year preceding the premium payment year, valued as of the first day of the plan year preceding the premium payment year. This adjustment is made before adjusting the value of the vested benefits to reflect the statutory interest rate.

Concededly, this adjustment is not precisely accurate for every plan. The PBGC considered using a surrogate, such as a specified percentage of normal cost, that would be more reflective of each plan's population and benefit structure. However, the PBGC has concluded that this approach would involve substantial complications (particularly in view of the effect that different funding methods would have on the calculation of a surrogate) and thus would defeat the primary goal of keeping the alternative calculation method relatively simple. If a particular plan believes that the application of this simplified adjustment would overstate its premium liability, the plan is free to use the general rule.

The alternative calculation method includes a formula (§ 2610.23(c)(1) of the

interim rule, redesignated as paragraph (c)(2) in the proposed rule) for adjusting the value of vested benefits from the Schedule B to reflect the statutory interest rate. This formula assumes that a plan will use only two interest rates in valuing vested benefits on the Schedule B, *i.e.*, a single pre-retirement rate and a single post-retirement rate (both reported on line 12c of the Schedule B). However, a number of plans have historically used multiple rates for valuing pre-retirement vested benefits, frequently the PBGC's select and ultimate rates for plan valuations of mass-withdrawal-terminated multiemployer plans (29 CFR § 2676.15(c)).

The formula in § 2610.23(c)(2) cannot be used to adjust benefit values to reflect the statutory interest rate for plans that use, and report on line 12c, multiple interest rates. However, the PBGC anticipates that beginning with the 1988 Schedule B (which will be used for 1989 premium payments), plans will no longer be permitted to use multiple rate interest assumptions. IRS staff has advised the PBGC that, as part of the implementation of the new interest rule under ERISA section 302(b)(5) and Code section 412(b)(5), the Schedule B instructions will require that a single interest rate within the prescribed corridor be used for valuing benefits reported on line 6d of the Schedule B. Accordingly, there is no need to change the formula in § 2610.23(c)(2).

The PBGC has received a number of complaints concerning the mandatory interest adjustment from practitioners servicing plans that use a lower interest rate than the statutory rate. As under the general rule, the PBGC proposes to exempt such plans from the interest rate adjustment (§ 2610.23(c)), effective for plan years beginning on or after January 1, 1989.

Interim § 2610.23(c)(2) provides that the value of assets is to be adjusted in accordance with the rules governing the determination of the value of plan assets under the general rule. As noted above, under the general rule, contributions that are received during the premium payment year must be discounted with interest to the last day of the preceding plan year. Accordingly, the PBGC proposes a parallel clarification in § 2610.23(c)(2) (redesignated § 2610.23(c)(3) in the proposed rule). Under the alternative calculation method, of course, contributions received after the date of the Schedule B data (the first day of the plan year preceding the premium payment year) would be discounted back to that date at the statutory, rather than the plan, interest rate. This is so because the time adjustment formula under interim § 2610.23(c)(3) (redesignated § 2610.23(c)(4) in the proposed rule) uses the statutory rate rather than the plan rate. As under the general rule, the contribution adjustment relates both to employer and employee contributions.

Significant Events

The PBGC is proposing two changes to the list of "significant events" (§ 2610.23(d)) applicable to large plans (*i.e.*, those with 500 or more participants) that use the alternative calculation method and to all plans using the general rule. These changes would apply for premium payment years beginning on or after January 1, 1989. First, the PBGC proposes to delete "an increase in the average age of plan participants by more than two years" as a separate significant event. The PBGC has concluded that this event is not a reliable indicator of a material increase in the value of a plan's vested benefits. Second, the PBGC proposes to add to the list "any other event or trend that results in a material increase in the value of unfunded vested benefits" (proposed paragraph (d)(7)). This additional significant event is meant to encompass those events that, while not specifically listed, are material in the judgment of the enrolled actuary. The PBGC has purposely described this significant event in language very similar to that used in ERISA section 103(d)(10) and intends that practitioners interpret "materiality" for all purposes under this regulation as they would under section 103(d)(10). Finally, the PBGC notes that its deletion of the "increase in average age" event is not meant to suggest that this could not constitute a significant event under the newly added provison.

The PBGC has received inquiries regarding the treatment of cost-of-living adjustments ("COLA's") as significant events. Section 2610.23(d)(7) of the interim regulation (proposed to be redesignated § 2610.23(d)(6)), which treats certain COLA increases as significant events, applies to a COLA increase going into effect, not to the adoption of a plan amendment establishing a COLA. The latter, however, may constitute a significant event under § 2610.23(d)(1) (relating to certain increases in a plan's actuarial costs attributable to a plan amendment), if it has, either alone or in conjunction with other plan amendments, the stipulated effect on a plan's actuarial costs.

Finally, the PBGC notes that when an adjustment for the occurrence of a significant event is required, this adjustment should be made to the value of unfunded vested benefits. Further, the adjustment should reflect only the effect of the significant event and may not be used as a basis for changing the formulae in the alternative calculation method.

Variable Rate Exemptions and Special Rules

Section 2610.24 provides a number of exemptions and special rules regarding the computation and payment of the variable rate portion of the premium. The PBGC proposes to make a number of changes in that section, all of which will be effective beginning with the 1989 premium payment year.

Under the interim regulation, there are two special provisions available to plans that have fewer than 100 participants and that are unable to use the alternative calculation method because they do not report the necessary data on the preceding plan year's Schedule B. Under the first provision, § 2610.24(a)(1), the plan may submit an enrolled actuary's certification that the plan had no unfunded vested benefits as of the last day of the preceding plan year. A plan that does so is exempt from determining unfunded vested benfits and does not owe a variable rate amount. Under the second provision, § 2610.24(b), these plans could pay a variable rate premium of $5 per participant (in addition to the $16 flat rate portion), without calculating unfunded vested benefits.

When it promulgated the interim regulation, the PBGC expected to eliminate both of these rules once all plans were able to use the alternative calculation method. As noted above, beginning with the 1989 premium payment year, all plans, regardless of size, will be required to report on the Schedule B the data needed to use the alternative calculation method. The PBGC, therefore, proposes to eliminate the "$5 rule" for plan years beginning on or after January 1, 1989.

However, the PBGC has reconsidered the certification of no unfunded vested benefits option and proposes to retain it and to expand its applicability. Proposed § 2610.24(a)(1) would apply to plan years beginning on or after January 1, 1989, and provides that any plan with fewer than 500 participants may submit an enrolled actuary's certification of no unfunded vested benefits. The PBGC is proposing this option because, as was discussed in the preamble to the interim regulation, it is very concerned that it not impose undue administrative burdens and costs on plans, particularly small plans, incident to paying the

variable rate portion of the premium. Since only about 15% of all participants in covered single-employer plans are in plans with fewer than 500 participants, and because approximately 80% of covered single-employer plans do not have unfunded vested benefits, the PBGC is confident that implementation of this option will not have a substantial impact on its premium revenues. The PBGC will, of course, monitor the use of this actuarial certification option through appropriate audits.

Finally, the PBGC proposes to add a special rule for determining vested benefits for certain large plans in premium payment years beginning on or after January 1, 1989. Under this rule (§ 2610.24(b)), if an enrolled actuary of a plan that has 500 or more participants determines that the value of a plan assets equals or exceeds the value of all benefits accrued under the plan (valued at the statutory interest rate), the value of the plan's vested benefits need not be determined and the value of accrued benefits may be reported in lieu thereof in the Premium Payment Package. This will save fully funded plans the expense of determining vested benefits. (While this proposed change would not apply until the 1989 premium payment year, the PBGC will accept 1988 filings for fully funded plans of any size in which the vested benefits value is reported under the general rule as being "no greater than" the accrued benefits value (valued at the statutory interest rate).)

Cap on Variable Rate Amount

The $34 statutory ceiling on the per participant variable rate amount is reduced, for each of the five consecutive premium payment years commencing with the first premium payment year beginning on or after January 1, 1988, by the product of $3 multiplied by the number of plan years during the last five plan years commencing before January 1, 1988, (the "base period") with respect to which the contributing sponsor or contributing sponsors made contributions to the plan in an amount not less than the maximum amount allowable as a deduction under section 404 of the Internal Revenue Code (the "Code") (ERISA section 4006(a)(3)(E)(iv)(II) and interim § 2610.22(a)(2)). The PBGC has received a number of inquiries on how to determine whether a maximum deductible contribution was made during the base period and proposes to clarify and to modify the rules governing that determination.

Proposed § 2610.22(a)(3)(i) provides that this determination is based on the methods of computing the maximum deductible contribution under Code section 404, including actuarial assumptions and funding methods, that were used by the plan and the contributing sponsor or sponsors with respect to each of the plan years in the base period. For this purpose, it is irrelevant that a larger contribution would have been permitted if different computation methods had been used. It is the plan's and the sponsor's actual practice during the base period that is controlling. In the event of a PBGC audit, the plan administrator may be required to provide documentation to establish the computation methods used during the base period.

Proposed § 2610.22(a)(3)(ii) provides relief with respect to plans to which contributing sponsors made contributions that were rounded down slightly from the maximum deductible amount. The PBGC does not believe that a plan should lose the benefit of the cap reduction in such circumstances, particularly since the significance of paying the exact maximum amount was not apparent when the contribution was made. (Note that relief may also be available when the plan's actuary rounds off *de minimis* amounts to determine the maximum deductible amount. Whether the cap reduction would apply in these circumstances would be determined under paragraph (a)(3)(i), discussed above, based on a review of the plan's practice with respect to the computation methods used.) This proposed change would apply beginning with the 1989 premium payment year.

Proposed § 2610.22(a)(3)(iii) provides rules for determining whether the maximum deductible contribution was made by a contributing sponsor that was subject to the limitation in Code section 404(a)(7)(A), dealing with contributions to both defined benefit and defined contribution plans. The cap reduction provides relief for severely underfunded plans from the immediate impact of the variable rate premium, when the plan sponsor attempted to improve the plan's funding level by making the maximum deductible contribution to the plan for one or more of the past five plan years. The PBGC believes that where the maximum deductible contribution to the defined benefit plan was reduced as a result of the maintenance of, and contributions to, a defined contribution plan (or a defined benefit plan not covered by Title IV of ERISA), the contributions to the covered defined benefit plan should not be treated as being in the maximum deductible amount for purposes of the cap reduction.

Accordingly, the PBGC is proposing, with respect to premium payment years beginning on or after January 1, 1989, that if a contributing sponsor was subject to the section 404(a)(7(A) limitation during the base period, the determination of whether the contributing sponsor made the maximum deductible contribution shall be made by disregarding amounts contributed to a defined contribution plan or to a non-covered defined benefit plan. Further, if the contributing sponsor maintains more than one covered defined benefit plan, the determination is made by aggregating the total contributions to those plans and comparing the total to the section 404(a)(7)(A) limitation.

Proposed § 2610.22(a)(3)(vi) addresses application of the cap reduction in those cases in which the contributing sponsor's taxable year and the plan year do not coincide. Although the maximum deductible amount applies for a contributing sponsor's taxable year, it is generally determined on the basis of a plan year. When the taxable year and plan year do not coincide, Internal Revenue Service regulations (26 CFR 1.404(a)–14(c)(3)) permit the contributing sponsor to compute the maximum deductible amount for a taxable year by using a weighted average of the maximum deductible amounts for each of the plan years falling within the taxable year. Proposed § 2610.22(a)(3)(iv) clarifies that in these circumstances, one determines whether the maximum deductible contribution was made by aggregating all contributions for the plan year, irrespective of the taxable year in which they were applied, and comparing that total to the maximum deductible amount determined on the basis of the plan year. This is consistent with the statutory provisions governing the cap reduction, which measure the contribution history of the plan with respect to plan years rather than taxable years.

Proposed § 2610.22(a)(3)(iv) also clarifies how the determination is made where the Code section 404(a)(7)(A) limitation (discussed above) applies. That limitation, unlike the other limitations in Code section 404, is determined on a taxable year, rather than a plan year, basis. It is thus possible for a contributing sponsor to be subject to this limitation in only one of the two taxable years in which a plan year falls. Under such circumstances, the contribution with respect to the plan year would not be the maximum deductible amount unless it was the maximum deductible amount for that

plan year with respect to each taxable year.

Finally, the PBGC has been asked whether a plan maintained by a nonprofit entity may be entitled to the benefit of the cap reduction. The PBGC is considering whether the cap reduction should apply in such circumstances, and if so, how to determine whether a contribution in the base period equalled the maximum deductible amount.

Refunds for Certain Short Plan Years

The statutory and regulatory framework governing the PBGC premium provides for an annual premium based on the number of plan participants as of the appropriate "snapshot" date, generally the last day of the preceding plan year. There is no proration of the premium for short plan years, and there is no adjustment of the premium where the participant count increases or decreases after the "snapshot" date. In addition, each plan is a separate entity for premium purposes and must pay premiums accordingly.

These basic principles, when applied in the context of mergers, consolidations, and spinoffs, can result in two plans paying premiums for the same group of participants for an overlapping period of time. On the other hand, it is possible that no plan would pay premiums for a group of participants for a period of time. Thus, while some plans are disadvantaged by the application of these general principles, others benefit.

Several practitioners have asked the PBGC to promulgate rules eliminating the so-called "duplicate premiums" in connection with mergers, consolidations and spinoffs. The PBGC has studied this issue and has decided not to propose such rules at this time. In order to establish rules that are equitable and that do not contain loopholes or other unintended incentives, it appears that the PBGC would have to develop lengthy and complicated rules. In view of the many other major changes in the premium regulation with which practitioners must now familiarize themselves, the PBGC does not believe this is an appropriate time to add more complexity to the regulation. However, the PBGC will continue to consider whether to issue a notice of proposed rulemaking dealing with this subject after practitioners have had some time to adjust to the new variable rate rules.

The PBGC is proposing at this time certain exceptions to the general principles discussed above. These exceptions relate to premium obligations for short plan years resulting from events other than multiple plan transactions. Specifically, the proposed regulation would provide for a prorated refund of premiums in three situations: (1) Where a plan has an initial short plan year; (2) where a plan has a short plan year due to a plan amendment changing plan years; and (3) where a plan has a final short plan year due to plan termination. (The second exception has been in effect operationally for several years.) Under these proposed exceptions (§§ 2610.22(d) and 2601.33(d)), the PBGC would give refunds for the portion of a plan year in which a plan is not in effect (or, in the case of a change in plan years, the portion of the plan year that overlaps with the next plan year). These new rules would apply to both single-employer and multiemployer plans for plan years beginning on or after January 1, 1989.

In the case of a short final plan year of a single-employer plan arising from a standard termination (or a distress termination of a plan that is sufficient for guaranteed benefits), the proposed rule extends the length of the short plan year for purposes of computing the amount of the refund if the plan administrator does not submit the post-distribution certification in a timely manner. The PBGC has had significant compliance problems in getting plan administrators to file post-distribution certifications. It is hoped that tying the amount of the refund to the filing of the certification will ameliorate this situation. The PBGC is not proposing an analogous rule for multiemployer plans, because the PBGC has not experienced significant compliance problems in getting multiemployer plan trustees to notify the PBGC of the plan's final distribution of assets.

Recordkeeping Requirements and Audits

Section 2610.11(a) of the interim regulation requires plan administrators to retain records supporting the premium calculations for a period of six years after the premium due date. The PBGC proposes to delete the requirement that these records be retained "at the plan's principal place of business." Certain kinds of data may be more efficiently retained in the offices of plan consultants, actuaries, insurance companies, and other plan professionals that assist plan administrators in performing their functions. The PBGC emphasizes, however, that it is the responsibility of the plan administrator to ensure that all required records are retained.

The PBGC also proposes to clarify the recordkeeping requirement by including some examples of the kinds of records covered by the requirement and by specifying that all records subject to the recordkeeping requirement must be made available to the PBGC upon request for inspection and photocopying.

The PBGC has been asked whether it will apply the civil penalty under ERISA section 4071 to late or incomplete premium filings. This section permits the PBGC to impose a penalty of up to $1,000 per day against "any person who fails to provide any notice or other material information required" under subtitles A through D of Title IV or the PGBC's implementing regulations. The PBGC has no present plans to do so, because ERISA section 4007(b) provides specific penalties relating to premium payments.

The amount of the penalty under section 4007(b) is tied to the amount of the premium underpayment. This presumes that the PBGC is able to determine a plan's premium obligation. However, since the data necessary for this determination are in the possession, or under the control, of the plan administrator, the PBGC reminds plan administrators that it is their responsibility, in the event of a PBGC audit, to establish both the number of participants for whom premiums must be paid and the amount of the premium that must be paid. If the plan administrator is unable to do so, the PBGC may impose an additional premium, along with penalties and interest (§ 2610.11(b)).

Section 2610.11(b) of the interim regulation provides one example of this rule, relating specifically to the verification of the amount of a plan's unfunded vested benefits. The PBGC is now adding a second example to § 2610.11(b) to address a problem that has recently arisen in PBGC premium audits; *i.e.*, the lack of adequate plan records to verify the number of plan participants. If a plan administrator is unable to establish with plan records that the participant count on which the premium payment was based is correct, the PBGC may rely on data it obtains from other sources, such as the Department of Labor or the Internal Revenue Service, to presumptively establish the participant count for premium computation purposes. Thus, for example, if a plan administrator is unable to verify the number of its current employees who are participating in a plan, the PBGC may presume that all current employees (as reported to other sources) are plan participants. (The plan administrator may, of course, rebut this presumption with credible evidence.)

Miscellaneous Issues

There seems to be some confusion regarding how participants are to be counted for premium purposes in "floor offset" arrangements. Such plans generally provide for a minimum defined benefit that is subject to partial or complete offset based on the individual account balance of the participant. A number of practitioners have suggested that, when a person's benefit is payable from his or her individual account, that person has no accrued benefit under the defined benefit portion of the plan and is, therefore, not a "participant" for premium payment purposes.

The PBGC disagrees. In a floor offset arrangement, participants do accrue benefits under, and are entitled to receive benefits from, the defined benefit portion of the plan. This is true regardless of a participant's individual account balance at a particular time. Thus, an active participant is "earning or retaining credited service" (within the meaning of the § 2610.2 definition of participant) under the defined benefit portion of the plan, even if, as of the premium computation date, his or her entire benefit would be payable from the individual account portion. Similarly, in the case of an inactive participant or a deceased participant's beneficiary, the fact that the entire benefit may be provided (or is currently being provided) by the individual account portion of the plan does not defeat the persons's entitlement to receive (or to begin receiving) at least the amount of his or her accrued benefit under the defined benefit portion of the plan.

The PBGC has received some inquiries on behalf of new plans that grant past service credit, expressing concern that such a plan will be faced with an inordinately high variable rate premium because that past service credit is not yet funded. In general, it is true that such plans will have higher premiums, but it is also true that such plans pose a greater risk to the insurance program. However, just as the PBGC's exposure is increased gradually as a result of the five-year phase-in of the PBGC's guarantee, the past service liability is added gradually to a plan's current liability (the starting point for the determination of unfunded vested benefits for premium purposes) as a result of a similar phase-in rule. (The PBGC notes that, under certain circumstances, existing plans may also be entitled to this phase-in of pre-participation service with respect to new participants.)

In computing current liability, with some exceptions, service with an employer before an employee is a plan participant is disregarded during the first year of participation in computing current liability, and such service is phased in to the computation at the rate of 20 percent per year of participation. ERISA section 302(d)(7)(D). Thus, in a new plan's first plan year, for which the premium calculation date is the first day of the year, no past service is counted. In computing the premium for the second plan year, for which the premium calculation date is the last day of the first plan year, 20 percent of the past service is included in the current liability determination under section 302(d)(7), and so on until the pre-participation service is fully phased in for purposes of computing the premium for the plan's sixth plan year.

In this connection, the PBGC recognizes that plans that could benefit from the phase-in of pre-participation service may be unable to obtain this benefit if they use the alternative calculation method for the 1989 premium payment year. It is currently expected that the Form 5500, Schedule B, will not be revised to reflect current liability until the 1989 Schedule B. The 1988 Schedule B, which is used under the alternative calculation method to calculate the 1989 premium payment, thus would not reflect the pre-participation service phase-in.

The PBGC decided not to provide a special rule addressing this problem for the 1989 premium payment year, because doing so would add significant complexities to the alternative calculation method and the problem is only a temporary one. Plans that may benefit from the phase-in of pre-participation service may find it advantageous to use the general rule for the 1989 premium payment year.

The PBGC has been asked whether a plan that is subject to § 2610.10(a) is barred as a result thereof from using the alternative calculation method. That provision moves the premium calculation day to the first day of the premium payment year for certain plans that engage in mergers and spinoffs effective on that day. That rule does not, in and of itself, disqualify a plan from using the alternative calculation method. However, for plans with 500 or more participants, the occurrence of a merger or spinoff covered under § 2610.10(a) will constitute a significant event (§ 2610.23(d)(3)) for which the enrolled actuary will have to make appropriate adjustments under the alternative calculation method.

Finally, the PBGC solicits public comment on the frequency with which it should update the interest rates in Appendix B ("Interest Rates for Valuing Vested Benefits") and Appendix C ("Composite Rates for Use in Interest Rate Adjustment Formula"). The interest rates in Appendix A ("Late Payment Interest Charges") generally change, and are generally updated by the PBGC, on a quarterly basis. The PBGC proposes to update the rates in Appendices A, B and C on a quarterly basis, so that practitioners will be able to obtain all rate changes under the premium regulation at the same time. While the rates in Appendices B and C do change on a monthly basis, the PBGC does not believe that monthly updating is needed, because these rates, unlike the Appendix A rates, are not of immediate relevance to the practitioner.

E.O. 12291 and the Regulatory Flexibility Act

The PBGC has determined that this rule is a "major rule" within the meaning of Executive Order 12291, February 17, 1981 (46 FR 13193) because the single-employer plan premium increase implemented in this regulation will have an annual effect on the economy of more than $100 million. In accordance with E.O. 12291, the PBGC has prepared a Regulatory Impact Analysis. Interested persons may obtain copies of the Regulatory Impact Analysis from the PBGC's Communications and Public Affairs Department (Code 38000), 2020 K Street NW., Washington, DC 20006.

Under section 605(b) of the Regulatory Flexibility Act, the PBGC certifies that these rules will not have a significant economic impact on a substantial number of small entities. The purpose and effect of this regulation is to provide rules for calculating the premium owed under ERISA section 4006. The costs attendant thereto for small pension plans (those with fewer than 100 participants) will not be significant, since virtually all such plans will either use the simplified calculation method or will be exempt from performing the calculation.

Public Comment

The PBGC urges interested parties to submit comments and suggestions on this proposed regulation. Comments should be addressed to the Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006. Written comments will be available for public inspection at the PBGC's Communications and Public Affairs Department, Suite 7100, at the above address between 9:00 a.m. and 4:00 p.m. Each comment should include the name and address of the person submitting the

comment, identify the proposed regulation, and give reasons for any recommended change. This proposal may be changed based on the comments received.

List of Subjects in 29 CFR Part 2610

Employee Benefit Plans, Penalties, Pension Insurance, Pensions, and Reporting and Recordkeeping Requirements.

In consideration of the foregoing, the PBGC proposes to revise Part 2610 of Chapter XXVI of Title 29, Code of Federal Regulations, as follows:

PART 2610—PAYMENT OF PREMIUMS

Subpart A—General Provisions

Sec.

2610.1 Purpose and scope.
2610.2 Definitions.
2610.3 Forms.
2610.4 Mailing address.
2610.5 Date of filing.
2610.6 Computation of time.
2610.7 Late payment interest charges.
2610.8 Late payment penalty charges.
2610.9 Coverage for guaranteed basic benefits.
2610.10 Special rule for certain mergers and spinoffs.
2610.11 Recordkeeping requirements; PBGC audits.

Subpart B—Single-Employer Premiums for Post-1987 Plan Years

2610.21 Purpose and scope.
2610.22 Premium rates.
2610.23 Determination of unfunded vested benefits.
2610.24 Variable rate exemptions and special rules.
2610.25 Filing requirement.
2610.26 Liability for premiums.

Subpart C—Single-Employer Premiums for Pre-1988 Plan Years; Multiemployer Premiums

2610.31 Purpose and scope.
2610.32 Single-employer premium rates.
2610.33 Multiemployer premium rates.
2610.34 Filing requirement.
Appendix A—Late Payment Interest Charges
Appendix B—Interest Rates for Valuing Vested Benefits

Authority: 29 U.S.C. 1302(b)(3), 1306, 1307, as amended by sec. 9331, Pub. L. 100–203, 101 Stat. 1330.

Subpart A—General Provisions

§ 2610.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to provide rules for computing and procedures for paying the premiums imposed by sections 4006 and 4007 of the Employee Retirement Income Security Act of 1974, as amended. Subpart A contains the rules that apply both to single-employer and multiemployer plans with respect to all plan years. These general rules cover such matters as the definitions of terms under this part, procedural requirements, and late payment interest and penalty charges. Subpart B contains the premium rates and due dates and computational rules for single-employer plans under the new variable rate premium structure enacted as part of the Pension Protection Act. These new rules apply to single-employer plans for plan years beginning on or after January 1, 1988. Subpart C contains the premium rates and due dates for single-employer plans with respect to all prior plan years and for multiemployer plans with respect to all plan years.

(b) *Scope.* This part applies to all plans that are covered by Title IV of the Act pursuant to section 4021 of the Act.

§ 2610.2 Definitions.

For purposes of this part:

"Act" means the Employee Retirement Income Security Act of 1974, as amended.

"Code" means the Internal Revenue Code of 1986, as amended.

"Multiemployer Plan" means a plan defined in section 4001(a)(3) of the Act.

"New Plan" means a plan that became effective within the premium payment year and includes a plan resulting from a consolidation or spinoff. A plan that meets this definition is considered to be a new plan for purposes of this part even if the plan constitutes a successor plan within the meaning of section 4021(a) of the Act.

"Newly Covered Plan" means a plan that is not a new plan and that was not covered by Title IV of the Act pursuant to section 4021 of the Act immediately prior to the premium payment year.

"Participant" means any individual who is included in one of the categories below:

(a) *Active.* (1) Any individual who is currently in employment covered by the plan and who is earning or retaining credited service under the plan. This category includes any individual who is considered covered under the plan for purposes of meeting the minimum coverage requirements, but because of offset or other provisions (including integration with Social Security benefits), the individual does not have any accrued benefits.

(2) Any non-vested individual who is not currently in employment covered by the plan but who is earning or retaining credited service under the plan. This category does not include a non-vested former employee who has incurred a break in service the greater of one year or the break in service period specified in the plan.

(b) *Inactive*—(1) *Inactive receiving benefits.* Any individual who is retired or separated from employment covered by the plan and who is receiving benefits under the plan. This category does not include an individual to whom an insurance company has made an irrevocable commitment to pay all the benefits to which the individual is entitled under the plan.

(2) *Inactive entitled to future benefits.* Any individual who is retired or separated from employment covered by the plan and who is entitled to begin receiving benefits under the plan in the future. This category does not include an individual to whom an insurance company has made an irrevocable commitment to pay all the benefits to which the individual is entitled under the plan.

(c) *Deceased.* Any deceased individual who has one or more beneficiaries who are receiving or entitled to receive benefits under the plan. This category does not include an individual if an insurance company has made an irrevocable commitment to pay all the benefits to which the beneficiaries of that individual are entitled under the plan. *Provided that,* for plan years beginning before September 2, 1975, a retiree or former employee for whom a fully paid-up immediate or deferred annuity has been purchased shall be treated as a "participant" if such individual retains a legal claim against the plan for benefits or if the plan retains a participating interest in the annuity policy.

"PBGC" means the Pension Benefit Guaranty Corporation.

"Plan Year" means the calendar, policy or fiscal year on which the records of the plan are kept.

"Premium Payment Year" means the plan year for which the premium is being paid.

"Short Plan Year" means a plan year that is less than twelve full months.

§ 2610.3 Forms.

The estimation, declaration, reconciliation and payment of premiums shall be made using the forms prescribed by and in accordance with the instructions in the PBGC Annual Premium Payment Package.

§ 2610.4 Mailing address.

Plan administrators shall mail all forms required to be filed under this part and all payments for premiums, interest and penalties required to be made under this part to: Pension Benefit Guaranty Corporation, P.O. Box 105655, Atlanta, GA 30348–5655.

§ 2610.5 Date of filing.

(a) Any form required to be filed under the provisions of this part and any payment required to be made under the provisions of this part shall be deemed to have been filed or made on the date on which it is mailed.

(b) A form or payment shall be presumed to have been mailed on the date on which it is postmarked by the United States Postal Service, or three days prior to the date on which it is received by the PBGC if it does not contain a legible United States Postal Service postmark.

§ 2610.6 Computation of time.

In computing any period of time prescribed by this part, the day of the act, event, or default from which the designated period of time begins to run is not counted. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or federal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or federal holiday. For purposes of computing late payment interest charges under § 2610.7 and late payment penalty charges under § 2610.8, a Saturday, Sunday or federal holiday referred to in the previous sentence shall be included.

§ 2610.7 Late payment interest charges.

(a) If any premium payment due under this part is not paid by the due date prescribed for such payment by § 2610.25 or § 2610.34, as applicable, an interest charge will accrue on the unpaid amount at the rate imposed under section 6601(a) of the Code for the period from the date payment is due to the date payment is made. Late payment interest charges accrue as simple interest before January 1, 1983, and thereafter are compounded daily. (The interest rates for specified time periods are set forth in Appendix A to this part.)

(b) When PBGC issues a bill for premium payments necessary to reconcile the premiums paid with the actual premium due, interest will be accrued on the unpaid premium until the date of the bill if paid no later than 30 days after the date of such bill. If the bill is not paid within the 30-day period following the date of such bill, interest will continue to accrue throughout such 30-day period and thereafter, until the date paid.

(c) PBGC bills for interest assessed under this section will be deemed paid when due if paid no later than 30 days after the date of such bills. Otherwise, interest will accrue in accordance with paragraph (a) of this section on the amount of the bill from the date of the bill until the date of payment.

§ 2610.8 Late payment penalty charges.

(a) *Penalty charge.* If any premium payment due under this part is not paid by the due date prescribed for such payment by §§ 2610.25 or 2610.34, as applicable, the PBGC will, unless a waiver is granted pursuant to paragraph (b) of this section, assess a late payment charge on the unpaid premium at the rate provided in paragraphs (a)(1), (a)(2), or (a)(3) of this section, as applicable.

(1) If the due date for the premium is prior to October 2, 1975, the late payment charge shall be at the rate specified in the following table:

Days late from due date	Late payment charge (percent)
1 to 60	0
61 to 90	25
91 to 120	50
121 to 180	75
More than 180	100

(2) If the due date for the premium is on or after October 2, 1975, and before July 31, 1984, the late payment charge shall be at the rate specified in the following table:

Days late from due date	Late payment charge (percent)
1 to 30	5
31 to 60	10
61 to 90	20
91 to 120	40
121 to 150	60
151 to 180	80
More than 180	100

(3) If the due date for the premium is on or after July 31, 1984, the late payment charge (not to exceed 100% of the unpaid premium) shall be equal to the greater of—

(i) 5% per month (or fraction thereof) of the unpaid premiums; or

(ii) $25.

(b) *Waiver of penalty charge.* The late payment penalty charge will be waived, in whole or in part—

(1) With respect to any premium payment made within 60 days after the due date prescribed for such payment in § 2610.25 or § 2610.34, as applicable, if, before such due date, the PBGC grants a waiver upon a showing of substantial hardship arising from the timely payment of the premium had a showing that the premium will be paid within such 60-day period;

(2) If the PBGC grants a waiver based on any other demonstration of good cause;

(3) If the PBGC, on its own motion, wavies the application of paragraph (a) of this section;

(4) With respect to any premium payment (excluding any variable rate portion of the premium under § 2610.22(a)(2)), if a plan that is required to make a reconciliation filing described in § 2610.25(b)(2)(iii) or § 2610.34(b)—

(i) Paid at least 90 percent of the flat rate portion of the premium due for the premium payment year by the due date specified in § 2610.25(b)(2)(i) or § 2610.34(b); or

(ii) Paid by the due date specified in § 2610.25(b)(2)(i) or § 2610.34(b) an amount equal to the premium that would be due for the premium payment year, computed using the flat per capita premium rate for the premium payment year and the participant count upon which the prior year's premium was based; and

(iii) Pays 100 percent of the premium due for the premium payment year under § 2610.22 (excluding any variable rate portion of the premium under § 2610.22(a)(2)), § 2610.32, or § 2610.33, as applicable on or before the due date for the reconciliation filing under § 2610.25(b)(2)(iii) or § 2610.34(b), as applicable; or

(5) With respect to any PBGC bills for the premium payment necessary to reconcile the premium paid with the actual premium due, if such bills are paid to later than 30 days after the date of such bills.

§ 2610.9 Coverage for guaranteed basic benefits.

(a) The failure by a plan administrator to pay the premiums due under this part will not result in that plan's loss of coverage for basic benefits guaranteed under sections 4022(a) or 4022A(a) of the Act.

(b) The payment of the premiums imposed by this part will not result in coverage for basic benefits guaranteed under sections 4022(a) or 4022A(a) of the Act for plans not covered under Title IV of the Act pursuant to section 4021 of the Act.

§ 2610.10 Special rule for certain mergers and spinoffs.

(a) With respect to a plan described in paragraph (b) of this section that is paying its premium for a premium payment year beginning on or after January 1, 1988, all references in §§ 2610.22, 2610.23, 2610.24 and 2610.33, as applicable, to the last day of the plan year preceding the premium payment year shall be deemed to refer to the first day of the premium payment year.

(b) A plan is described in this paragraph if—

(1) The plan engages in a merger or spinoff that is not *de minimis* pursuant to the regulations under section 414(1) of the Code (in the case of a single-employer plans) or pursuant to Part 2672 of this chapter (in the case of multiemployer plans), as applicable;

(2) The merger or spinoff is effective on the first day of the plan's premium payment year; and

(3) The plan is the transferee plan in the case of a merger or the transferor plan in the case of a spinoff.

§ 2610.11 Recordkeeping requirements; PBGC audits.

(a) *Retention of records to support premium payments.* With respect to plan years beginning on or after January 1, 1988, all plan records, including calculations and other data prepared by an enrolled actuary or, for a plan described in section 412(i) of the Code, by the insurance company from which the insurance contracts are purchased, that are necessary to support or to validate premium payments under this part shall be retained by the plan administrator for a period of six years after the premium due date. Records that must be retained pursuant to this paragraph include, but are not limited to, records that establish the number of plan participants, that reconcile the calculation of the plan's unfunded vested benefits with the actuarial valuation upon which the calculation was based, and, for plans that assert entitlement to the reduction in the cap on the variable rate portion of the premium, that demonstrate the methods and assumptions used by the plan during the base period with respect to calculating its maximum deductible contribution pursuant to section 404 of the Code. Records retained pursuant to this paragraph shall be made available to the PBGC upon request for inspection and photocopying.

(b) *PBGC audit.* Premium payments under this part are subject to audit by the PBGC. If, upon audit, the PBGC determines that a premium due under this part was underpaid, the late payment interest charges under § 2610.7 and the late payment penalty charges under § 2610.8 shall apply to the unpaid balance from the premium due date to the date of payment. In determining the premium due—

(1) If, in the judgment of the PBGC, the plan's records fail to establish the number of plan participants with respect to whom premiums were required for any premium payment year, the PBGC may rely on data it obtains from other sources (including the Internal Revenue Service and the Department of Labor) for presumptively establishing the number of plan participants for premium computation purposes; and

(2) If, in the judgment of the PBGC, the plan's records fail to establish that the plan's unfunded vested benefits were of the amount reported by the plan for the premium payment year, the variable rate portion of the premium owed by the plan with respect to that premium payment may be deemed to be the maximum $34 per participant charge, pursuant to § 2610.22(a)(3).

Subpart B—Single-Employer Premiums for Post-1987 Plan Years

§ 2610.21 Purpose and scope.

This subpart provides rules for computing and procedures for paying premiums for single-employer plans with respect to plan years beginning on or after January 1, 1988.

§ 2610.22 Premium rate.

(a) *General rule.* For plan years beginning on or after January 1, 1988, the premium paid by a single-employer plan for basic benefits guaranteed under section 4022(a) of the Act shall equal the sum of the amounts in paragraphs (a)(1) and (a)(2) of this section (subject to the limitation in paragraph (a)(3) of this section), multiplied by the number of participants in the plan on the last day of the plan year preceding the premium payment year.

(1) *Flat rate amount.* The amount under this paragraph is $16.

(2) *Variable rate amount.* Except for plans covered by an exemption or special rule pursuant to § 2610.24, the amount under this paragraph is $6 for each $1,000 (or fraction thereof) of a plan's unfunded vested benefits, as determined under § 2610.23, with that product divided by the number of participants in the plan on the last day of the plan year preceding the premium payment year. The resulting amount shall be rounded to the nearest cent, with a fraction of one-half cent or more rounded up and a fraction of less than one-half cent rounded down.

(3) *Cap on variable rate amount.* Except as modified by the next sentence, in no event shall the variable rate amount determined under paragraph (a)(2) of this section exceed $34 per participant. For each of the five consecutive premium payment years commencing with the first premium payment year beginning on or after January 1, 1988, the $34 maximum shall be reduced by the product of $3 multiplied by the number of plan years during the last five plan years commencing before January 1, 1988, with respect to which the contributing sponsor or contributing sponsors made contributions to the plan in an amount not less than the maximum amount allowable as a deduction under section 404 of the Code, as determined in accordance with paragraphs (a)(3)(i) through (a)(3)(iv) of this section.

(i) *Determination of maximum deductible contribution.* The determination of whether contributions were in an amount not less than the maximum amount allowable as a deduction under section 404 of the Code shall be based on the methods of computing the maximum deductible contribution under section 404, including actuarial assumptions and funding methods, used by the plan and the contributing sponsor or contributing sponsors (provided such assumptions and methods met the requirements for reasonableness under section 412 of the Code) with respect to each of the last five plan years commencing before January 1, 1988.

(ii) *Special rule for rounding of de minimis amounts.* Any contribution that is rounded down to no less than the next lower multiple of one hundred dollars (in the case of maximum deductible amounts up to one hundred thousand dollars) or to no less than the next lower multiple of one thousand dollars (in the case of maximum deductible amounts above one hundred thousand dollars) shall be deemed for purposes of this paragraph to be in an amount not less than the maximum deductible amount.

(iii) *Determination of maximum deductible contribution for sponsors maintaining defined benefit and defined contribution plans.* For purposes of this paragraph, if a contributing sponsor is subject to the limitation on deductions described in section 404(a)(7)(A) of the Code (relating to total deductions in connection with one or more defined contribution plans and one or more defined benefit plans), amounts contributed to a defined contribution plan (or plans), or to a defined benefit plan (or plans) not covered by Title IV of the Act pursuant to section 4021 of the Act, shall be disregarded in determining whether the amounts contributed equalled the maximum deductible contribution under section 404 of the Code. If the contributing sponsor maintains more than one defined benefit plan covered by Title IV of the Act pursuant to section 4021 of the Act, the determination shall be made by aggregating the amounts contributed to all such plans and comparing that total to the section 404(a)(7)(A) limitation.

(iv) *Determination of maximum deductible contribution in certain cases when plan year and taxable year do not coincide.* If a contributing sponsor determined the maximum deductible contribution for a taxable year by using a weighted average of the maximum deductible contributions for the plan years falling within the taxable year pursuant to 26 CFR § 1.404(a)–14(c)(3), the determination under this paragraph of whether the contribution for a plan year was the maximum deductible amount shall be made by aggregating all contributions for the plan year, irrespective of the taxable year in which they were applied. If this total is less than the maximum deductible amount under Code section 404 (without applying the limitation in Code section (404(a)(7)(A)) determined on the basis of the plan year, the contribution shall be treated as being the maximum deductible amount under this paragraph only if the portion of the contribution applied in each taxable year in which the plan year fell equalled the maximum deductible amount (with respect to that plan year) for that taxable year under the limitation in section 404(a)(7)(A).

(b) *Special computation date for new and newly covered plans.* For purposes of this section, the number of plan participants for purposes of computing the premium owed with respect to a new plan or a newly covered plan (as defined in § 2610.2) shall be determined as of the first day of the premium payment year or, if later, the date on which the plan became effective for benefit accruals for future service, and all references in paragraph (a) of this section to the last day of the plan year preceding the premium payment year shall be deemed to refer to such day or date.

(c) *Plans that change plan years.* A plan that changes its plan year shall pay the premium prescribed by this section for the short plan year.

(d) *Special refund rule for certain short plan years.* A plan described in this paragraph is entitled to a refund for a short plan year that begins on or after January 1, 1989. The plan must pay the full premium due and request a refund from the PBGC. The amount of the refund will be determined by prorating the premium for the short plan year by the number of months (treating a part of a month as a month) in the short plan year. A plan is described in this paragraph if—

(1) The plan is a new or newly covered plan that becomes effective for premium purposes on a date other than the first day of its first plan year;

(2) The plan adopts an amendment changing its plan year, resulting in a short plan year;

(3) The plan's assets are distributed pursuant to the plan's termination, in which case the short plan year for purposes of computing the amount of the refund under this paragraph shall be deemed to end on the later of the asset distribution date or the date 30 days prior to the date the PBGC receives the plan's post-distribution certification; or

(4) A trustee of the plan is appointed pursuant to section 4042 of the Act, in which case the short plan year for purposes of computing the amount of the refund under this paragraph shall be deemed to end on the date of appointment.

§ 2610.23 Determination of unfunded vested benefits.

(a) *General rule.* Except as permitted by paragraph (c) of this section or as provided in the exemptions and special rules under § 2610.24, the amount of a plan's unfunded vested benefits (as defined in paragraph (b) of this section) shall be determined as of the last day of the plan year preceding the premium payment year, based on the plan provisions and the plan's population as of that date. The unfunded vested benefits shall be determined using the same actuarial assumptions and methods used by the plan for purposes of determining the minimum funding contribution under section 302 of the Act and section 412 of the Code for the plan year preceding the premium payment year (or, in the case of a new or newly covered plan, for the premium payment year), except to the extent that other actuarial assumptions are specifically prescribed by this section or are necessary to reflect the occurrence of a significant event described in paragraph (d) of this section between the date of the funding valuation and the last day of the plan year preceding the premium payment year. (If the plan does a valuation as of the last day of the plan year preceding the premium payment year, no separate adjustment for significant events is needed.) Under this rule, the determination of the unfunded vested benefits may be based on a plan valuation done as of the first day of the premium payment year, provided that—

(1) The actuarial assumptions and methods used meet the requirements of this paragraph; and

(2) If an enrolled actuary determines that there is a material difference between the values determined under the valuation and the values that would have been determined as of the last day of the preceding plan year, the valuation results are adjusted to reflect appropriately the values as of the last day of the preceding plan year. (This adjustment need not be made if the unadjusted valuation would result in greater unfunded vested benefits.) In the case of any plan that determines the amount of its unfunded vested benefits under the general rule described in this paragraph, an enrolled actuary must certify, in accordance with the Premium Payment Package, that the determination was made in a manner consistent with generally accepted actuarial principles and practices.

(b) *Unfunded vested benefits.* The amount of a plan's unfunded vested benefits under this section shall be the excess of the plan's vested benefits amount (determined under paragraph (b)(1) of this section) over the actuarial value of the plan's assets (determined under paragraph (b)(2) of this section).

(1) *Vested benefits amount.* A plan's vested benefits amount under this section shall be the plan's current liability (within the meaning of section 302(d)(7) of the Act) determined by taking into account only vested benefits and by using an interest rate equal to 80% of the annual yield for 30-year Treasury constant maturities, as reported in Federal Reserve Statistical Release G.13 and H.15, for the calendar month preceding the calendar month in which the premium payment year begins. (Appendix B to this part sets forth the required interest rates.) If the interest rate (or rates) used in the plan's funding valuation was (or were all) lower than the required interest rate, the vested benefits need not be revalued if an enrolled actuary certifies that the interest rate (or interest rates) used was (or were all) lower than the required interest rate.

(2) *Actuarial value of assets.* The actuarial value of a plan's assets under this section shall be determined in accordance with section 302(c)(2) of the Act, except that the value is not reduced by a credit balance in the funding standard account. Contributions owed for any plan year preceding the premium payment year shall be included only to the extent such contributions have been paid into the plan on or before the earlier of the due date for payment of the variable rate portion of the premium under § 2610.25 or the date that portion is paid and shall, if paid after the last day of the plan year preceding the premium payment year, be discounted at the plan rate (compounded daily) to such last day to reflect the date(s) of payment. Contributions for the premium payment year may not be included.

(c) *Alternative method for calculating unfunded vested benefits.* In lieu of

determining the amount of the plan's unfunded vested benefits pursuant to paragraph (a) of this section, a plan administrator may calculate the amount of a plan's unfunded vested benefits under this paragraph using the plan's Form 5500, Schedule B, for the plan year preceding the premium payment year. Pursuant to this paragraph, unfunded vested benefits shall be determined from the entries in lines 6d(i), 6d(ii) and, usually, 8b of the plan's Schedule B. The value of the vested benefits shall be adjusted in accordance with paragraph (c)(1) of this section to reflect accruals during the plan year preceding the premium payment year and with paragraph (c)(2) of this section to reflect the interest rate prescribed in paragraph (b)(1) of this section, and the value of the assets shall be adjusted in accordance with paragraph (c)(3) of this section. (If the plan administrator certifies that the plan's interest rate (or rates) used to determine the values in lines 6d(i) and 6d(ii) of the Schedule B was (or were all) lower than the interest rate prescribed in paragraph (b)(1) of this section, the interest rate adjustment prescribed in paragraph (c)(2) of this section is not required.) The resulting unfunded vested benefits amount shall be adjusted in accordance with paragraph (c)(4) of this section to reflect the passage of time from the date of the Schedule B data to the last day of the plan year preceding the premium payment year.

(1) *Vested benefits adjustment for accruals.* The value of vested benefits entered in line 6d(ii) shall be adjusted to reflect the increase in vested benefits attributable to accruals during the plan year preceding the premium payment year by multiplying that value by 1.07.

(2) *Vested benefits interest rate adjustment.* The value of vested benefits as entered on the Schedule B shall be adjusted in accordance with the following formula to reflect the interest rate prescribed in paragraph (b)(1) of this section:

$$VB_{adj} = VB_{6d(i)} \times .94^{(RIR-BIR)} + VB_{6d(ii)} \times .94^{(RIR-BIR)} \times ((100+BIA)/(100+RIR))^{(ARA-68)};$$

where—

(i) VB_{adj} is the adjusted vested benefits amount (as of the first day of the plan year preceding the premium payment year) under the alternative calculation method;

(ii) $VB_{6d(i)}$ is the amount entered in line 6d(i) of the Schedule B;

(iii) $VB_{6d(ii)}$ is the amount entered in line 6d(ii) of the Schedule B, multiplied by 1.07 in accordance with paragraph (c)(1) of this section;

(iv) RIR is the required interest rate set forth in Appendix B to this part;

(v) BIR is the interest rate entered on line 12c (post-retirement) of the Schedule B that was used to determine the entry on line 6d(i) of the Schedule B;

(vi) BIA is the interest rate entered on line 12c (pre-retirement) of the Schedule B that was used to determine the entry in line 6d(ii) of the Schedule B; and

(vii) ARA is the assumed retirement age entered on line 12d of the Schedule B that was used to determine the entries on lines 6d(i) and 6d(ii) of the Schedule B.

(3) *Adjusted value of plan assets.* The value of plan assets shall be the amount reported on line 8b of the Schedule B, unless that amount was determined as of a date other than the first day of the plan year preceding the premium payment year. In that event, the value of plan assets shall be the amount entered in line 6c of the Schedule B. The value of assets reported on line 8b (or 6c) of the Schedule B shall be adjusted in accordance with paragraph (b)(2) of this section, except that the amount of all contributions that are included in the value of assets and that were made after the first day of the plan year preceding the premium payment year shall be discounted to such first day at the interest rate listed in Appendix B of this part for the premium payment year, compounded daily.

(4) *Adjustment for passage of time.* The amount of the plan's unfunded vested benefits shall be adjusted to reflect the passage of time between the date of the Schedule B data (the first day of the plan year preceding the premium payment year) and the last day of the plan year preceding the premium payment year in accordance with the following formula:

$$UVB_{adj} = (VB_{adj} - A_{adj}) \times (1 + RIR/100)^{Y};$$

where—

(i) UVB_{adj} is the amount of the plan's adjusted unfunded vested benefits;

(ii) VB_{adj} is the value of the adjusted vested benefits calculated in accordance with paragraphs (c)(1) and (c)(2) of this section;

(iii) A_{adj} is the adjusted asset amount calculated in accordance with paragraph (c)(3) of this section;

(iv) RIR is the required interest rate set forth in Appendix B to this part; and

(v) Y is deemed to be equal to 1 (unless the plan year preceding the premium payment year is a short plan year, in which case Y is the number of years between the first day and the last day of the short plan year, expressed as a decimal fraction of 1.0 with two digits to the right of the decimal point).

(d) *Restrictions on alternative calculation method for large plans.* A plan with 500 or more participants as of the last day of the plan year preceding the premium payment year may use the alternative calculation method described in paragraph (c) of this section only if no significant event, as described in this paragraph, has occurred between the first day and the last day of the plan year preceding the premium payment year and an enrolled actuary so certifies in accordance with the Premium Payment Package. If a significant event has occurred between those dates, the alternative method may be used only if an enrolled actuary makes an appropriate adjustment to the value of unfunded vested benefits to reflect the occurrence of the significant event and certifies to that fact in accordance with the Premium Payment Package. Significant events described in this paragraph are—

(1) An increase in the plan's actuarial costs (consisting of the plan's normal cost under section 412(b)(2)(A) of the Code, amortization charges under section 412(b)(2)(B) of the Code, and amortization credits under section 41(b)(3)(B) of the Code) atrtributable to a plan amendment, unless the cost increase attributable to the amendment is less than 5% of the actuarial costs determined without regard to the amendment;

(2) The extension of coverage under the plan to a new group of employees resulting in an increase of 5% or more in the plan's liability for accrued benefits;

(3) A plan merger, consolidation or spinoff that is not *de minimis* pursuant to the regulations under section 414(l) of the Code;

(4) The shutdown of any facility, plant, store, etc., that creates immediate eligibility for benefits that would not otherwise be immediately payable for participants separating from service;

(5) The offer by the plan for a temporary period to permit participants to retire at benefit levels greater than that to which they would otherwise be entitled;

(6) A cost-of-living increase for retirees resulting in an increase of 5% or more in the plan's liability for accrued benefits; and

(7) Any other event or trend that results in a material increase in the value of unfunded vested benefits.

(e) *Special calculation date for new and newly covered plans.* For purposes of this section, the determination or calculation of a plan's unfunded vested benefits with respect to a new plan or a newly covered plan (as defined in § 2610.2) shall be made as of the first day of the premium payment year or, if later, the date on which the plan became effective for benefit accruals for future

service, and all references in paragraphs (a) through (d) of this section to the last day of the plan year preceding the premium payment year shall be deemed to refer to such day or date.

§ 2610.24 Variable rate exemptions and special rules.

(a) *Exemptions.* A plan described in paragraphs (a)(1), (a)(2) or (a)(3) of this section is not required to determine its unfunded vested benefits under § 2610.23 and does not owe a variable rate amount under § 2610.22(a)(2).

(1) *Certain fully funded plans.* A plan is described in this paragraph if the plan had fewer than 500 participants on the last day of the plan year preceding the premium payment year, and an enrolled actuary certifies in accordance with the Premium Payment Package that, as of that date, the plan had no unfunded vested benefits.

(2) *Plans without vested benefit liabilities.* A plan is described in this paragraph if it did not have any participants with vested benefits as of the last day of the plan year preceding the premium payment year, and the plan administrator so certifies in accordance with the Premium Payment Package.

(3) *Section 412(i) plans.* A plan is described in this paragraph if the plan was a plan described in section 412(i) of the Code and the regulations thereunder at all times during the plan year preceding the premium payment year and the plan administrator so certifies, in accordance with the Premium Payment Package. If the plan is a new plan or a newly covered plan (as defined in § 2610.2), the certification under this paragraph shall be made as of the due date for the premium under § 2610.25(d) and shall certify to the plan's status at all times during the premium payment year through such due date.

(b) *Special rule for determining vested benefits for certain large plans.* With respect to a plan that had 500 or more participants on the last day of the plan year preceding the premium payment year, if an enrolled actuary determines pursuant to § 2610.23(a) that the actuarial value of plan assets equals or exceeds the value of all benefits accrued under the plan (valued at the interest rate prescribed in § 2610.23(b)(1)), the enrolled actuary need not determine the value of the plan's vested benefits, and may instead report in the Premium Payment Package the value of the accrued benefits.

(c) *New and newly covered plans.* In the case of a new plan or a newly covered plan, all references in paragraphs (a) or (b) of this section to the last day of the plan year preceding the premium payment year shall be deemed to refer to the first day of the premium payment year or, if later, the date on which the plan became effective for benefit accruals for further service.

§ 2610.25 Filing requirement.

(a) *General rule.* The plan administrator of each plan shall file the form or forms prescribed by this part and any premium payments due, in accordance with the instructions in the Premium Payment Package. The premium forms and payments shall be filed no later than the applicable due date specified in paragraph (b) or, for new plans or newly covered plans, paragraph (d) of this section.

(b) *Due dates.* For plan years beginning on or after January 1, 1988, the due date for small plans is prescribed in paragraph (b)(1) of this section and the due dates for large plans are prescribed in paragraph (b)(2) of this section.

(1) *Plans with fewer than 500 participants.* If the plan has fewer than 500 participants, as determined under paragraph (c) of this section, the due date is the fifteenth day of the eighth full calendar month following the month in which the plan year began.

(2) *Plans with 500 or more participants.* If the plan has 500 or more participants, as determined under paragraph (c) of this section—

(i) The due date for the flat rate portion of the premium required by § 2610.22(a)(1) is the last day of the second full calendar month following the close of the plan year preceding the premium payment year; and

(ii) The due date for the variable rate portion of the premium required by § 2610.22(a)(2) is the fifteenth day of the eighth full calendar month following the month in which the premium payment year begins.

(iii) If the number of plan participants on the last day of the plan year preceding the premium payment year is not known by the date specified in paragraph (b)(2)(i) of this section, a reconciliation filing (on the form prescribed by this part) and any required premium payment or request for refund shall be made by the date specified in paragraph (b)(2)(ii) of this section.

(3) *Plans that change plan years.* For any plan that changes its plan year, the premium form or forms and payment or payments for the short plan year shall be filed by the applicable due date or dates specified in paragraphs (b)(1), (b)(2), or (d) of this section. For the plan year that follows a short plan year, the due date or dates for the premium forms and payments shall be, with respect to each such due date, the later of—

(i) The applicable due date or dates specified in paragraphs (b)(1), (b)(2), or (d) of this section; or

(ii) 30 days after the date on which the amendment changing the plan year was adopted.

(c) *Participant count rule for purposes of determining filing due dates.* For purposes of determining under paragraph (b) of this section whether a plan has fewer than 500 participants, or 500 or more participants, the plan administrator shall use the number of participants for whom premiums were payable for the plan year preceding the premium payment year.

(d) *Due dates for new and newly covered plans.* Notwithstanding the provisions of paragraph (b) of this section, the premium form and payment for both the flat rate portion and the variable rate portion of the premium for the first plan year of coverage of any new plan or newly covered plan (as defined in § 2610.2) shall be filed on or before the latest of—

(1) The fifteenth day of the eighth full calendar month following the month in which the plan year began or, if later, in which the plan became effective for benefit accruals for future service;

(2) 90 days after the date of the plan's adoption; or

(3) 90 days after the date on which the plan became covered by Title IV of the Act pursuant to section 4021 of the Act.

(e) *Continuing obligation to file.* The obligation to file the form or forms prescribed by this part and to pay any premiums due continues through the plan year in which all plan assets are distributed pursuant to a plan's termination or in which a trustee is appointed under section 4042 of the Act, whichever occurs earlier. The entire premium computed under this subpart is due, irrespective of whether the plan is entitled to a refund for a short plan year pursuant to § 2610.22(d).

(f) *Improper filings.* Any form not filed in accordance with this part, not filed in accordance with the instructions in the Premium Payment Package, not accompanied by the required premium payment, or otherwise incomplete, may, in the discretion of the PBGC, be returned with any payment accompanying the form to the plan administrator, and such payment shall be treated as as not having been made. If on the form or forms filed with the PBGC, any of the items necessary to establish the correct variable rate premium owed by the plan are omitted, the variable rate portion of the premium owed by the plan with respect to that premium payment may be deemed to be

the maximum $34 per participant charge, pursuant to § 2610.22(a)(3).

§ 2610.26 Liability for premiums.

(a) The designation under this subpart of the plan administrator as the person required to file the applicable forms and to submit the premium payment is a procedural requirement only and does not alter the liability for premium payments imposed by section 4007 of the Act. Pursuant to section 4007(e) of the Act, both the plan administrator and the plan's contributing sponsor are liable for premium payments, and, if the contributing sponsor is a member of a controlled group, each member of the controlled group is jointly and severally liable for the required premiums. Any entity that is liable for required premiums is also liable for any interest and penalties assessed with respect to such premiums.

(b) For any plan year in which a plan administrator issues (pursuant to section 4041(a)(2) of the Act) notices of intent to terminate in a distress termination under section 4041(c) of the Act or the PBGC initiates a termination proceeding under section 4042 of the Act, and for each plan year thereafter, the obligation to pay the premiums (and any interest or penalties thereon) imposed by the Act and this Part shall be an obligation solely of the contributing sponsor and the members of its controlled group, if any.

Subpart C—Single-Employer Premiums for Pre-1988 Plan Years; Multiemployer Premiums

§ 2610.31 Purpose and scope.

This subpart provides rules for calculating and procedures for paying premiums for single-employer plans with respect to plan years beginning before 1988, and for multiemployer plans with respect to all plan years.

§ 2610.32 Single-employer premium rates.

(a) For plans other than multiemployer plans, the premium rate for basic benefits guaranteed under section 4022(a) of the Act is as follows:

(1) For plan years beginning before September 2, 1976: one dollar for each individual who is a participant in the plan at any time during the plan year;

(2) For plan years beginning on or after September 2, 1976, up to and including plan years beginning on December 31, 1977: one dollar for each individual who is a participant in the plan on the last day of the preceding plan year;

(3) For plan years beginning on or after January 1, 1978, up to and including plan years beginning on December 31, 1985: two dollars sixty cents for each individual who is a participant in the plan on the last day of the preceding plan year;

(4) For plan years beginning on or after January 1, 1986, up to and including plan years beginning on December 31, 1987: eight dollars fifty cents for each individual who is a participant in the plan on the last day of the preceding plan year.

(b) *Newly covered plans.* For any plan not previously covered by section 4021 of the Act, the plan administrator shall pay the applicable premium under paragraph (a) of this section for each individual who is a participant in the plan on the date the plan becomes covered by section 4021(a) of the Act.

(c) *Changes in plan years.* For the first full plan year beginning after a plan changes its plan year, the plan administrator shall pay the applicable premium under paragraph (a) of this section for each individual who is a participant in the plan on the last day of the short plan year.

§ 2610.33 Multiemployer premium rates.

(a) For multiemployer plans, the premium rate for basic benefits guaranteed under section 4022A(a) is as follows:

(1) For plan years beginning after September 26, 1980, multiemployer plans shall pay premiums at the rate set forth in the following table for each individual who is a participant in such plan on the last day of the plan year preceding the premium payment year.

For premium payment years	Rate
After Sept. 26, 1980, and before Sept. 27, 1984	$1.40
After Sept. 26, 1984, and before Sept. 27, 1986	1.80
After Sept. 26, 1986, and before Sept. 27, 1988	2.20
After Sept. 26, 1988	2.60

(2) For the plan year in which September 26, 1980, falls (the "enactment year"), multiemployer plans shall pay a premium for each individual who is a participant in the plan on the last day of the preceding plan year at the rate set forth in the following table:

For premium payment years beginning in—	Rate
September 1979	$.50
October 1979	.54
November 1979	.58
December 1979	.62
January 1980	.67
February 1980	.71
March 1980	.75
April 1980	.79
May 1980	.83
June 1980	.88
July 1980	.92
August 1980	.96
September 1980 (on or before Sept. 26)	1.00

(b) *New and newly covered plans.* For any new plan or newly covered plan (as defined in § 2610.2), the plan administrator shall pay the applicable premium under paragraph (a) of this section for each individual who is a participant in the plan on—

(1) The date the plan becomes covered by section 4021(a) of the Act, if the premium payment year begins before January 1, 1988; or

(2) The first day of the premium payment year or, if later, the date on which the plan became effective for benefit accruals for future service, if the premium payment year begins on or after January 1, 1988.

(c) *Changes in plan years.* For the first full plan year beginning after a plan changes its plan year, the plan administrator shall pay the applicable premium under paragraph (a) of this section for each individual who is a participant in the plan on the last day of the short plan year.

(d) *Special refund rule for certain short plan years.* A plan described in this paragraph is entitled to a refund for a short plan year that begins on or after January 1, 1989. The plan must pay the full premium due and request a refund from the PBGC. The amount of the refund will be determined by prorating the premium for the short plan year by the number of months (treating a part of a month as a month) in the short plan year. A plan is described in this paragraph if—

(1) The plan is a new or newly covered plan that becomes effective for premium purposes on a date other than the first day of its first plan year;

(2) The plan adopts an amendment changing its plan year, resulting in a short plan year; or

(3) The plan's assets are distributed pursuant to the plan's termination, in which case the short plan year for purposes of computing the amount of the refund under this paragraph shall be deemed to end on the asset distribution date.

§ 2610.34 Filing requirement.

(a) The plan administrator of each covered plan shall file the form prescribed by this part and any premium payments due, in accordance with the premium declaration instructions accompanying the form. Due dates for new or newly covered plans and plans

with short plan years are in paragraphs (a)(8) and (a)(9) of this section. For other plans, the premium form and payments shall be filed no later than the date specified in the applicable paragraph (a)(1) through (a)(7)(ii) as follows:

(1) For plan years beginning before and in progress on September 2, 1974: October 2, 1974;

(2) For plan years beginning on or after September 2, 1974, up to and including plan years beginning on December 31, 1977: 30 days after the beginning of the plan year;

(3) For plan years beginning on or after January 1, 1978, up to and including plan years beginning on December 31, 1980: seven months after the close of the prior plan year;

(4) For plan years beginning on or after January 1, 1981, up to and including plan years beginning on December 31, 1984: the last day of the seventh month following the close of the prior plan year;

(5) For plan years beginning on or after January 1, 1985, up to and including plan years beginning on December 31, 1985:

(i) If the plan has fewer than 10,000 participants for the plan year, as determined under paragraph (a)(10) of this section, the last day of the seventh month following the close of the prior plan year; or

(ii) If the plan has 10,000 or more participants for the plan year, as determined under paragraph (a)(10) of this section, the last day of the second full month following March 29, 1985 or, if later, the last day of the second month following the close of the prior plan year; and

(6) For plan years beginning on or after January 1, 1986, up to and including plan years beginning on December 31, 1987:

(i) If the plan has fewer than 500 participants for the plan year, as determined under paragraph (a)(10) of this section, the last day of the seventh month following the close of the prior plan year; or

(ii) If the plan has 500 or more participants for the plan year, as determined under paragraph (a)(10) of this section the last day of the second month following the close of the prior plan year.

(7) For plan years of multiemployer plans beginning on or after January 1, 1988—

(i) If the plan has fewer than 500 participants for the plan year, as determined under paragraph (a)(10) of this section, the fifteenth day of the eighth full calendar month following the month in which the premium payment year begins; or

(ii) If the plan has 500 or more participants for the plan year, as determined under paragraph (a)(10) of this section, the last day of the second month following the close of the prior plan year.

(8) Notwithstanding the provisions of paragraphs (a)(1) through (a)(7) of this section, for any new plan or plan newly covered by section 4021 of the Act, the first premium form and payments due for the first year of coverage shall be filed on or before the latest of—

(i) In the case of plan years beginning before January 1, 1988:

(A) The last day of the seventh month following the beginning of the plan year;

(B) 90 days after the date of plan's adoption;

(C) 90 days after the date on which the plan became effective for benefit accruals for future service; or

(D) 90 days after the date on which the plan became covered by section 4021 of the Act; and

(ii) In the case of plan years beginning on or after January 1, 1988:

(A) The fifteenth day of the eighth full calendar month following the month in which the plan year began or, if later, in which the plan became effective for benefit accruals for future service;

(B) 90 days after the date of the plan's adoption; or

(C) 90 days after the date on which the plan became covered by Title IV of the Act pursuant to section 4021 of the Act.

(9) For any plan that changes its plan year, the premium form and payments for the short plan year are due in accordance with the provisions of paragraphs (a)(1) through (a)(7) of this section. Premium forms and payments for the plan year that follows a short plan year shall be filed on or before the later of 30 days after the date on which the amendment to change the plan year was adopted, or the date specified in the applicable paragraph as follows:

(i) For plan years beginning before January 1, 1985, the last day of the seventh month following the close of the preceding short plan year; and

(ii) For plan years beginning on or after January 1, 1985, up to and including plan years beginning on December 31, 1985—

(A) If the plan has fewer than 10,000 participants for the plan year, as determined under paragraph (a)(10) of this section: the last day of the seventh month following the close of the preceding short plan year; or

(B) If the plan has 10,000 or more participants for the plan year, as determined under paragraph (a)(10) of this section: the last day of the second month following the close of the preceding short plan year; and

(iii) For plan years beginning on or after January 1, 1986, up to and including plan years beginning on December 31, 1987—

(A) If the plan has fewer than 500 participants for the plan year, as determined under paragraph (a)(10) of this section: the last day of the seventh month following the close of the preceding short plan year; or

(B) If the plan has 500 or more participants for the plan year, as determined under paragraph (a)(10) of this section: the last day of the second month following the close of the preceding short plan year.

(iv) For plan years of multiemployer plans beginning on or after January 1, 1988—

(A) If the plan has fewer than 500 participants for the plan year, as determined under paragraph (a)(10) of this section, the fifteenth day of the eight full calendar month following the month in which the premium payment year begins; or

(B) If the plan has 500 or more participants for the plan year, as determined under paragraph (a)(10) of this section, the last day of the second month following the close of the prior plan year.

(10) For purposes of paragraphs (a)(5), (a)(6), (a)(7), (a)(9), (b)(4), (b)(5), and (b)(6) of this section, the number of participants in a plan year is determined as of the following dates:

(i) If the plan year is the plan's second plan year, the first day of the first plan year; or

(ii) If the plan year is the plan's third or a subsequent plan year, the last day of the second preceding plan year.

(b) *Reconciliation due date.* The plan administrator of each covered plan shall file the premium reconciliation form prescribed by this part, in accordance with the instructions accompanying the form, no later than the date specified in the applicable paragraph as follows:

(1) For plan years beginning before September 2, 1976: two years and 30 days after the beginning of the plan year;

(2) For plan years beginning on or after September 2, 1976, up to and including plan years beginning on December 31, 1976: one year and 30 days after the beginning of the plan year;

(3) For plan years beginning on or after January 1, 1977, up to and including plan years beginning on December 31, 1977: seven months after the close of the plan year; or

(4) For plan years beginning on or after January 1, 1985, up to and including

plan years beginning on December 31, 1985, if the plan has 10,000 or more participants for the plan year, as determined under paragraph (a)(10) of this section: the last day of the seventh month following the close of the prior plan year.

(5) For plan years beginning on or after January 1, 1986, up to and including plan years beginning on December 31, 1987, if the plan has 500 or more participants for the plan year, as determined under paragraph (a)(10) of this section: the last day of the seventh month following the close of the prior plan year.

(6) For plan years of multiemployer plans beginning on or after January 1, 1988, if the plan has 500 or more participants for the plan year, as determined under paragraph (a)(10) of this section, the fifteenth day of the eighth full calendar month following the month in which the premium payment year begins.

(c) *Continuing obligation to file.* The obligation to file the form prescribed by this subpart and to pay any premiums due continues until plan assets are distributed under a termination procedure or until a trustee is appointed under section 4042 of the Act, whichever occurs earlier. The entire premium computed under this subpart is due, irrespective of whether the plan is entitled to a refund for a post-1988 short plan year (in the case of certain multiemployer plans) pursuant to § 2610.33(d).

(d) *Improper filings.* Any form not filed in accordance with this subpart, not filed in accordance with the instructions contained in the form, not accompanied by the required premium payment, or otherwise incomplete, may, in the discretion of the PBGC, be returned in whole or in part to the plan administrator and treated as not having been filed.

(e) *Transitional rule for multiemployer plans.* For the plan year in which September 26, 1980, falls ("the enactment year"), the premium determined under § 2610.33 is due on the date determined under paragraphs (a)(3), or (a)(4) of this section, unless the enactment year begins before July 1, 1980. If the enactment year begins before July 1, 1980, the premium is due in two installments as follows:

(1) The multiemployer plan shall pay, on the date determined under paragraph (a)(3) or (a)(4) of this section, a premium of fifty cents for each individual who is a participant in the plan on the last day of the preceding plan year; and

(2) The plan shall pay, within 30 days after PBGC issues a notice of the additional premium due under § 2610.33, such additional premium. However, if the plan fails to pay the amount described in paragraph (e)(1) before January 31, 1981, the additional premium shall be due on the earlier of 30 days after the PBGC issues a notice of the additional premium or March 31, 1981.

Appendix A—Late Payment Interest Charges

The following table lists the late payment interest rates under § 2610.7(a) for the specified time periods:

From—	Through—	Interest rate (percent)
Sep. 2, 1974	June 30, 1975	6
July 1, 1975	Jan. 31, 1976	9
Feb. 1, 1976	Jan. 31, 1978	7
Feb. 1, 1978	Jan. 31, 1980	6
Feb. 1, 1980	Jan. 31, 1982	12
Feb. 1, 1982	Dec. 31, 1982	20
Jan. 1, 1983	June 30, 1983	16
July 1, 1983	Dec. 31, 1984	11
Jan. 1, 1985	June 30, 1985	13
July 1, 1985	Dec. 31, 1985	11
Jan. 1, 1986	June 30, 1986	10
July 1, 1986	Sept. 30, 1987	9
Oct. 1, 1987	Dec. 31, 1987	10
Jan. 1, 1988	Mar. 31, 1988	11
Apr. 1, 1988	Sept. 30, 1988	10
Oct. 1, 1988		11

Appendix B—Interest rates for valuing vested benefits

The following table lists the required interest rates to be used in valuing a plan's vested benefits under § 2610.23(b) and in calculating a plan's adjusted vested benefits under § 2610.23(c)(1):

For premium payment years beginning in—	Required interest rate [1]
January 1988	7.30
February 1988	7.06
March 1988	6.74
April 1988	6.90
May 1988	7.16
June 1988	7.38
July 1988	7.20
August 1988	7.31
September 1988	7.46

[1] The required interest rate listed above is equal to 80% of the annual yield for 30-year Treasury constant maturities, as reported in Federal Reserve Statistical Release G.13 and H.15, for the calendar month preceding the calendar month in which the premimum payment year begins.

Issued in Washington, DC, this 29th day of September, 1988.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

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Wednesday
October 5, 1988

Part IV

Department of Education

34 CFR Part 500 et al.

Bilingual Education Program; Basic Programs etc.; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Parts 500, 501, 524, 525, 526, 548, 561, 562, 573, 574, and 581

Bilingual Education Program; Basic Programs etc.

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Bilingual Education Program and the Emergency Immigrant Education Program. This action is taken to implement sections 4401–4410 and 7001–7063 of the Elementary and Secondary Education Act as amended by the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988. These regulations incorporate miscellaneous statutory amendments.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. Sections 500.51, 501.20, 501.26, 501.40, and 501.42 of the final regulations contain paperwork and will become effective after the information collection requirements contained in those sections have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Mary Mahony, the Office of Bilingual Education and Minority Languages Affairs (OBEMLA), U.S. Department of Education, 400 Maryland Avenue SW. (Switzer Building, Room 5078), Washington, DC 20202–6570, Telephone (202) 732–5063.

SUPPLEMENTARY INFORMATION: These regulations implement the Hawkins-Stafford Amendments of 1988, which amended the Bilingual Education Act, as amended by Pub. L. 98–511, enacted on October 19, 1984, and amended the Emergency Immigrant Education Act of 1984.

Waiver of Notice of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, because these regulations merely incorporate statutory changes, public comment could have no effect on the content of the regulations. Therefore, the Secretary has determined that publication of proposed rules is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

These technical amendments do not apply to second- and third-year noncompeting continuation grants in FY 1989 and third-year noncompeting continuation grants in FY 1990.

Intergovernmental Review

These programs are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

Assessment of Educational Impact

The Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Parts 500, 501, 524, 525, 526, 548, 561 and 581

Adult education, Bilingual education, Colleges and universities, Dissemination, Education, Elementary and secondary education, Grant programs—education, Reporting and recordkeeping requirements.

Dated: September 28, 1988.

Linus Wright,

Acting Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.003, Bilingual Education: Basic Programs; Family English Literacy Program; Special Populations Program; Academic Excellence Program; State Education Agency Program; Educational Personnel Training Program; Short-Term Training Program; Training Development and Improvement Program. Catalog of Federal Domestic Assistance Number 84.162, Emergency Immigrant Education Program)

The Secretary amends Parts 500, 501, 524, 525, 526, 548, 561, 562, 573, 574, and 581 of Title 34 of the Code of Federal Regulations as follows:

PART 500—BILINGUAL EDUCATION: GENERAL PROVISIONS

1. The authority citation for Part 500 is revised to read as follows:

Authority: 20 U.S.C. 3281–3341, unless otherwise noted.

2. Section 500.1 is amended by removing paragraphs (e), (g), and (l), and by redesignating paragraphs (f), (h), (i), (j), and (k) as paragraphs (e), (f), (g), (h), and (i), respectively, and by revising the authority citations following the existing and redesignated paragraphs to read as follows:

§ 500.1 [Amended]

Paragraph and Authority Citation

(a) (Authority: 20 U.S.C. 3291(a) (1), (2), and (3))
(b) (Authority: 20 U.S.C. 3291(a)(4))
(c) (Authority: 20 U.S.C. 3291(a)(5))
(d) (Authority: 20 U.S.C. 3291(a)(6))
(e) (Authority: 20 U.S.C. 3302)
(f) (Authority: 20 U.S.C. 3221)
(g) (Authority: 20 U.S.C. 3321(a)(2), 3323)
(h) (Authority: 20 U.S.C. 3321(a)(3))
(i) (Authority: 20 U.S.C. 3321(a)(4))

3. Section 500.3 is amended by removing "(b) and (c)" in paragraph (a) and adding, in its place, "(b), (c), and (d)", revising paragraphs (a)(2)(i), (a)(2)(iv), and (a)(2)(v), adding a new paragraph (a)(2)(vi), revising paragraph (b), adding a new paragraph (d), and revising the authority citation to read as follows:

§ 500.3 What regulations apply to these programs?

(a) * * *

(2) * * *

(i) Part 74 (Administration of Grants of Institutions of Higher Education, Hospitals and Nonprofit Organizations);

* * * * *

(iv) Part 78 (Education Appeal Board);

(v) Part 79 (Intergovernmental Review of Department of Education Programs and Activities); and

(vi) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(b) The provisions in 34 CFR 75.217 (b) through (d) (relating to the review of applications) do not apply to the State Educational Agency Program in 34 CFR Part 548.

* * * * *

(d) The provisions in 34 CFR 75.217(b)(2) (relating to the review of applications) do not apply to 34 CFR Parts 501, 524, 525, 526, 561, 573, and 574.

(Authority: 20 U.S.C. 3281–3341)

4. Section 500.4 is amended by revising paragraph (b) and adding a new paragraph (c) to read as follows:

§ 500.4 What definitions apply to these programs?

* * * * *

(b) *Definitions in the Act.* The following terms used in the parts listed in § 500.1 are defined in section 7003 of the Act:

Director
Family English literacy program
Limited English proficiency and proficient
Low-income
Native language
Office
Other programs for persons of limited English proficiency
Programs of academic excellence
Program of developmental bilingual education
Program of transitional bilingual education
Secretary
Special alternative instructional programs

(Authority: 20 U.S.C. 3283)

(c) *Program definitions.* The following definitions also apply to the parts listed in § 500.1:

"Act" or "Title VII" means the Bilingual Education Act, Title VII of the Elementary and Secondary Education Act, as amended by Pub. L. 100-297.

(Authority: 20 U.S.C. 3281-3341)

"Educational personnel" means teachers, teacher aides, paraprofessionals, administrators, school psychologists, guidance counselors, and other persons who provide or are preparing to provide instructional or support services in programs for limited English proficient persons.

(Authority: 20 U.S.C. 3281-3341)

"Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) that is recognized for the special programs and services provided by the United States to Indians because of their status as Indians.

(Authority: 20 U.S.C. 3292)

"Tribally sanctioned educational authority" means any department or division of education operating within the administrative structure of the duly constituted governing body of an Indian tribe, as well as any nonprofit institution or organization that—

(1) Is chartered by the governing body of an Indian tribe to operate any school or otherwise oversee delivery of educational services to members of that tribe; and

(2) Is approved by the Secretary for the purposes of carrying out programs under the Act.

(Authority: 20 U.S.C. 3292)

5. The authority citation for § 500.10 is revised to read as follows:

(Authority: 20 U.S.C. 3282)

6. The authority citation for § 500.11 is revised to read as follows:

(Authority: 20 U.S.C. 3291(j))

7. A new § 500.12 is added to Subpart B to read as follows:

§ 500.12 How may programs assisted under the Act enhance students' instruction?

Programs assisted under the Act may—

(a) Provide technology-based instruction;

(b) Expand the educational calendar of the schools in which the students are enrolled to include programs before and after school and during the summer months; and

(c) Lower pupil-teacher ratios.

(Authority: 20 U.S.C. 3291 (a) and (d)(3)(D))

§ 500.20 [Removed]

8. Section 500.20 is removed and Subpart C is reserved.

9. The authority citation for § 500.50 is revised to read as follows:

(Authority: 20 U.S.C. 3303)

10. Section 500.51 is amended by removing the word "and" at the end of paragraph (d), removing the period at the end of paragraph (e), and adding, in its place, "; and", adding a new paragraph (f) and revising the authority citation to read as follows:

§ 500.51 What evaluation information must a grantee collect?

* * * * *

(f) The specific activities undertaken to improve pre-referral evaluation procedures and instructional programs for LEP children who may be handicapped or gifted and talented.

(Authority: 20 U.S.C. 3303)

11. Section 500.52 is amended by removing paragraph (b)(4) and redesignating paragraphs (b)(5) and (b)(6) as (b)(4) and (b)(5), respectively, and revising the authority citation to read as follows:

(Authority: 20 U.S.C. 3303)

PART 501—BILINGUAL EDUCATION: BASIC PROGRAMS

12. The authority citation for Part 501 is revised to read as follows:

Authority: 20 U.S.C. 3281-3341, unless otherwise noted.

13. Section 501.1 is amended by removing "721" in paragraphs (a), (b), and (c), and adding, in its place, "7021", and revising the authority citation to read as follows:

(Authority: 20 U.S.C. 3291(a) (1), (2), and (3))

14. The authority citation for § 501.2 is revised to read as follows:

(Authority: 20 U.S.C. 3291(b)(1)(A))

15. Section 501.3 is amended by revising paragraph (b), adding a new paragraph (c), and revising the authority citation to read as follows:

§ 501.3 What regulations apply to Basic Programs?

* * * * *

(b) The regulations in this Part 501, except as provided in paragraph (c) of this section.

(c) The regulations in this Part 501 do not apply to second- and third-year noncompeting continuation grants in fiscal year (FY) 1989 and third-year noncompeting continuation grants in FY 1990. The regulations applicable to these noncompeting continuation grants are the regulations applicable in FY 1988.

(Authority: 20 U.S.C. 3291(a) (1), (2), and (3))

16. The authority citation for § 501.4 is revised to read as follows:

(Authority: 20 U.S.C. 3283, 3291)

17. Section 501.10 is amended by revising the introductory text of paragraph (b), paragraph (c), and the authority citation to read as follows:

§ 501.10 What activities are eligible for assistance?

* * * * *

(b) During the first twelve months of a project, a grantee may engage exclusively in preservice activities. These activities do not include providing instructional services to limited English proficient (LEP) children. Activities may include, but are not limited to—

* * * * *

(c) Providing or securing training for personnel participating or preparing to participate in the program that will assist them to meet State and local certification requirements. To the extent possible, college or university credit must be awarded for the training.

(Authority: 20 U.S.C. 3291(a) (1), (2), and (3), (d)(1)(B), and (f)(7))

18. The authority citation for § 501.11 is revised to read as follows:

(Authority: 20 U.S.C. 3291(f)(6)

19. Section 501.20 is amended by removing "721" in paragraphs (a)(1) and (b)(2), and adding, in its place, "7021", removing the word "and" following paragraph (b)(2), and adding new paragraphs (b)(4) and (b)(5), and revising the authority citation to read as follows:

§ 501.20 What must an applicant include in its application for assistance?

* * * * *

(b) * * *

(4) Use student evaluation and assessment procedures appropriate for LEP students; and

(5) Identify and serve any handicapped LEP students in accordance with the requirements of the EHA.

(Authority: 20 U.S.C. 3291)

20. Section 501.21 is amended by removing the period at the end of paragraph (c)(3), and adding, in its place "; and", adding a new paragraph (c)(4), and revising the authority citation to read as follows:

§ 501.21 What requirements pertain to the application advisory council and the parent advisory committee?

* * * * *

(c) * * *

(4) It will provide support for additional parent advisory activities if support is requested.

(Authority: 20 U.S.C. 3291)

21. The authority citation for § 501.22 is revised to read as follows:

(Authority: 20 U.S.C. 3291 (f)(2), (k))

22. Section 501.23 is revised to read as follows:

§ 501.23 What requirements pertain to preservice activities?

An applicant shall demonstrate in its application how it plans to conduct the preservice activities described in § 501.10(b) for the first twelve months of the grant.

(Authority: 20 U.S.C. 3291(d)(1)(B))

23. Section 501.24 is amended by revising paragraph (a) and the authority citation to read as follows:

§ 501.24 What requirements pertain to training activities?

* * * * *

(a) Provide or secure training for persons participating or preparing to participate in the project that will assist them to meet State and local certification requirements and that, to the extent possible, will provide them with college or university credit;

* * * * *

(Authority: 20 U.S.C. 3291(f)(7))

24. The authority citation for § 501.25 is revised to read as follows:

(Authority: 20 U.S.C. 3291(f)(4), 3303)

25. A new § 501.26 is added to read as follows:

§ 501.26 What requirements pertain to SEA review of an application?

An applicant that seeks assistance shall include evidence, in its application, that the SEA has been notified of the application and has been given an opportunity to offer recommendations on the application to the applicant and the Secretary and otherwise comply with the procedures in 34 CFR 75.156–75.160.

(Authority: 20 U.S.C. 3291 (e)(5), (f)(9))

26. Section 501.30 is amended by removing the words "may also consider" in paragraph (c) and adding, in their place, the words "also considers", and revising the authority citation to read as follows:

(Authority: 20 U.S.C. 3291 (a) (1), (2), (3), (c)(3), (f)(8), (g), and (h))

27. The authority citation for § 501.31 is revised to read as follows:

(Authority: 20 U.S.C. 3291 (a) (1), (2), (3), (c)(2), (d)(1)(B), (f) (1), (3), (6), (7), and 3303)

28. The authority citation for § 501.32 is revised to read as follows:

(Authority: 20 U.S.C. 3291 (f)(8), (h))

29. Section 501.33 is amended by revising the heading, the introductory text of paragraph (a), paragraph (a)(3), and the authority citation to read as follows:

§ 501.33 What specific factors does the Secretary consider in awarding grants under special alternative instructional programs?

(a) For special alternative instructional programs, the Secretary additionally gives priority to applications based on—

* * * * *

(3) The presence of a small number of LEP students in the LEA's schools and the LEA's inability to obtain native language teachers because of isolation or regional location.

* * * * *

(Authority: 20 U.S.C. 3291 (c)(3) and (g))

30. The authority citation for § 501.34 is revised to read as follows:

(Authority: 20 U.S.C. 3291(d)(1) (A), (C))

31. Section 501.40 is amended by adding a new paragraph (c) and revising the authority citation to read as follows:

§ 501.40 What information must be given to parents?

* * * * *

(c) The grantee shall make every effort to provide the information to parents in a language and form the parents understand.

(Authority: 20 U.S.C. 3283(c), and 3291(d)(1)(D))

32. The authority citation for § 501.41 is revised to read as follows:

(Authority: 20 U.S.C. 3283(a)(4) (B), (C), (D))

33. A new § 501.42 is added to read as follows:

§ 501.42 How long may a student remain in a Program of Transitional Bilingual Education or a Special Alternative Instructional Program?

(a) A student may be enrolled in a program of Transitional Bilingual Education or a Special Alternative Instructional Program for a period of no more than 3 years, unless—

(1) The school in which the student is enrolled conducts a comprehensive evaluation of the overall academic progress of the student; and

(2) The results of the evaluation indicate the lack of English proficiency is impeding the academic progress of the student in meeting grade promotion and graduation standards and, in the case of a handicapped child, attainment of the objective in the child's individualized education program.

(b) Any student with respect to whom the requirements of paragraph (a)(1)–(2) of this section are met may remain in the program for a fourth year and, if these requirements are met again at the end of the fourth year, the student may remain in the program for a fifth year.

(c) The evaluation required by paragraph (a) of this section must involve teachers and school personnel familiar with the student's overall academic progress. The results of such an evaluation must be made available to the parents of the student. Each evaluation must indicate how the student's English language development will be addressed during the period the student is retained in the program. The students' academic program during that period shall emphasize mastery of English.

(d) No student may remain in a program described in paragraph (a) of this section for more than 5 years.

(Authority: 20 U.S.C. 3291(d)(3))

PART 524—BILINGUAL EDUCATION: ACADEMIC EXCELLENCE PROGRAM

34. The authority citation for Part 524 is revised to read as follows:

Authority: 20 U.S.C. 3281–3341, unless otherwise noted.

35. Section 524.1 is amended by revising paragraph (b)(2) and the authority citation to read as follows:

§ 524.1 Academic Excellence Program.

* * * * *

(b) * * *

(2) Facilitate the dissemination of effective bilingual education practices for limited English proficient students that—

(i) Can be models for effective schools using effective teaching practices; or

(ii) Serve as models of exemplary bilingual education programs.

(Authority: 20 U.S.C. 3283(a)(8))

36. Section 524.2 is amended by revising paragraph (a)(2), adding paragraph (a)(3), removing paragraph (b), redesignating paragraph (c) as paragraph (b), and revising redesignated paragraph (b)(2), and the authority citation to read as follows:

§ 524.2 Who is eligible to apply for assistance?

(a) * * *

(2) Institutions of higher education (IHEs), including junior or community colleges.

(3) Private nonprofit organizations applying separately or jointly.

(b) * * *

(2) Approved by the Program Effectiveness Panel (PEP) as defined in 34 CFR 785.5.

(Authority: 20 U.S.C. 3291(b)(2), 3283(a)(8))

37. Section 524.3 is amended by revising paragraph (b), adding a new paragraph (c), and revising the authority citation to read as follows:

§ 524.3 What regulations apply?

* * * * *

(b) The regulations in this Part 524, except as provided in paragraph (c) of this section.

(c) The regulations in this Part 524 do not apply to second- and third-year noncompeting continuation grants in FY 1989 and third-year noncompeting continuation grants in FY 1990. The regulations applicable to these noncompeting continuation grants are the regulations applicable in FY 1988.

(Authority: 20 U.S.C. 3291)

38. Section 524.4 is amended by revising paragraph (b) and the authority citation to read as follows:

§ 524.4 What definitions apply?

* * * * *

(b) The definitions of "Program Effectiveness Panel" and "PEP approval" in 34 CFR 785.5.

* * * * *

(Authority: 20 U.S.C. 3291)

39. The authority citation for § 524.10 is revised to read as follows:

(Authority: 20 U.S.C. 3291)

40. Section 524.20 is amended by removing "JDRP" at the beginning of paragraph (a)(1), and adding, in its place, "PEP", and removing "721" in paragraph (b)(1), and adding, in its place "7021", and by revising the authority citation to read as follows:

(Authority: 20 U.S.C. 3291(a)(4))

41. Section 524.21 is amended by revising paragraph (a) and removing "721" in paragraph (c)(1), and adding, in its place, "7021", and revising the authority citation to read as follows:

§ 524.21 How does an SEA nominate an applicant under this program?

(a) The SEA of the State in which the program is located may nominate up to eight programs under this part.

* * * * *

(Authority: 20 U.S.C. 3291(a)(4))

42. The authority citation for § 524.30 is revised to read as follows:

(Authority: 20 U.S.C. 3291(a)(4))

43. The authority citation for § 524.31 is revised to read as follows:

(Authority: 20 U.S.C. 3291(a)(4))

44. The authority citation for § 524.32 is revised to read as follows:

(Authority: 20 U.S.C. 3291)

45. The authority citation for § 524.33 is revised to read as follows:

(Authority: 20 U.S.C. 3291(d)(2))

46. The authority citation for § 524.40 is revised to read as follows:

(Authority: 20 U.S.C. 3291(a)(4))

PART 525—BILINGUAL EDUCATION: FAMILY ENGLISH LITERACY PROGRAM

47. The authority citation for Part 525 is revised to read as follows:

(Authority: 20 U.S.C. 3281–3341, unless otherwise noted)

48. The authority citation for § 525.1 is revised to read as follows:

(Authority: 20 U.S.C. 3283(a)(7))

49. The authority citation for § 525.2 is revised to read as follows:

(Authority: 20 U.S.C. 3291(b)(2))

50. Section 525.3 is amended by revising paragraph (b) and adding a new paragraph (c), and revising the authority citation to read as follows:

§ 525.3 What regulations apply to the Family English Literacy Program?

* * * * *

(b) The regulations in this Part 525, except as provided in paragraph (c) of this section.

(c) The regulations in this Part 525 do not apply to second- and third-year noncompeting continuation grants in FY 1989 and third-year noncompeting continuation grants in FY 1990. The regulations applicable to these noncompeting continuation grants are the regulations applicable in FY 1988.

(Authority: 20 U.S.C. 3283(a)(7), 3291(a)(5))

51. The authority citation for § 525.4 is revised to read as follows:

(Authority: 20 U.S.C. 3283(a)(7))

52. Section 525.10 is amended by removing "and" at the end of paragraph (a)(1), removing the period at the end of paragraph (a)(2) and adding, in its place "; and", adding a new paragraph (a)(3), and revising the authority citation to read as follows:

§ 525.10 What activities are eligible for assistance?

(a) * * *

(a) Instruction designed to enable aliens otherwise eligible for temporary resident status under section 245A of the Immigration and Nationality Act to achieve a minimal understanding of ordinary English, and a knowledge and understanding of history and government of the United States as required by section 312 of the Immigration and Nationality Act.

* * * * *

(Authority: 20 U.S.C. 3283(a)(7))

53. Section 525.20 is amended by removing "721" and adding, in its place, "7021", and revising the authority citation to read as follows:

(Authority: 20 U.S.C. 3291(a)(5))

54. The authority citation for § 525.21 is revised to read as follows:

(Authority: 20 U.S.C. 3291(a)(5), 3303)

55. The authority citation for § 525.30 is revised to read as follows:

(Authority: 20 U.S.C. 3283 (a)(8), (h))

56. The authority citation for § 525.31 is revised to read as follows:

(Authority: 20 U.S.C. 3283(a)(7))

57. The authority citation for § 525.32 is revised to read as follows:

(Authority: 20 U.S.C. 3291)

58. The authority citation for § 525.33 is revised to read as follows:

(Authority: 20 U.S.C. 3291(b)(2))

PART 526—BILINGUAL EDUCATION: SPECIAL POPULATIONS PROGRAM

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

(Authority: 20 U.S.C. 3281–3341, unless otherwise noted)

60. The authority citation for § 526.1 is revised to read as follows:

(Authority: 20 U.S.C. 3291(a)(6))

61. The authority citation for § 526.2 is revised to read as follows:

(Authority: 20 U.S.C. 3291(b)(2))

62. Section 526.3 is amended by revising paragraph (b), adding a new paragraph (c), and revising the authority citation to read as follows:

§ 526.3 What regulations apply to the Special Populations Programs?

* * * * *

(b) The regulations in this Part 526, except as provided in paragrah (c) of this section.

(c) The regulations in this Part 526 do not apply to second- and third-year noncompeting continuation grants in FY 1989 and third-year noncompeting continuation grants in FY 1990. The regulations applicable to these noncompeting continuation grants are the regulations applicable in FY 1988.

(Authority: 20 U.S.C. 3291(a)(6))

63. The authority citation for § 526.4 is revised to read as follows:

(Authority: 20 U.S.C. 1401–1420, 3291(a)(6))

64. The authority citation for § 526.10 is revised to read as follows:

(Authority: 20 U.S.C. 3291(a)(6))

65. The authority citation for § 526.20 is revised to read as follows:

(Authority: 20 U.S.C. 3291(a)(6), 3303)

66. The authority citation for § 526.30 is revised to read as follows:

(Authority: 20 U.S.C. 3291(a)(6))

67. The authority citation for § 526.31 is revised to read as follows:

(Authority: 20 U.S.C. 3291(a)(6))

68. In § 526.32, the authority citation following the cross-reference after paragraph (d), "(Authority: 20 U.S.C. 3231(a)(6), 3243)" is removed, and a new authority citation is added, in its place, to read "(Authority: 20 U.S.C. 3291(a)(6), 3303)", and the authority citation at the end of the section is revised to read as follows:

(Authority: 20 U.S.C. 1401–1420, 3291(a)(6))

69. Section 526.33 is amended by removing the words "one to", and revising the authority citation to read as follows:

(Authority: 20 U.S.C. 3291(b)(2))

70. The authority citation for § 526.40 is revised to read as follows:

(Authority: 20 U.S.C. 3283(c), 3291(d)(1)(D))

PART 548—BILINGUAL EDUCATION: STATE EDUCATIONAL AGENCY PROGRAM

71. The authority citation for Part 548 is revised to read as follows:

(Authority: 20 U.S.C. 3281–3341, unless otherwise noted)

72. The authority citation for § 548.1 is revised to read as follows:

(Authority: 20 U.S.C. 3302)

73. The authority citation for § 548.2 is revised to read as follows:

(Authority: 20 U.S.C. 3302)

74. Section 548.3 is revised to read as follows:

§ 548.3 What regulations apply to the State Educational Agency Program?

The following regulations apply to the State Educational Agency Program:

(a) The regulations identified in 34 CFR 500.3.

(b) The regulations in this Part 548.

(Authority: 20 U.S.C. 3302)

§ 548.4 [Amended]

75. Section 548.4 is amended by removing paragraph (a), the paragraph designation for paragraph (b), the words "awards made subsequent to Fiscal Year 1985" from former paragraph (b), and adding, in their place, the words "the State Educational Agency Program", and revising the authority citation to read as follows:

(Authority: 20 U.S.C. 3302)

§ 548.10 [Amended]

76. Section 548.10 is amended by removing "721" and "732" from paragraph (c)(1) and adding, in their places, "7021" and "7032", respectively, and removing "721" from paragraph (c)(2) and adding, in its place, "7021", and revising the authority citation to read as follows:

(Authority: 20 U.S.C. 3302)

77. The authority citation for § 548.11 is revised to read as follows:

(Authority: 20 U.S.C. 3302)

78. The authority citation for § 548.20 is revised to read as follows:

(Authority: 20 U.S.C. 3302)

79. Section 548.30 is amended by revising paragraph (b) and the authority citation to read as follows:

§ 548.30 How are funds distributed to an SEA?

* * * * *

(b) The amount paid to an SEA for any fiscal year may not be less than $75,000 nor greater than 5 percent of the total amount paid to LEAs within the State under Part A of Title VII during the fiscal year preceding the year for which assistance is sought.

* * * * *

(Authority: 20 U.S.C. 3302)

80. The authority citation for § 548.31 is revised to read as follows:

(Authority: 20 U.S.C. 3302)

81. Section 548.32 is amended by removing "732" from paragraph (d) and adding, in its place, "7032", and revising the authority citation to read as follows:

(Authority: 20 U.S.C. 3302)

82. The authority citation for § 548.40 is revised to read as follows:

(Authority: 20 U.S.C. 3302)

PART 561—BILINGUAL EDUCATION: EDUCATIONAL PERSONNEL TRAINING PROGRAM

83. The authority citation for Part 561 is revised to read as follows:

(Authority: 20 U.S.C. 3281–3341, unless otherwise noted)

84. The authority citation for § 561.1 is revised to read as follows:

(Authority: 20 U.S.C. 3321(a)(1))

85. The authority citation for § 561.2 is revised to read as follows:

(Authority: 20 U.S.C. 3321(a)(1))

86. Section 561.3 is amended by revising paragraph (b), adding a new paragraph (c), and revising the authority citation to read as follows:

§ 561.3 What regulations apply to the Educational Personnel Training Program?

* * * * *

(b) The regulations in this Part 561, except as provided in paragraph (c) of this section.

(c) The regulations in this Part 561 do not apply to second- and third-year noncompeting continuation grants in FY 1989 and third-year noncompeting continuation grants in FY 1990. The regulations applicable to these noncompeting continuation grants are the regulations applicable in FY 1988.

(Authority: 20 U.S.C. 3321(a)(1))

87. The authority citation for § 561.4 is revised to read as follows:

(Authority: 20 U.S.C. 3321(a)(1))

88. Section 561.10 is amended by adding the words "designed to assist

educational personnel in meeting State and local certification requirements" before the period at the end of the sentence, and revising the authority citation to read as follows:

(Authority: 20 U.S.C. 3321(a)(1))

89. Section 561.20 is revised to read as follows:

§ 561.20 What requirements pertain to the application advisory council and advisory committee?

An applicant for an award under this program shall develop its application in consultation with an advisory council composed of representatives of SEAs and LEAs within the applicant's service area or geographic region that operate programs for limited English proficient persons.

(Authority: 20 U.S.C. 3321(c))

90. The authority citation for § 561.30 is revised to read as follows:

(Authority: 20 U.S.C. 3321(a)(1))

91. The authority citation for § 561.31 is revised to read as follows:

(Authority: 20 U.S.C. 3321(a)(1), (d))

92. The authority citation for § 561.32 is revised to read as follows:

(Authority: 20 U.S.C. 3324)

93. Section 561.40 is amended by revising the heading, redesignating the existing text as paragraph (b), adding a new paragraph (a), and revising the authority citation to read as follows:

§ 561.40 What additional requirements apply?

(a) Programs must be designed to assist educational personnel in meeting State and local certification requirements, and, whenever possible, should award college or university credit.

* * * * *

(Authority: 20 U.S.C. 3321(d))

94. The authority citation for § 561.41 is revised to read as follows:

(Authority: 20 U.S.C. 3325)

PART 562—BILINGUAL EDUCATION: FELLOWSHIP PROGRAM

95. The authority citation for Part 562 is revised to read as follows:

(Authority: 20 U.S.C. 3281–3341, unless otherwise noted)

96. The authority citations following the sections in Part 562 listed below are revised to read as follows:

Section and Authority Citation

§ 562.1 (Authority: 20 U.S.C. 3321, 3323)
§ 562.2 (Authority: 20 U.S.C. 3323)
§ 562.3 (Authority: 20 U.S.C. 3323)
§ 562.4 (Authority: 20 U.S.C. 3281–3341)
§ 562.5 (Authority: 20 U.S.C. 3325)
§ 562.10 (Authority: 20 U.S.C. 3323, 3324)
§ 562.11 (Authority: 20 U.S.C. 3323)
§ 562.20 (Authority 20 U.S.C. 3323)
§ 562.30 (Authority: 20 U.S.C. 3323)
§ 562.31 (Authority: 20 U.S.C. 3323)
§ 562.40 (Authority: 20 U.S.C. 3323(b))
§ 562.41 (Authority: 20 U.S.C. 3323(b))
§ 562.42 (Authority: 20 U.S.C. 3323(b))
§ 562.43 (Authority: 20 U.S.C. 3323(b))
§ 562.44 (Authority: 20 U.S.C. 3323(b))
§ 562.45 (Authority: 20 U.S.C. 3323(b))
§ 562.46 (Authority: 20 U.S.C. 3323(b))
§ 562.47 (Authority: 20 U.S.C. 3323(b))

PART 573—BILINGUAL EDUCATION: TRAINING DEVELOPMENT AND IMPROVEMENT PROGRAM

97. The authority citation for Part 573 is revised to read as follows:

(Authority: 20 U.S.C. 3281–3341, unless otherwise noted)

98. The authority citations following the sections in Part 573 listed below are revised to read as follows:

Section and Authority Citation

§ 573.1 (Authority: 20 U.S.C. 3321(a)(3))
§ 573.2 (Authority: 20 U.S.C. 3321(b)(1))
§ 573.4 (Authority: 20 U.S.C. 3321(a)(3))
§ 573.10 (Authority: 20 U.S.C. 3321(a)(3))
§ 573.30 (Authority: 20 U.S.C. 3321(a)(3))
§ 573.31 (Authority: 20 U.S.C. 3321(a)(3))

99. Section 573.3 is amended by revising paragraph (b), adding a new paragraph (c), and revising the authority citation to read as follows:

§ 573.3 What regulations apply to the Training Development and Improvement Program?

* * * * *

(b) The regulations in this Part 573, except as provided in paragraph (c) of this section.

(c) The regulations in this Part 573 do not apply to second- and third-year noncompeting continuation grants in fiscal year (FY) 1989 and third-year noncompeting continuation grants in FY 1990. The regulations applicable to these noncompeting continuation grants are the regulations applicable in FY 1988.

(Authority: 20 U.S.C. 3321(a) (3))

PART 574—BILINGUAL EDUCATION: SHORT-TERM TRAINING PROGRAM

100. The authority citation for Part 574 is revised to read as follows:

(Authority: 20 U.S.C. 3281–3341, unless otherwise noted)

101. The authority citations following the sections in Part 574 listed below are revised to read as follows:

Section and Authority Citation

§ 574.1 (Authority: 20 U.S.C. 3321(a)(4))
§ 574.2 (Authority: 20 U.S.C. 3321(b)(2))
§ 574.4 (Authority: 20 U.S.C. 3283, 3321(a)(4))
§ 574.10 (Authority: 20 U.S.C. 3321(a)(4))
§ 574.20 (Authority: 20 U.S.C. 3321(b)(2))
§ 574.30 (Authority: 20 U.S.C. 3321(a)(4))
§ 574.31 (Authority: 20 U.S.C. 3321(a)(4))
§ 574.32(g) (Authority: 20 U.S.C. 3321(a)(4))
§ 574.33 (Authority: 20 U.S.C. 3321(a)(4), 3324)
§ 574.40 (Authority: 20 U.S.C. 3325)

102. The authority citation following § 574.32(b)(2)(iv) is revised to read as follows:

(Authority: 20 U.S.C. 3321(e), 3324)

103. Section 574.3 is amended by revising paragraph (b), adding a new paragraph (c), and revising the authority citation to read as follows:

§ 574.3 What regulations apply to the Short-Term Training Program?

* * * * *

(b) The regulations in this Part 574, except as provided in paragraph (c) of this section.

(c) The regulations in this Part 574 do not apply to second- and third-year noncompeting continuation grants in fiscal year (FY) 1989 and third-year noncompeting continuation grants in FY 1990. The regulations applicable to these noncompeting continuation grants are the regulations applicable in FY 1988.

(Authority 20 U.S.C. 3321(a)(4))

PART 581—EMERGENCY IMMIGRANT EDUCATION PROGRAM

104. The authority citation for Part 581 is revised to read as follows:

(Authority: 20 U.S.C. 3122–3130, unless otherwise noted)

105. The authority citations following the sections in Part 581 listed below are revised to read as follows:

Section and Authority Citation

§ 581.1 (Authority: 20 U.S.C. 3127)
§ 581.2 (Authority: 20 U.S.C. 3126)
§ 581.3 (Authority: 20 U.S.C. 3122–3130)
§ 581.4 (Authority: 20 U.S.C. 3122)
§ 581.11 (Authority: 20 U.S.C. 3126(b))
§ 581.20 (Authority: 20 U.S.C. 3123(b), 3124, 3126(b))
§ 581.40 (Authority: 20 U.S.C. 3123(b), 3126(b), 3128(a)(3))
§ 581.50 (Authority: 20 U.S.C. 3127)
§ 581.51 (Authority: 20 U.S.C. 3122, 3125, 3126(c))
§ 581.53 (Authority: 20 U.S.C. 3129(b))
§ 581.54 (Authority: 20 U.S.C. 3129(b))
§ 581.55 (Authority: 20 U.S.C. 3129(b))
§ 581.56 (Authority: 20 U.S.C. 3129(b))

§ 581.57 (Authority: 20 U.S.C. 3129(b))
§ 581.58 (Authority: 20 U.S.C. 3129(b))
§ 581.60 (Authority: 20 U.S.C. 3125, 3126 (b) and (c))

106. Section 581.10 is amended by revising paragraph (e) and the authority citation to read as follows:

§ 581.10 What assurances must a State submit to receive a grant?

* * * * *

(e) An assurance that the SEA will submit—

(1) A biennial report to the Secretary concerning the expenditure of funds by LEAs under this program; and

(2) Any other reports required by the Secretary under this program.

* * * * *

(Authority: 20 U.S.C. 3128, 3130)

107. Section 581.52 is amended by revising paragraph (c) and the authority citation to read as follows:

§ 581.52 What requirements pertain to the participation of immigrant children in elementary and secondary nonpublic schools?

* * * * *

(c) Any waiver of the requirements that an LEA provide services to immigrant children enrolled in elementary and secondary nonpublic schools is subject to consultation, withholding, notice, and judicial review requirements in accordance with the provisions of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended, and the regulations in §§ 581.53 through 581.58.

(Authority: 20 U.S.C. 3128(a)(6), 3129(b))

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Reader Aids

Federal Register
Vol. 53, No. 193
Wednesday, October 5, 1988

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, OCTOBER

38687-38938.....3
38939-39072.....4
39073-39224.....5

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
5867.....38687
5868.....38689
5869.....38691
5870.....38693
5871.....38695
5872.....38697
5873.....38699
5874.....38705
5875.....39071
5876.....39073
5877.....39075
5878.....39077

Executive Orders:
11183 (Amended by EO 12653).....38703
12653.....38703

Administrative Orders:
Memorandums:
Sept. 29, 1988.....38701

5 CFR

Proposed Rules:
430.....38954
432.....38954

7 CFR

401.....38707
910.....38707
1610.....39014
1951.....39014

Proposed Rules:
1001.....38963
1002.....38727, 38963
1004.....38963
1007.....38730
1098.....38730
1772.....38965

10 CFR

600.....38939
1035.....38939

12 CFR

611.....39079

Proposed Rules:
615.....39099

13 CFR

105.....38941

Proposed Rules:
108.....38737

14 CFR

Proposed Rules:
157.....39062

15 CFR

379.....38835
399.....38835

16 CFR

13.....38941
304.....38942

Proposed Rules:
419.....39103

17 CFR

240.....38967

Proposed Rules:
15.....39103

18 CFR

1307.....39081

20 CFR

404.....38943, 39014
416.....39014

21 CFR

177.....39083
524.....39084
558.....38708
886.....38946

22 CFR

204.....39015

24 CFR

Proposed Rules:
203.....38844
213.....38844
220.....38844
221.....38844
222.....38844
226.....38844
233.....38844
234.....38844
235.....38844

26 CFR

1.....38708, 39015
602.....38708, 39015

29 CFR

Proposed Rules:
1910.....38738
1915.....38738
1917.....38738
1918.....38738
1926.....38738
2610.....39200

30 CFR

773.....38868
916.....39085

Proposed Rules:
256.....38739
281.....38739
282.....38739
906.....39105

32 CFR

199.....38947
1285.....38716

33 CFR

100.....38716
117.....38717
165.....38718

34 CFR

219.....39018
222.....39018
500.....39218
501.....39218
524.....39218
525.....39218
526.....39218
548.....39218
561.....39218
562.....39218
573.....39218
574.....39218
581.....39218

37 CFR

Proposed Rules:
10.....38740, 38948

39 CFR

232.....39087

40 CFR

52.....38719, 38722, 39087
60.....38892
81.....38724
147.....39088
180.....39090
272.....38950
799.....38952

Proposed Rules:
61.....39058
145.....38741
180.....39106-39109
763.....38868

42 CFR

405.....38835
412.....38835
413.....38835
489.....38835

43 CFR

3450.....39015

44 CFR

62.....39091

Proposed Rules:
67.....38741

45 CFR

Proposed Rules:
302.....39110
303.....39110
304.....39110
305.....39110

46 CFR

Proposed Rules:
580.....38742, 38969

47 CFR

0.....39092
36.....39095
73.....39095
94.....38725
300.....39095

Proposed Rules:
73.....38743, 38747
90.....39114

48 CFR

519.....39096

Proposed Rules:
222.....38749
247.....38753
252.....38753

49 CFR

383.....39044
390.....39044
391.....39044
392.....39044
1185.....39096

Proposed Rules:
177.....39114
531.....39115
1207.....39119
1249.....39119

50 CFR

642.....39097
675.....38725, 39097

Proposed Rules:
17.....38969
23.....38755

LIST OF PUBLIC LAWS

Last List: October 4, 1988

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 4794/Pub. L. 100-457

Department of Transportation and Related Agencies Appropriations Act, 1989. (Sept. 30, 1988; 102 Stat. 2125; 33 pages) Price: $1.25

H.R. 4587/Pub. L. 100-458

Legislative Branch Appropriations Act, 1989. (Oct. 1, 1988; 102 Stat. 2158; 28 pages) Price: $1.00

H.R. 4782/Pub. L. 100-459

Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1989. (Oct. 1, 1988; 102 Stat. 2186; 43 pages) Price: $1.25

H.R. 4784/Pub. L. 100-460

Rural Development, Agriculture, and Related Agencies Appropriations Act, 1989. (Oct. 1, 1988; 102 Stat. 2229; 39 pages) Price: $1.25

H.R. 4637/Pub. L. 100-461

Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989. (Oct. 1, 1988; 102 Stat. 2268)

H.R. 4776/Pub. L. 100-462

District of Columbia Appropriations Act, 1989. (Oct. 1, 1988; 102 Stat. 2269)

H.R. 4781/Pub. L. 100-463

Department of Defense Appropriations Act, 1989. (Oct. 1, 1988; 102 Stat. 2270)